

MEMORANDUM

Date: February 28, 2012

To: HAC

From: Julie Conway

Re: Measure J/ Chapter 17.10 update

Over the last few years your Commission has been presented with proposed changes to Chapter 17.10 and the Measure J program. Attached is a letter that was presented today to the Board of Supervisors that includes those changes and new proposals, some of which your commission has previously discussed. The Board has directed staff to return in late March or early April after meeting with your Commission.



COUNTY OF SANTA CRUZ

PLANNING DEPARTMENT

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February 22, 2012

AGENDA: February 28, 2012

Board of Supervisors
701 Ocean Street
Santa Cruz CA 95060

SUBJECT: Accept and File Report on Possible Changes to "Measure J" Affordable Housing Ordinance and Guidelines, and to the Affordable Housing Preservation Program

Dear Members of the Board:

The "Measure J Program" was approved by county voters in 1978, and it established an inclusionary affordable housing requirement for new housing development projects of five or more units. Santa Cruz County Code Chapter 17.10 contains not only the voter-approved provisions of Measure J, but also additional provisions regarding implementation of affordable housing requirements. Further, your Board has adopted Administrative Guidelines for the Affordable Housing Program, containing additional guidelines and details regarding implementation of Code provisions. Your Board also has approved an Affordable Housing Preservation (AHP) Program to give the County the ability to purchase at-risk Measure J and other restricted units in order to prevent the loss of affordability restrictions in the event of foreclosure.

As a result of Measure J, there are nearly 500 price-restricted homes located throughout the unincorporated County. These units are limited to low- and moderate-income eligible purchasers and low-income renters. For about thirty years, the Measure J Program worked as designed and provided income-qualified households with opportunities to purchase homes at prices well below market values. However, once the impact of national economic conditions began to be felt in the local housing market in 2007, the Program encountered certain challenges, as the number of foreclosures increased and as values of market-rate homes dropped closer to or even below the restricted values of Measure J homes.

One of the early programmatic responses approved by your Board in September 2007 was to strengthen the Measure J Affordable Housing Preservation Program (AHP), which had been in effect since 1990, to allow use of redevelopment housing set-aside funds for the AHP. In order to prevent the loss of deed restrictions which ensure long-term affordability of units, a unit is purchased by the County at the restricted re-sale price or market value, whichever is less. Necessary repairs are then made and the unit is sold to an income-qualified household. In August 2010 the AHP was modified to also allow the County to master lease units to non-profit agencies who then meet the housing needs of special needs households. This allowed for retaining the unit in County ownership and not selling it until housing values increased and the County could recover its cost of acquiring the unit.

In June 2011, your Board authorized staff to limit the purchase of homes under the AHP to those that would not involve extensive rehabilitation and that could be readily re-sold to eligible households with the affordability deed restriction intact. It was recognized that some units would be lost to the affordable housing stock, because their values and/or conditions were such that these units, even at market appraised values, had become "affordable by nature" of condition, design, location and other factors; and would not have values consistent with Measure J calculations for years into the future.

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On November 8, 2011, your Board considered a report on the status of various housing projects for which RDA and County affordable housing funds had been committed. At that time, your Board took action to cancel the \$4,814,400 Swan Lake Purchase Agreement. The focus of the Swan Lake effort, then, shifted away from the County buying the remaining 20 Measure J units that are currently owned by the developer and rented at market rate. Instead, efforts are being directed at identifying ways to provide assistance under the county's Affordable Housing Preservation (AHP) Program, to existing Measure J Swan Lake unit owners whose units currently cannot be sold other than to "cash buyers" due to unavailability of bank financing. Up to \$3,600,000 was discussed as potentially available under the Housing Authority contract, as the AHP program was anticipated to occur under that contract. Staff was directed to report back to the Board on February 28, 2012 regarding Swan Lake, and to provide implementation of options for Swan Lake by June 2012. The recommended modifications to the Measure J Administrative Guidelines, AHP Program, and Chapter 17.10 should help with availability of options for Swan Lake owners, just as they will help owners of other Measure J units throughout the County. After a review of the recommended programmatic changes, this report will further discuss how these changes could result in improved options for Swan Lake owners. The process and timeline for implementation of each of the recommended changes will also be reviewed.

