



**BOARD OF SUPERVISORS
AGENDA LETTER**

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: HCD
Department No.: 055
For Agenda Of: 11/14/2006
Placement: Departmental
Estimate Time: 60 minutes
Continued Item: YES
If Yes, date from: 7/25/06
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Director(s) Ron Cortez, Deputy County Executive Officer, 568-2243
Contact Info: Jennifer Christensen, 568-3515

SUBJECT: Affordable Housing Compliance Project

County Counsel Concurrence:

As to form: Yes No N/A

Auditor-Controller Concurrence:

As to form: Yes No N/A

Other Concurrence: N/A

As to form: Yes No N/A

Recommended Action(s):

That the Board of Supervisors:

- a. Receive and file "For Sale" Affordable Units Compliance Project Report (Attachment A);
- b. Hold first reading of an Ordinance of the County of Santa Barbara Adding Chapter 46 to the Santa Barbara County Code to Add Owner Occupancy and Enforcement Provisions to the County's Affordable Housing Program (Attachment B);
- c. Set second reading of an Ordinance of the County of Santa Barbara Adding Chapter 46 to the Santa Barbara County Code to Add Owner Occupancy and Enforcement Provisions to the County's Affordable Housing Program on November 21, 2006;
- d. Hold first reading of an Ordinance Authorizing the County Executive Officer to Exercise the County's Option to Purchase For-Sale Affordable Housing Units as part of the County's streamlined buyback program (Attachment C);
- e. Set second reading of an Ordinance Authorizing the County Executive Officer to Exercise the County's Option to Purchase For-Sale Affordable Housing Units on November 21, 2006;
- f. Approve the formation of a Stakeholders Advisory Group, comprised of 5 group members representing the five Supervisorial Districts, to review the goals, policies and outcomes of the Inclusionary Housing Program and alternatives to the Inclusionary Program;

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- g. Receive the Inclusionary Housing Program Administrative Manual (Attachment D), and authorize the Housing and Community Development Department to revise the manual as determined necessary;
- h. Consider recommendations regarding the redistribution of functions from the Economic Development Division of the Housing and Community Development Department (Attachment E); and
- i. Approve funding for the development of an Inclusionary Housing Database of \$43,000.

Summary:

In July 2003, the Housing and Community Development Department (“HCD”) was assigned the responsibility for monitoring and enforcement of covenants for the Inclusionary Housing Program. At the time the program was assigned to HCD, there were no significant compliance policies or procedures. HCD initiated a monitoring and enforcement effort in December 2004, and reported to the Board of Supervisors on the new monitoring program in April 2005. Community members challenged the results of the monitoring effort, and the Board of Supervisors requested the assistance of the Auditor-Controller’s Office. At that time, HCD halted all activity regarding monitoring and enforcement.

In April 2005, your Board asked the Auditor-Controller to perform an audit of HCD with an initial emphasis on the monitoring and enforcement activity with regards to County “for sale” affordable housing units. The Auditor-Controller returned to your Board on May 16, 2006 with an Affordable Housing Program Preliminary Report on Restrictive Covenant Compliance and on the Monitoring and Lottery Selection Process. This preliminary report indicated findings on certain internal control weaknesses and matters of noncompliance with regards to the lottery and certification processes, compliance monitoring, and occupancy and rental prohibitions.

In July 2006, the then director of the department, Ed Moses, resigned from his position. Deputy County Executive Officer Ron Cortez was appointed to act as the Interim Housing Director. As a result of the new appointment, a management review was planned in order to assess the operations of the department and determine the optimal departmental organization. In addition, the Auditor-Controller is currently engaged in audits of HCD’s Finance Division and “for sale” affordable housing program.

The management review of HCD is in progress. Deputy CEO Ron Cortez and CEO Project Manager Jennifer Christensen (the authors of this letter) have identified several significant management issues that must be addressed. Early observations indicate that although staff is committed to the mission of the department, there is little evidence of proper oversight or direction. We continue to find additional areas of concern and in need of improvement.

Background:

I. Overview of Housing and Community Development Department

The Housing and Community Development Department was formed as a result of Board of Supervisors direction on March 27, 2001. Extensive study and report of options and recommendations for the structure of the administrative organization of resources dedicated to housing was presented to the Board at that time, and recruitment for the position of director was opened. The County Administrator’s Office

presented recommendations which would focus and streamline the County's efforts on the provision of affordable housing. The creation of a County Department of Housing and Community Development was recommended, "to be the optimal instrument for execution of County affordable housing and economic policy."

