

**SANTA CRUZ COUNTY
BOARD OF SUPERVISORS INDEX SHEET**

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Index: --Letter of the Planning Director of January 15, 2005
--Options for Measure J Sale/Resale Program

Item: 60. CONSIDERED report on Measure J affordable housing program sale and resale process;
(1) accepted and filed report;
(2) approved the staff recommendation to implement Option 2 (and incorporating Housing Advisory Commission's specific suggestions about outreach efforts) and to include a one year program evaluation to determine whether to consider a two-tiered system as discussed in the letter of the Planning Department of January 15, 2005; and
(3) directed Planning to report back on or before March 2006 with the results of the program evaluation and, if appropriate, recommended program modifications



COUNTY OF SANTA CRUZ

PLANNING DEPARTMENT

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 TOM BURNS, PLANNING DIRECTOR

January 15, 2005

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

RE: SALE AND RE-SALE OF MEASURE J UNITS

Dear Members of the Board:

In January 2004, as part of considering a status report on the Measure J program, your Board requested a report during budget hearings on the sale and re-sale of Measure J units. During budget hearings, as part of your Board approving the consolidation of RDA and Planning Housing programs to the Planning Department, the Measure J report was deferred until January to allow for the transition to be completed and staff to conduct a more thorough analysis of the program options. In the intervening months, the Housing Advisory Committee has also reviewed this matter and their recommendations are discussed in this report.

BACKGROUND

The Measure J affordable housing program began in the late **1970's** and currently there are over 380 ownership units scattered throughout the County. Over the years, staff has discussed with your Board possible changes to the sale and re-sale process for Measure J units.

Currently, the initial sale or resale of Measure J units is primarily a private transaction between the buyer and the seller. The County's role in Measure J transactions includes: 1) certifying the income of potential purchasers; 2) assuring that the unit is purchased by a first time home buyer; 3) verifying that the household consists of an appropriate number of residents; **4)** verifying 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; and, 5) handling escrow instructions to ensure that all program requirements have been fulfilled, including the recordation of resale restrictions.

While the number of Measure J units that are sold in any given year varies based on a variety of factors (interest rates, unit availability, etc.), on average, approximately 10-20 units per year

January 25, 2005

APPROVED AND FILED

BOARD OF SUPERVISORS

DATE: *January 25, 2005*

COUNTY OF SANTA CRUZ

SUSAN A. MAURIELLO

EX-OFFICIO CLERK OF THE BOARD

BY *Sharon Mitchell* DEPUTY

are either sold initially by the project developer to an eligible purchaser or re-sold from an owner to an eligible purchaser to another.

Because existing Measure J owners (or initial developers) currently select the new buyer, questions have been raised about how new buyers are selected, whether the units are kept off the open market, and the extent to which interested members of the public have an opportunity to purchase a Measure J unit'. In addition, Measure J sellers eager to sell their unit quickly have had difficulty locating a Measure J eligible purchaser and have expressed interest in a program which helps them more easily identify a buyer for their unit.

Given the limited number of Measure J units and the demand in the community for affordable housing, it is important that the resale process be broadly publicized to maximize the opportunities for the public at large to obtain a Measure J units and making sure that the process facilitates the sale of the unit in a timely manner.

PROGRAM OPTIONS

Staff has considered two general approaches to the sale and re-sale of Measure J units:

1. The County controls who the unit is sold to; and
2. The County creates a list of potentially interested buyers to help facilitate the transaction but does not assume ultimate responsibility for the transaction.

These two options further discussed below, and a summary of these options are included in Attachment 1:

Option 1: County determines whom the unit is sold to.

As indicated in the January 2004 report, one option for ensuring more equal access to Measure J units would be for the County to maintain a waiting list of eligible purchasers. For this system to operate most effectively, any interested purchaser would have to become part of a pool that would be subject to an equitable selection process (e.g. a lottery system or first come first serve). Eligible households could be pre-certified, and as Measure J units become available, sellers would be furnished with the name of an eligible buyer prepared to buy the unit in a timely manner. This approach, which could be administered by County staff or on a contract basis, would provide for a more transparent system, and ensure that the units be available to the general public in an equitable manner.