On December 13, 2011, your Board received information about the status of the AHP program, which reported that thirty (30) units had been preserved since 2007 through acquisition, with twenty-six (26) re-sold and four (4) master-leased to non-profit agencies. Since June 2011, thirteen (13) units were lost to foreclosure and affordability restrictions thus eliminated from those units. Five (5) of those units were in developments where the number of rental units exceeds the number of owner-occupied units, and thus bank financing is not available to buyers of units in those developments, which include Swan Lake Condominiums, Vista Prieta and Casa la Familia (the latter two are senior housing developments, which has kept market values down to an affordable level even without the affordability restriction). The remaining eight (8) units lost to the affordable housing stock were in locations where values are lower, or were in poor condition, or had market prices that were well below calculated restricted values. It was also noted in the December report that twenty-four (24) additional units were able to remain owner-occupied or sold with deed restrictions intact, through efforts made by the County to work with owners and lenders to prevent foreclosures through loan modifications, loan advances, and implementation of money management strategies and work out plans.

At the time of the December 13, 2011 AHP status report, the future of Redevelopment was still uncertain, as the California Supreme Court had not yet ruled on the legality of AB1x26 and AB1x27. Therefore, there was some uncertainty about the future level of Affordable Housing Preservation program activities that the County would be able to pursue. By the end of December, however, the court had ruled to uphold the termination of redevelopment agencies and also to strike down the option for agencies to make voluntary payments in order to remain alive. Subsequently, as provided by the law, the County of Santa Cruz did elect on January 10, 2012 to retain the responsibility for performing housing functions previously performed by the Redevelopment Agency (RDA), effective February 1, 2012. As such, all assets, rights, powers, duties and obligations of the former RDA Housing Program continue, under what is now known as the County Housing Program, which will allow for a limited continuation of the AHP Program.

Recognizing the on-going difficulties associated with the housing market, and the probable need to amend certain Chapter 17.10, Measure J Administrative Guidelines and AHP provisions, on December 13, 2011 your Board directed staff to carry out additional analysis and return to the Board with recommendations for changes that would be responsive to current market conditions while preserving an affordable housing program. Staff has identified a number of changes intended to strengthen the program in the long run. The recommendations reviewed in this report fall into four categories: provisions responding to the market downturn, provisions adding to program feasibility and flexibility, administrative clean-up measures, and ease of use provisions. Some changes are modifications to

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Administrative Guidelines for the Measure J and AHP programs, while other changes are ordinance amendments to Chapter 17.10 of the County Code, as reviewed below.

AMENDMENTS TO MEASURE J ADMINISTRATIVE GUIDELINES

Proposed changes to the Measure J Affordable Housing Guidelines (AHG), which are consistent with the voter-approved provisions of Measure J and do not require ordinance amendments, include:

1. Extend Modification of AHG Minimum Household Size Requirement

In today's real estate lending market, purchasers of Measure J homes are expected to have a down payment of 20% of the purchase price and higher credit scores in order to qualify for a mortgage, in addition to meeting the Measure J eligibility requirements. As a result, Measure J homeowners are having difficulty selling their homes. On May 4, 2010 your Board approved a temporary 2-year modification of the Administrative Guidelines, with respect to the minimum household size requirement. The Program usually requires that the minimum household size be equal to the number of bedrooms in a unit, but was modified to allow the minimum size to be one less person than the number of bedrooms. This expands the pool of interested eligible buyers for a Measure J unit, in that a two-bedroom home could be purchased by a single person, a three-bedroom home could be purchased by a two-person household, and a four-bedroom home could be purchased by a three-person household.

Staff is recommending that the temporary modification of the AHG minimum household size requirement scheduled to expire on June 5, 2012 be extended an additional three years to June 5, 2015.