The director position was formally filled on December 2, 2002. The director was charged with the responsibility of overseeing the department's operations until his resignation in July 2006. The department was comprised of four divisions: Finance; Housing Development; Economic Development; and Management, Assessment and Planning. In June 2006, the Board of Supervisors eliminated funding for the Economic Development Division, leaving three divisions to carry out the functions of the department.

II. Finance Division

The Auditor recently initiated an audit of the Finance Division of HCD. The purpose of the audit is to gain an understanding of the operations and compliance requirements surrounding the funding and accounting of all amounts received, disbursed, or otherwise transacted by Federal, State, and other local sources for the fiscal years ended 6/30/06 and 6/30/05. At the conclusion of the audit, the audit report will identify any issues found relating to compliance with funding agreements, transparency of accounting transactions and reporting, and make recommendations accordingly. HCD will review the findings and provide responses as needed. Completion of the Finance Division audit is expected in November/December 2006.

Housing Finance assesses the county's affordable housing needs annually. Financial and technical assistance is provided to for-profit and non-profit developers of affordable housing projects. Staff provides assistance in project development to planners and administrators in other public agencies and cities, and provides leadership for the consortium formed with cities eligible to receive Federal affordable housing funds through the HOME Program and Community Development Block Grant (CDBG) funding through the State of California's Small Cities Program.

The audit team is reviewing grant agreements, FIN records, the HOME Consortium Five Year Consolidated Plan, the Housing Element, and a division synopsis provided by staff in order to review the Finance Division's programs. Finance Division funds and programs included in the audit are the Homebuyer Assistance Program, the Isla Vista Project Area Redevelopment Agency Housing Set-Aside funds (IV RDA Fund), the Affordable Housing Trust Fund, Rental Housing Mediation, the Portfolio Recapitalization Loan, and HOME funds.

III. Housing Development Division

The Auditor continues to work on an audit of the "for sale" affordable housing program. The Housing Development division manages the implementation of affordable housing units approved by the Planning Commission and the Board of Supervisors. The Housing Development Division currently has one staff member, a Senior Planner. Functions of the division include the following responsibilities:

- Preparation and execution of developers' Agreements to Provide Affordable Housing that implement planning conditions to fulfill Housing Element and state law requirements and are generally included among the Planning Commission conditions;
- Implementation of affordable housing "for sale" unit lotteries;

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- Certification of qualified buyers for the purchase of “for sale” units;
- Execution and recordation of restrictive covenants;
- Processing of requests for refinancings and resale of existing “for sale” units;
- Calculation of in-lieu fees; and
- Review and processing of complaints pertaining to affordable units.

Over the past three fiscal years, the Housing Development Division has provided the following services to its customers:

SERVICE	FY 2004-2005	FY 2005-2006	FY 2006-2007
Administration of Lotteries	4	1	
Prepare and Record Agreements to Provide	4	3	1
Buyers Certifications Processed	24	71	72
“For Sale” Affordable Units Transferred	17	14	5
Release of Covenant documents executed	3	1	
Developments with In-lieu Fees paid	1	2	1
Occupancy Surveys Sent, Info compiled	130	262	

At the meeting on July 25, 2006, project team recommendations for improvements to the lottery and certification process were presented to and approved by your Board. Additional review was incorporated into the certification process to resolve identified internal control weaknesses. In addition, the project team’s report indicated several next steps including a final ordinance, a draft administrative manual, a buyer education program, a staffing needs assessment, and a review of possible contracting options for monitoring services. The project team’s final recommendations for a “For Sale” Affordable Unit Compliance Program are set forth in Exhibit A. Ordinances necessary to implement the project team’s recommendations are attached as Exhibits B and C. A draft administrative manual documenting the “for sale” affordable housing program’s policies and procedures is attached as Exhibit D.

IV. Economic Development Division

The mission of the Economic Development Program was to improve quality of life and job prosperity by engaging communities and stakeholders with respectful consideration. The objectives of the program included pursuing the reduction of poverty through economic vitality and capacity building of essential infrastructure and local organizations and communities to improve the business climate in the local economy. The program also implemented a Comprehensive Economic Strategy, which allowed local governments to pursue state and federal economic development funding.

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In June 2006, your board eliminated funding for the Economic Development Division of the department. Implementation of this budget determination included elimination of two staff positions. In addition, the division’s operations were reviewed for reassignment or termination. **Despite the fact that there are a few programs that remain, there is no funding for the administration of these programs.**

Recommendations for the division’s remaining programs are depicted in Attachment E.

V. Next Steps for Management Review and Departmental Organization

Looking ahead, the Auditor is expected to complete two audits that will be helpful to complete a management review of the department. Delivery of these audit reports are anticipated in November/December 2006. The department will review the audit findings and recommendations upon receipt, and provide a response to findings as necessary.