¹ Although there has been no documented evidence that untoward transactions have occurred, it is critical that transactions between buyers and sellers are fair and that purchasers are not taken advantage of by sellers who operate in a "sellers' market". To address this issue, staff has developed an affidavit that must be signed by both the buyer and seller attesting to the fact that the transaction has occurred in accordance with program requirements. While an affidavit in and of itself is not a complete safeguard, the affidavit is signed under penalty of perjury and designed to provide for an added focus on the fact that the specific transaction details have been handled properly.

Because this approach would ensure that the units were equally accessible to all members of the public, staff initially considered pursuing this option. However, after further analysis, there were a number of issues that must be taken into account as part of pursuing this type of program design. Administering a program of this nature would be complex, labor intensive, and interject the County into what is currently a private real estate transaction. Based on discussions with other jurisdictions as well as County Counsel about our specific program requirements, if the County assumed a more direct role in handling the sale and re-sale of Measure J units, given the volatile nature of real estate transactions and the likelihood that unanticipated delays or other problems could arise during the transaction, then the County could be held responsible for disadvantaging the existing owner. This would potentially subject the County to a liability risk that currently does not exist, as well as introduce an opportunity for animosity between the County and owners who could perceive that the County's involvement in the transaction contributed to costly delays.

However, if the Board nonetheless wishes to proceed along these lines, in order to address these issues, then the County would have to develop a program to ensure that the seller not incur any delays in selling the unit to the County's designated purchaser. This approach would involve the County designating purchasers, and if the transaction encountered difficulties and was subject to delay, the County must be prepared to acquire the unit in order to assure the seller that the transaction would be completed in a timely manner. County interim ownership of the Measure J home would result in assuming holding costs prior to identifying a Measure J purchaser, potential liabilities associated with the County being in the chain of title, and handling all aspects of the transaction once an eligible purchaser had been identified.

While existing Measure J owners currently have Declarations of Restrictions which specify that the County must insure that the unit be sold to an income eligible purchaser, the specific language in the Declarations does not anticipate that the County would engage in the type of selection process discussed above. As a result, County Counsel has indicated to staff that this process should therefore be voluntary on the part of the Measure J owners, and thus not provide for a uniform approach. In addition, because this scenario may involve the County possibly acquiring units on a routine basis, and handling the associated operational issues, this approach would require additional staffing resources. For the reasons noted above, this approach for existing Measure J owners is not recommended at this time.

It is worth noting that there are elements of Option 1 that staff proposes to explore for 1) newly created Measure J units; 2) for those purchasing existing Measure J homes and thus not bound by existing Covenants and Restrictions; and 3) for existing owners on a voluntary basis, which could include incentives to encourage voluntary participation.

Option 2: County creates a list of interested buyers to help facilitate the transaction: County does not assume ultimate responsibility for the transaction

Rather than the County interjecting itself into each Measure J transaction, the County could provide a stepped-up effort to better inform the public about the availability of Measure J units without assuming the responsibilities and liabilities associated with Option 1. To this end, staff

could hold public workshops and general outreach efforts to inform interested members of the community about the Measure J program as well as other County housing programs. This approach would ensure that interested purchasers fully understand the program requirements (income eligibility, resale requirements, etc) and would provide an opportunity to be included in a list of potentially interested purchasers. This list would be made available to Measure J sellers to consider in the course of selecting a purchaser. With the seller's permission, the interested purchasers could also be notified of the names of Measure J sellers. It is worth noting that, given the limited volume of Measure J transactions, it will be important that outreach efforts not raise the expectations of members of the public; outreach efforts will convey realistic expectations about the likelihood of purchasing a Measure J unit and also include information about other housing programs available through the County.