2. Allow Rental of Measure J Units at Rates Affordable to Low-income Households with Incomes at or below 80% of Area Median Income

Section 17.10.050 of the Ordinance allows Measure J units to be rented as Investor-Owner units, providing they are rented to eligible households at an affordable price as defined by the Affordable Housing Guidelines. Currently, the maximum allowable rent is calculated as that which is affordable to very low income households, defined as those with incomes at or below 60% of Area Median Income (AMI). This limitation places the burden of providing a deeper level of affordability on low- and moderate-income homeowners who were themselves Measure J buyers. Particularly in this market, the 60% rent level prevents many homeowners from covering their housing costs (mortgage, property taxes, insurance and possible HOA dues) and ensuring adequate maintenance of the units. In the case of homeowners with units in developments where fewer than 50% of the units are owner occupied (such as at Swan Lake, Vista Prieta and Casa la Familia), when the homeowner needs or desires to move from the unit, conditions are particularly problematic, as the units are ineligible for bank financing and therefore very difficult to sell. These homeowners have few choices other than trying to rent the unit at a rate that does not cover costs, or entering into foreclosure proceedings. Allowing rent levels to be set at a level affordable to low-income households at or below 80% makes it more feasible for an Investor-Owner to cover mortgage and other costs associated with continuing to own the unit while living elsewhere, as may be necessitated by the location of new employment, an increase in household size, and other factors. It should be noted that the size, condition, location and nature of any given unit may result in rent prices that are lower than the calculated maximum under the 80% limitation, as rent prices will not be viable at rates that exceed market rental rates for the type of unit.

Currently, there are 65 existing Measure J units that are being rented by their owners. Under existing provisions which would remain in effect, rent rates may not be increased by more than 10%

per year. In any case, owners are not likely to raise rents beyond market rents. These factors should serve to provide a workable transition for existing renters of Measure J units.

It is recommended that this change to allow rents at the 80% level be made available only for those units that are required to or agree to remain affordable "in perpetuity". Presently, some Measure J units have affordability restrictions that are set to expire after 30 years of ownership. For these type units, upon sale or transfer the County has been imposing the "perpetuity" restriction in order to keep Measure J units in the affordable housing stock. It is important that the change to allow higher rents does not create an incentive for owners to "wait out the clock" while renting the unit, so that the owner eventually can sell the unit at market rate and the unit is lost to the Measure J program.

3. Allow Measure J Owners to Accept Maximum Rent Levels for Section 8 and Similar Programs

Currently, the Measure J Affordable Housing Guidelines (AHG) discourage participation in the Section 8 program, because current County rules limit unit rents to the Measure J rent level, which is lower than the allowable "HUD Fair Market Rents" set by the Section 8 program. In the current housing market, rents have been rising and it has become more and more difficult for Section 8 households to find appropriate housing and landlords willing to participate in the Section 8 program, particularly since actual market rents sometimes exceed the established HUD Fair Market Rent. Therefore, it is recommended that Measure J owners that decide to rent their units be able to participate in the Section 8 and similar programs and accept the rent levels allowed by those programs, thereby ensuring that the unit is occupied by a qualifying household paying an affordable rent. This change is recommended to sunset in five years, unless extended by Board action.

4. Amend Minimum In-Lieu Fee

The formula for calculating the amount of a fee paid by developers in-lieu of construction of an affordable unit is based on language in Section 17.10.034 of the Ordinance, which is further detailed in the AHG. The current fee is a progressive percentage of the average sales price which increases for more expensive units; the lowest fee is based on 40% of an average sales price up to and including \$600,000 for a market rate unit, with a current minimum in-lieu fee of \$200,000. In the current housing market developers are projecting that market rate units will sell at average prices closer to \$400,000, so if the minimum percentage of 40% is applied it would result in a fee of \$160,000 per unit. Amending the AHG to remove a stated minimum will allow the in-lieu fee for developments of homes selling for \$600,000 or less to be set at 40% of the market units, and will support the feasibility of moving forward with development of certain housing projects which have been stalled, such as the remaining units at Cabrillo Commons. This is recommended to be a permanent change to the AHG. In the future, once prices have stabilized, it will always be possible to establish an appropriate minimum in-lieu fee, but at the present time it is not possible to project when or what that might be, and until such time the "40% of the market value of comparable units" will appropriately implement the in-lieu provisions consistent with Measure J.