In response to the Board’s interest in the goals and outcomes of the Inclusionary Housing Program, it is our recommendation that a Stakeholders Advisory Group be formed to review the goals, policies and outcomes of the Inclusionary Housing Program and program alternatives, and to provide feedback to staff for recommendation to the Board of Supervisors. Each Supervisor is asked to appoint one non-staff member to the project team. A report of findings and recommendations pertaining to the County’s Inclusionary Housing Program will be presented to the Board in 120 days.

Alternatives to Inclusionary Housing that may be reviewed by the Committee include:

1. State Density Bonus Program (SDBP)
2. Affordable Housing Overlay Program (AHO)
3. Streamlined Permitting
4. Accessory Dwelling Units/RSUs
5. Land Banking
6. Reduced Impact Fees and Waivers
7. Leveraging the Low-Income Housing Tax Credits
8. Proactive Partnering With For-Profit and Nonprofit Developers
9. Affordable Housing Trust Funds (In-Lieu Fees), and Donation of Land (Off-Site Mitigation)
10. Market Innovations Such As Location-Efficient Mortgages

Fiscal and Facilities Impacts:

Budgeted: Yes No

Fiscal Analysis:

<u>Funding Sources</u>	<u>Current FY Cost:</u>	<u>Annualized On-going Cost:</u>	<u>Total One-Time Project Cost</u>
General Fund			
State			
Federal			
Fees			
Other:			\$ 46,300.00
Total	\$ -	\$ -	\$ 46,300.00

Narrative: The above fiscal analysis was prepared for the Housing Development Division only. It assumes one-time database development costs of approximately \$43,000 and annual SQL hosting costs

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of \$3,300. The estimated costs will be taken from the HCD budget to the extent possible. However, these expenditures were not budgeted for the current fiscal year and a budget revision may be necessary to cover these costs.

Staffing Impact(s):

Legal Positions:

FTEs:

Special Instructions:

Publish a summary of the owner occupancy ordinance and the ordinance delegating authority to purchase affordable units as directed in the respective ordinances.

Attachments:

Attachment A: Compliance Project Team Report

Attachment B: Ordinance of the County of Santa Barbara Adding Chapter 46 to the Santa Barbara County Code to Add Owner Occupancy and Enforcement Provisions to the County's Affordable Housing Program

Attachment C: Ordinance Authorizing the County Executive Officer to Exercise the County's Option to Purchase For-Sale Affordable Housing Units

Attachment D: Inclusionary Housing Program Administrative Manual

Attachment E: Recommendations for the Redistribution of Economic Development Functions

Authored by: Jennifer Christensen, Project Manager

cc: Michael Brown, County Executive Officer
Bob Geis, Auditor-Controller
Shane Stark, County Counsel
Mary McMaster, Deputy County Counsel

ATTACHMENT A

REPORT TO THE BOARD OF SUPERVISORS
COUNTY OF SANTA BARBARA



“FOR SALE” AFFORDABLE HOUSING
COMPLIANCE PROGRAM

PROJECT TEAM RECOMMENDATIONS
FOR MONITORING AND ENFORCEMENT

NOVEMBER 14, 2006

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**PROJECT TEAM SUMMARY OF
RECOMMENDATIONS FOR MONITORING AND ENFORCEMENT**

I. Introduction

At the meeting on July 25, 2006, project team recommendations for improvements to the lottery and certification process were presented to and approved by your Board. Process improvements included a streamlined application and lottery process, development of a database for the purpose of tracking inventory, implementation of a mandatory annual survey for all “for sale” affordable unit owners, and implementation of additional internal controls for review and approval of buyer certifications. In addition, the project team identified several next steps for completion of a compliance program and implementation of process improvements to the management of the County’s “for sale” affordable units.

II. Project Team Recommendations for Enforcement

A. Violations Committee

As a result of the previous audit findings of the Auditor identifying suspected violations, a Violations Committee has been formed to review suspected violations. The County Executive Office proposes to actively review this list on an ongoing basis and is working closely with the Auditor and County Counsel to pursue all available remedies to enforce the applicable covenants.

In addition, the Office of the District Attorney has assigned staff so that suspected cases of fraud can be referred for investigation and possible criminal prosecution. Referrals for criminal investigation and possible prosecution will be made by the Violations Committee to the District Attorney.