As part of program implementation, staff would carefully monitor the new program to determine the number of Measure J purchasers who originated from the list of interested purchasers. This new program could be implemented with existing staffing resources, and based on the results of a one year program evaluation, staff would consider instituting a two-tiered system, whereby elements of Option 1 could be applied to 1) newly created Measure J units; 2) new Measure J owners who purchase an existing Measure J home; and 3) existing Measure J owners on a voluntarily basis, which could include incentives to encourage participation.

Staff believes that Option 2 will provide for greater public awareness of the program, minimize additional staffing resources needed to operate these outreach efforts, and ensure that the County not incur any liability for unanticipated issues or delays that arise during a transaction. In addition, the program evaluation component discussed above will help determine program effectiveness and whether a more active role for the County would be appropriate. For these reasons, staff recommends your Board approve Option 2.

HOUSING ADVISORY COMMISSION REVIEW

The HAC discussed this program at their meetings in November and December 2004 and January 2005. At the most recent January 5th meeting, after extensive discussions about the program options, which included whether the County or a contract agency should handle the outreach efforts, HAC unanimously recommended that the Board adopt the proposed recommendation described above. HAC also explicitly requested that the outreach effort be targeted toward all segments of the community, be held in English and Spanish and not be directed only to households who utilize the WEB. In the event that your Board approves the staff recommendations, HAC's recommendations will be incorporated into the program design.

CONCLUSIONS / RECOMMENDATIONS

The actions recommended in this letter will help improve public awareness about the availability of Measure J units, and increase the County involvement in the sale and re-sale process without unduly interfering with private transactions between Measure J sellers and buyers. Staff will continue to monitor this program and return to your Board, as needed, with recommended program adjustments.

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

1. Accept and file this report;
2. Approve the staff recommendation to implement Option 2 (and incorporating HAC's specific suggestions about outreach efforts) and to include a one year program evaluation to determine whether to consider a two-tiered system as discussed in this letter; and
3. Report back to the Board on or before March 2006 with the results of the program evaluation and, if appropriate, recommended program modifications.

Very truly yours,



Tom Burns
Tom Burns
Planning Director

RECOMMENDED:


~~SUSANA MAURIELLO~~

County Administrative Officer

attachment

TB:ES

cc: Housing Advisory Commission

ATTACHMENT 1

OPTIONS FOR MEASURE J SALE/RE-SALE PROGRAM		
Operational Considerations	PROS	CONS
OPTION 1:		
County Controls who the unit is sold to		
<ul style="list-style-type: none"> • Conduct outreach efforts/workshops and web-based publicity to inform public about the program and units on the market • Establish a pool of eligible purchasers who are interested in purchasing a Measure J unit. • Develop, and implement, a system to equitably select an eligible purchaser and oversee the transaction 	<ul style="list-style-type: none"> • Ensures that all transactions are "transparent" • Allows for public at large to have equal access to Measure J units • Reduces potential for "under the table" transactions 	<ul style="list-style-type: none"> • Requires County involvement in transactions • Owners currently have recorded agreements which specify the transaction process; there would be legal problems if the County involvement in the transaction materially effects the Measure J • To address potential legal problems the County would be required to purchase units (at the Measure J price) • County assumes liability for transaction problem/delays • Increased staffing or contract services needed
OPTION 2:		
County creates list of potential buyers to help facilitate transaction, assumes no additional liabilities		
<ul style="list-style-type: none"> • Conduct outreach efforts/workshops and web-based publicity to inform public about the program and units on the market • Collect names of interested buyers and provides 1) sellers with list of names of interested buyers; and/or 2) interested purchasers with names of Measure J sellers (w/ sellers permission) • Monitor how many purchasers originate from list of interested Purchasers. 	<ul style="list-style-type: none"> • Transaction remains a private transaction - no County liability • Maximizes public awareness of program • Increases public access to Measure J units • Can most likely be accommodated within existing staffing resources 	<ul style="list-style-type: none"> • Seller makes final decision • Purchaser <u>not required</u> to be on the County's list of interested buyers