5. Remove Utility Allowance from Rent Calculation

The formula for calculating Measure J rents in Section 7 of the AHG requires the deduction of a utility allowance. This provision is difficult to enforce and verify, and staff is recommending that it be permanently removed from the AHG. The methodology for calculating rent levels reflects a standard of the rent not exceeding 30% of monthly income. Addition of utility costs beyond that 30% results in that household paying for housing costs that still can be considered as an appropriate percentage of household income toward housing costs.

6. Change Calculation of Resale Price, related to Interest Rates and Capital Improvements

The calculation of the Maximum Resale Price is based on a complicated formula that includes current interest rates. The result is that the Maximum Resale Price goes down as interest rates go up. Staff is recommending that the Maximum Resale Price instead be based on the change to AMI as published annually by the Federal Department of Housing and Urban Development, which would be consistent with other County programs. In a condition of high interest rates, it may be more likely that buyers are not as able or willing to pay the maximum resale price, so depending upon a variety of factors an owner may end up needing to drop the price, but this would occur through the sales negotiation process rather than be mandated by the AHG. This would be a permanent change to the AHG.

Staff also intends to analyze the Guidelines determine whether further clarification is needed regarding what is and is not considered a capital improvement, and to ensure that any disincentives to maintaining, repairing, rehabilitating and improving Measure J units are removed. Measure J units are subject to the affordability deed restriction "in perpetuity", and therefore it is very important that the units are maintained and repaired as needed over the years rather than being allowed to disintegrate.

Related to the matter of home value, it is also recommended that the AHG be amended to clarify that the Loan to Value maximum for Measure J owners seeking to refinance their mortgages cannot exceed 90% of the maximum resale price or the current market value, whichever is lower.

AMENDMENTS TO CHAPTER 17.10

Proposed amendments to Chapter 17.10 of the County Code (which will remain consistent with voter-approved Measure J provisions) include:

7. Conform to State Appellate Court Ruling to Exempt Rental Projects from Inclusionary Requirements

Over the years, there have been several legal challenges to the applicability of inclusionary housing requirements to rental projects, and recently the Appellate Court ruled (*in Palmer v. the City of Los Angeles*) that jurisdictions cannot impose any affordability or household eligibility restrictions on projects made up entirely of rental units. In order to comply with State law, it will be necessary to amend County Code Section 17.10 to exempt rental projects from the County's inclusionary requirement. This will be a permanent change to the ordinance.

8. Restore Ordinance Changes Previously Approved in 2002 but Inadvertently Deleted

In April of 2002 the Board of Supervisors adopted an amendment to the County Code that required the approving body (rather than a developer) to determine what method would be used by a developer to satisfy a project's affordable housing requirement (e.g. construct units or pay an in-lieu fee). The amendment provided that any change to the condition specifying how the affordable housing requirement would be met would need to be approved by the body that made the original approval. The ordinance amendment was inadvertently deleted from the Code when the Board adopted a series of code changes in 2006. It is recommended that the Board re-adopt this change in order to make it clear that the method of meeting the requirement is identified as part of the original housing project approval. However, it is now also recommended that the ordinance be amended such that the Planning Director would be authorized to approve changes from the original approach, such as allowing payment of an in-lieu fee rather than construction of the unit, or allowing use of the Existing Unit Conversion option, as discussed below.

9. Modify Terms of the Existing Unit Conversion Option to Broaden its Appeal

The Affordable Housing Ordinance in Chapter 17.10 provides several options under which a developer can meet the affordable housing obligation; one of which allows a developer to acquire existing market rate units in an amount that is double the number of required Measure J units, and to then add those newly acquired units to the program. This is known as the "Existing Unit Conversion" option. Prior to resale of such a unit to a Measure J purchaser, each home must meet a salability standard specified in the Affordable Housing Guidelines, which will often require unit upgrades.