B. Enforcement Ordinance

An owner occupancy ordinance has been drafted by County Counsel and reviewed by outside counsel, Goldfarb and Lipman. The ordinance focuses primarily on the owner occupancy requirement that is universal throughout the County’s many and various covenants recorded against “for sale” affordable units. The ordinance also requires adherence to the requirements contained in the individual covenants that restrict the use and sale of affordable for-sale units so as to give the County additional enforcement mechanisms. The ordinance will be presented to the Board for first reading on November 14, 2006.

The purpose of the ordinance is to ensure that for-sale affordable units continue to be maintained and available as an affordable ownership opportunity for qualified individuals and families at various income levels. The proposed ordinance will provide the County with an increased ability to enforce affordable home restrictions against participants in the program. Covenants for older units in the Inclusionary Housing Program do not include the same level of specificity with respect to restrictions on resale and requirements that the owner occupy the unit for the entire term of the program as it applies to the unit.

In addition to the buyer’s stated intent to reside in an affordable unit, the proposed ordinance clarifies that this intent to reside applies to all units in the Inclusionary Housing Program as long

as the unit is legally restricted. For example, an owner of a unit with a 30-year resale restriction must reside in that unit for the entire 30 years.

Codification of the restrictive covenants for affordable units is beneficial for the County, because it provides greater uniformity in the application of covenants in the Inclusionary Housing Program. It also provides the County with an additional mechanism for notice to the public of the rules governing affordable units.

III. Buyer Education Program

“Prospective owners of affordable units need to be aware of the legal and financial considerations associated with long-term affordability. Even when staff carefully explain restrictions, there may still be tension between the expectations of individual owners and the legal requirements to maintain affordability if the owner wishes to sell.”

The project team reviewed options for a buyer education program, and determined that an optional overview training coupled with a mandatory development specific training would be a useful component of the compliance program by reducing the number of violations that could occur. Early buyer education is expected to reduce the incidence of non-compliance through a simple process of education.

The project team looked to the Finance Division for an established curriculum for homebuyer education. Partnerships will need to be established with the local lenders and developers in order to achieve the desired outcome at the lowest cost possible. However, any buyer education program will require an estimated amount of staff time of 16 hours per course. These costs are not currently reflected in the budget. In addition, a source of funding to cover direct costs and staff time will need to be identified.

There are several interim steps that the department can implement immediately. These steps are based on the City of Santa Barbara’s processes for maintaining contact with and educating potential buyers and owners of “for sale” affordable units. These steps include the following:

1. Program summary and income qualification summary to anyone placed on the City’s interest list.
2. A full copy of the City’s affordability covenant to anyone requesting more detailed information about City’s program policies and requirements.
3. Key points of the affordability covenant are included in escrow instructions.
4. After close of escrow, the recorded covenant is sent to the new owner with a cover letter that highlights the key points of the covenant.

IV. Buyback Program

The project team recommends implementation of a formal Buyback Program to implement the existing covenant providing the County with the right of first refusal. The program would utilize funds in the Affordable Housing Trust Fund to repurchase the affordable units. The implementation of a buyback program will give the County maximum control over resales,

ensuring retention of affordable units in the Inclusionary Housing Program and minimizing the risk of fraudulent transfers. The program would also allow the County to impose a new covenant on a unit at the point of resale, including restarting the clock and maintaining the unit as an affordable “for sale” unit for an additional 45-90 years according to the new 45-year rolling base resale restrictive covenant.

Attachment C is a draft ordinance that would allow the CEO to exercise the county's option to purchase affordable units contained in many of the restrictive covenants. Under Gov. Code Sec 25350.60, the ordinance must include a dollar limit and it must set forth procedures for the exercise of the delegation. The ordinance will need to be renewed not less than every five years in order to remain effective.

Proceeds from the sale of “for sale” affordable units subject to shared equity covenants represents one possible funding source for the purchase of affordable “for sale” units. Shared equity proceeds over the last 3 ½ years are detailed in the next section discussing Staffing Needs, below.

V. Administrative Manual

An administrative manual is included in your materials as Attachment D. It includes an overview of the program and documents the policies and procedures for implementation of “for sale” affordable units. The administrative manual is designed to provide easily accessible information regarding the management of “for sale” units, from inception through expiration of the term of any restrictions pertinent to a “for sale” affordable unit.

The administrative manual includes a new Employee Participation Policy, also referred to as a conflict of interest policy. The Conflict of Interest policy is based on the HOME Consortium Conflict of Interest Policy and generally precludes individuals in a decision making capacity with respect to “for sale” affordable units from receiving any benefits from the Inclusionary Housing Program.

The administrative manual also includes an equity policy as stated in the County’s current restricted resale covenant. This policy is similar to equity policy utilized by the City of Santa Barbara. As a general rule, refinancings are not permitted for the purpose of allowing individuals to take out cash. Refinancings would be permitted that allow no cash out refinancings for the purpose of obtaining a lower interest rate.