The Existing Unit Conversion option provides an opportunity to create a greater number of affordable units, and may also result in upgrades to the existing housing stock. By purchasing two existing units for each one-unit obligation, this approach offers the potential for developers to actually provide more affordable units at an overall cost that could be less than the lost revenue associated with building an inclusionary unit. While several developers have expressed interest in this approach, this option has not been utilized for two reasons: 1) the ordinance requires that new units added to the program must be located in the same planning area as the market rate development project, limiting the potential number of homes that would be eligible for the program; and 2) it is impractical for developers to be required to commit to this program at the project approval stage because of the timing and logistics of acquiring and rehabilitating units. In an effort to support this option, staff proposes that the Ordinance be amended to allow the Planning Director to approve exceptions to the planning area requirement, based on the merits of a proposed alternative. For example, units in adjacent areas may be viewed favorably, but proposals that would result in concentrations of Measure J units in a planning area may be viewed less favorably. Also, it is proposed that developers with a permit condition to build inclusionary units have the option to utilize the Existing Unit Conversion approach through a subsequent modification of the project condition that the Planning Director would be authorized to approve. Staff believes that these changes could potentially increase the total number of permanently affordable units provided through the Measure J program, and may also result in improved quality of the housing stock through upgrades of older homes that may be required as part of enrolling units in the program.

**MODIFICATIONS TO AFFORDABLE HOUSING PRESERVATION
(AHP) PROGRAM FOR MEASURE J UNITS**

Proposed changes to the Affordable Housing Preservation Program (AHP), which was not a part of the voter-approved Measure J, and is not a program codified in Chapter 17.10, are outlined below. These changes are recommended to improve the AHP Program, and have been reviewed and determined to be viable additional components of the AHP Program by the County Counsel's Office.

10. Pre-foreclosure Release of Measure J units through Short Sale Escrows

Under the existing AHP program, the bank or lender commences foreclosure proceedings, and the County is notified of this and then decides whether to purchase the unit at the restricted price or current market value, whichever is less, with the purchase occurring before foreclosure proceedings are completed. If market value is below the existing loan amount, negotiation with the bank must occur and the bank must accept a lower price in order for the County to move forward with acquisition of the unit. And, as discussed earlier in this report, if there are factors related to location, housing condition, market value and/or prospects for salability, then the County may elect not to buy the unit, in which case the restrictions are removed as a result of a completed foreclosure. Under the AHP guidelines, the County's expenditure to buy and make repairs to a Measure J unit may not exceed more than 10% of the purchase price of the unit.

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A recommended new feature of the AHP Program would be for the County to consider the market value of a Measure J unit and, if the appraised market value is below the calculated Measure J value and the County has decided *not* to purchase the unit, then the County would agree to remove the affordability deed restriction as part of a short sale in escrow. This would allow a Measure J homeowner to participate in a short sale, if approved by the lender, with purchaser assured that the affordability restriction is removed. The County would require under this approach that the sale is an "arms length" transaction, such that, for example, sale to a family member would not be eligible for this approach. This should allow a Measure J owner to receive a somewhat higher value for the unit through a short sale, and to avoid foreclosure, in a situation where the affordability deed restriction is going to be lost in any case.

11. Affordable Housing Agreements with Non-Profit Housing Providers as Pilot Program

A recommended addition to the AHP Program, as a Pilot Program that would occur at the Swan Lake Condominium development for existing Measure J units, would be for the County to enter into agreements with non-profit agencies who desire to own and operate affordable housing to serve their special needs populations, such as transition-age youth and families in transition. Under this option, rather than the County directly purchasing and owning the unit with the anticipation of resale in the future to an eligible household, a non-profit would negotiate for purchase of Measure J units in the Swan Lake development. The County and the non-profit would enter into an agreement whereby the County would agree to provide acquisition (and perhaps rehabilitation) funding, in exchange for a commitment by the non-profit to provide affordable housing. The Affordable Housing Agreement would be structured such that the funding is not required to be repaid unless there is a default and the unit is not being used for affordable housing, in which case the County would either get the unit back or funds would be repaid. This option may be attractive in the current housing market, where it often is less expensive to acquire and rehabilitate an existing housing unit than it would be to construct a new housing unit.

In this new housing market, the "acquisition and rehabilitation" model is one worthy of further exploration as the County Affordable Housing Program moves forward. Since the County has elected to retain the housing assets and obligations of the former Redevelopment Agency, the County from time to time will have funds available to support additional affordable housing activities. In an era of limited new housing construction, including for new construction of affordable housing, an Acquisition and Rehabilitation Program may be a cost-effective method of increasing the affordable housing stock within Santa Cruz County.

DISCUSSION OF OPTIONS AT THE SWAN LAKE CONDOMINIUM DEVELOPMENT

As previously discussed by the Board, county affordable housing funding (up to \$3,600,000 has been contemplated) is available to be used to implement feasible and viable options related to the Swan Lake condominium units that were purchased under the Measure J program and applicable condominium conversion conditions by low- and moderate-income households who now face challenging circumstances. Staff and Supervisor Leopold have met with affected owners of Measure J units at Swan Lake, and housing staff and the County Counsel's Office have worked to develop options that might work to diminish the prospect of these households deciding to enter into foreclosure. Since different households have different objectives, it is recommended that various options be identified.

Prior to a discussion of such options, it is important to recognize when discussing Swan Lake that the situation is very unique. While a Swan Lake condo conversion was approved in 1984, with a requirement for one-third of the condominium units to be Measure J affordable units, the property owners did not begin to sell condos until over twenty years later, in 2006/07 at the peak of the housing market. The development is serving more as a market-rate rental project than as a homeownership

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community. Out of the 128 units at Swan Lake, information provided to staff is that twenty-two (22) are owner-occupied by Measure J-assisted households who purchased in 2007, seven (7) are market rate units that are either being rented at market rates or used by the owners as vacation units, one (1) is County-owned and vacant, one (1) is market-rate for-sale and vacant, and the remaining ninety-seven (97) are being rented at market rates and the owners are not actively marketing the units for sale. The majority of the market rate rental units are owned by one owner – the project developer. The fact is that Swan Lake is primarily providing housing as a market-rate rental complex, albeit not with a single property owner/investor, but with multiple owners/investors.

The earlier discussion in this report of recommended changes to Chapter 17.10, the Measure J Affordable Housing Guidelines and the Affordable Housing Preservation Program provisions, has already illuminated the options that may best respond to the situation faced by Swan Lake Measure J unit homeowners. These options, along with more detail as to how they might apply to Swan Lake units, are discussed below.

A. Allow Units as Investor-Owner Units as Permitted by 17.10.050; with Rents Set to Level Affordable to Households at 80% AMI; and Ability to Accept Section 8 Program Rents

The existing Affordable Housing Agreement and deed restrictions applicable to Swan Lake units owned by low-and moderate-income households do not allow Measure J units to be rented. This is unusual, in that Chapter 17.10 does allow other Measure J units to be rented by their owners. Under this option, the existing deed restrictions would be amended to remove the rental restriction. This, in combination with the recommendation to allow rent levels to be set at rates that would be affordable to households at or below 80%, rather than 60%, of area median income may make it feasible for some owners to move into alternate housing while retaining and renting out their Measure J units. Allowing rent levels to be set at a level affordable to low-income households at or below 80% makes it more feasible for an Investor-Owner to cover mortgage and other costs associated with continuing to own the unit while living elsewhere, as may be necessitated by the location of new employment, an increase in household size, and other factors.

Rents for Swan Lake units at the “80%” level would be up to \$1,614 for a one-bedroom unit, rather than the \$1,030 at the 60% level. Homeowners Association dues at the Swan Lake development are \$300 per month, and mortgage, insurance, property taxes and insurance payments are also paid by owners. This is the reason that the existing 60% rent level is not feasible. Current market rents for Swan Lake units are from \$1,450 to \$1,550 for one-bedroom units. Therefore, it can be seen that the maximums under the 80% calculation may not be achievable, but rents able to be set by Measure J owners could come close. The figures for two-bedroom units are \$1,815 per month rent at the 80% level, \$1,158 at the 60% level, and \$1,695 to \$1,850 at the current market rate level.

The option to rent their Measure J units at 80% levels may be attractive to some owners because while they are currently “under water”, they may be able to rent the unit and wait for values to recover somewhat, so that they would not fully lose the down payments and mortgage payment amounts already paid into the units. An owner could move out and rent the unit, which may generate additional cash flow for the owner such that the mortgage payment and HOA dues are covered.

It should be recognized that under the Affordable Housing Agreement and Option Agreement with the major Swan Lake property owner, in February 2013 the development will be relieved of the Measure J obligation for 20 units of Measure J housing that remain unsold, in the event that the County does not exercise its option to purchase the units.

B. County Funding Support for Non-Profits to Purchase Units from Existing Measure J Owners for Use as Affordable Housing

Purchase of Swan Lake units directly by the County is not desirable for a number of reasons, and it is not likely that the County would be able to re-sell the units to eligible households consistent with the Affordable Housing Preservation (AHP) Program Guidelines adopted by your Board. The County is not well positioned to own, manage and operate rental housing.

Instead, under the Pilot Program approach discussed earlier, an option that may be viable, to the extent that funding resources are available, is for the County to enter into agreements with non-profit organizations that are interested in owning and operating affordable housing for their special needs populations. This option would likely involve approval of short sales by lenders, but recently lenders have become more willing to approve short sales in lieu of foreclosures. The existing market value of Swan Lake Measure J restricted units will likely vary depending upon size, condition and location within the complex. Appraisals would need to be obtained to support purchase prices. It is expected that for most units, the value of the homes is below the existing loan on the home. Each interested non-profit agency would identify which unit(s) it desired and would negotiate supportable purchase prices. If units are in need of repairs and rehabilitation, the non-profit could also request that the County include funding for that within the Agreement. Non-profit agencies would need to have a history of owning and managing affordable housing, and have an identified source of on-going funding to be able to provide the units to their clientele, as with the demise of redevelopment, funding for operating affordable housing is going to be harder to identify and obtain.

C. Short Sales and County Reconveyance of Affordability Deed Restrictions

The first two Swan Lake options discussed above would preserve the affordability deed restrictions on the units, as they would continue to be occupied by qualifying very low or low income households as rental units.

Another option that may work for some Swan Lake homeowners is for them to pursue the AHP program modification #10, as described earlier in this report, the "Pre-foreclosure Release of Measure J units through Short Sale Escrows" option. In that the appraised market values of Swan Lake units are below the calculated Measure J values and the County is not in a position to purchase these units in a manner consistent with the adopted AHP Program Guidelines, the County would agree to reconvey and remove the affordability deed restriction as part of a short sale in escrow. This will allow the Swan Lake Measure J owner to participate in a short sale, if approved by the lender, with the purchaser assured that the affordability restriction is removed. This should allow a Measure J owner to receive a somewhat higher value for the unit through a short sale, and to avoid foreclosure, in a situation where the affordability deed restriction is going to be lost to the County Measure J Program in any case.

It is advised that any homeowner interested in pursuing this option consult with appropriate tax accountant and legal expertise, as in some circumstances taxes are owed on the gap amount of the short sale. It should also be noted that the Short Sale approach can be a complex and lengthy process.

D. Status Quo Option, Possibly with Housing Rehabilitation Loans

For some Swan Lake owners, it should be recognized that continuing to own and to live in their Swan Lake unit may be their best option. If the unit is adequately meeting their housing need at a cost that is feasible for the household, even though the unit has lost value and will be difficult to sell on the open market for the foreseeable future, the status quo option may be best for that household. If in the future the owner needs or desires to move from the unit, then one of the other options above could be pursued at that time. But in the meantime, avoiding a short sale or foreclosure while continuing to live

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in housing that is affordable and meets their needs, may not be a bad option. Under the scenario of not living in the Swan Lake unit, the household would need to find another unit to rent or purchase, which may be less suitable and/or more expensive than the existing situation of owning and living in a Swan Lake unit.

It would also be possible to consider making County housing rehabilitation loans to Swan Lake homeowners who decide to remain in the home, in order to address needed repairs and any habitability issues. For example, one owner is affected by the existing common heating provided to the units; perhaps that unit could be detached from that source and an alternate such as electric heating for the individual unit installed. Under the Housing Rehabilitation Program, payments on loans are usually deferred until the time of sale or transfer of the unit, in order to keep housing costs stable.

E. FORECLOSURE OPTION

The above-described options for Swan Lake homeowners have been identified with the intention of outlining alternatives to foreclosure. However, it should be recognized that some Swan Lake owners, especially if any have second mortgages, may decide that the foreclosure option may best meet their needs. As reviewed above, it is advised that any homeowner evaluating the pros and cons of any option consult with appropriate tax accountant and legal expertise. At the present time it is believed that there are federal provisions that waive or limit certain tax liabilities that are normally associated with foreclosures. In a foreclosure, a second mortgage is usually "wiped out" along with the first mortgage, which is not usually achievable through a short sale.

PROCESS AND TIMELINE FOR IMPLEMENTING RECOMMENDED CHANGES

Certain of the recommended changes can be made by the Board through providing direction to staff and adopting a resolution amending applicable Program Guidelines. Changes to Chapter 17.10 would be exempt from the California Environmental Quality Act, but will require a public hearing by the Board of Supervisors. Chapter 17.10 is not part of the Local Coastal Program, therefore no Coastal Commission approval is required. In accordance with established practice, the Housing Advisory Commission should consider and forward a recommendation to the Board regarding the changes. All of the changes are consistent with the Housing Element, and therefore no Planning Commission public hearing or recommendation is required. Staff recommends the following process and timeline:

- Early March Staff meets with Swan Lake homeowners to explain identified options and obtain input
- March 7th Housing Advisory Commission considers changes and makes its recommendation to the Board of Supervisors
- March 20th Board of Supervisors takes action on recommended amendments to the Measure J Affordable Housing Administrative Guidelines and to the Affordable Housing Preservation Guidelines, which take effect upon adoption
- April 10th Board of Supervisors holds public hearing and takes action on recommended amendments to Chapter 17.10
- May 10th Amendments to Chapter 17.10 take effect (30 days after adoption)

RECOMMENDATIONS

It is therefore RECOMMENDED that your Board take the following actions:

1. Accept and file report; and direct staff to prepare proposed amendments to the Measure J Affordable Housing Administrative Guidelines and to the Affordable Housing Preservation Guidelines, and to Chapter 17.10 of the County Code, consistent with the recommended changes described in this letter;
2. Direct staff to meet with Swan Lake Measure J homeowners to discuss and obtain input regarding the identified options that may be available to Swan Lake owners;
3. Direct the Housing Advisory Commission to meet on March 7, 2012 to consider and make recommendations to the Board regarding the changes contemplated within this letter;
4. Direct staff to return to the Board of Supervisors at its March 20, 2012 meeting with proposed amendments to Measure J Affordable Housing Guidelines and to the Affordable Housing Preservation Program Guidelines for action by the Board;
5. Direct housing staff and the County Counsel's office to work with Measure J and Swan Lake households to implement feasible options as may be available to such households; and
6. Schedule a public hearing for April 10, 2012 to consider taking action to amend Chapter 17.10 of the County Code

Sincerely,


Kathleen Molloy Previsich
Planning Director

RECOMMENDED:


SUSAN A. MAURIELLO
County Administrative Director