VI. Database

The project team reviewed the database of the existing Inclusionary Housing units in the County and developed a framework for a more accurate and efficient database to maintain information about existing and future units. The goal of the database project is to convert HCD’s Inclusionary Housing spreadsheets into a web-enabled SQL database application that tracks deed restricted housing. Doing so will provide an enhanced data entry interface for maintenance of the data and a more powerful and flexible reporting environment. The web interface will also provide owners of affordable units a convenient way to respond to the annual certification request for covenant

compliance (“Annual Surveys”). The information gathered and stored in the database can then be used by automated verification tools that compare the data against data in other databases for accuracy and consistency.

The database project described at the previous meeting has proceeded through the design phase. The estimated cost of development is approximately \$43,000. In addition to tracking units and streamlining the monitoring process, the database will enable numerous data gathering and reporting functions. The database will function as the basis for the County’s asset management component of the “for sale” affordable unit monitoring program. Sound asset management practices are essential to a successful compliance program.

VII. Staffing Needs Assessment, and Contracting for Services

The Housing Development division manages the implementation of affordable housing units approved by the Planning Commission and the Board of Supervisors. The Housing Development Division currently has one staff member, a Senior Planner. Functions of the division include the following responsibilities:

- O Preparation and execution of developers' Agreements to Provide Affordable Housing that implement planning conditions to fulfill Housing Element and state law requirements and are generally included among the Planning Commission conditions;
- O Implementation of affordable housing "for sale" unit lotteries;
- O Certification of qualified buyers for the purchase of "for sale" units;
- O Execution and recordation of restrictive covenants;
- O Processing of requests for refinancings and resale of existing "for sale" units;
- O Calculation of in-lieu fees; and
- O Review and processing of complaints pertaining to affordable units.

Over the past three fiscal years, the Housing Development Division has provided the following services to its customers:

SERVICE	FY 2004-2005	FY 2005-2006	FY 2006-2007
Administration of Lotteries	4	1	
Prepare and Record Agreements to Provide	4	3	1
Buyers Certifications Processed	24	71	72
"For Sale" Affordable Units Transferred	17	14	5
Release of Covenant documents executed	3	1	
Developments with In-lieu Fees paid	1	2	1
Occupancy Surveys Sent, Info compiled	130	262	

Currently, there is one Senior Planner that provides all of the services emanating from the Housing Development Division. That individual is charged with all of the responsibilities indicated above. This includes monitoring of approximately 400 "for sale" units. The performance of all functions by one County staff member is an inefficient and insufficient allocation of resources. There may be additional staffing identified as the proposed compliance

program is implemented. This information can be conveyed to the Board in the planned quarterly reports.

By comparison, the City of Santa Barbara utilizes a Senior Planner level staff member to process certifications and monitor and enforce covenants, and 3 part-time clerical staff to perform all of the clerical tasks associated with their “owner occupied” affordable units. The City’s inventory is approximately 300 units.

In light of the length of the terms on most resale and shared equity restricted properties, implementation of the inclusionary housing program necessitates a long-term investment in implementation and enforcement. Some jurisdictions dedicate staff to oversee new sales, monitor resident incomes and prepare and record restrictions with the County Recorder’s office. Other jurisdictions, particularly small communities, either delegate enforcement to housing authorities or contract with local nonprofit organizations. Implementation and enforcement costs money, and saleable units can frequently change hands, leaving no central source for periodic funding.¹

The need for County resources and staff is exacerbated by the fact that some “for sale” units go back as far as 20 years. Outside of the last three years since the inception of the Housing and Community Development Department, there does not appear to have been any significant or coordinated monitoring or covenant enforcement. In 1998, the County Housing Authority was engaged to monitor the units at Oak Grove. However, the engagement was only for a single year. Development of a reliable asset management system will require a significant amount of staff or contractor time during the initial months of implementation.

Contracting for Services

Discussions with the County Housing Authority, the City of Santa Barbara, and the City of Carpinteria indicate that the County Housing Authority may be an option for contracting. The City of Santa Barbara is not interested in providing monitoring services under contract at this time. The City of Carpinteria is not in a position to provide monitoring services to the County. In fact, the City of Carpinteria has entered into a contract with the City of Santa Barbara to manage Carpinteria’s entire Inclusionary program.

The County Housing Authority has some experience with monitoring on behalf of the County. In 1997, the County Housing Authority conducted monitoring efforts of the Oak Grove development. This development was comprised of approximately 173 units at that time. The contract amount was \$11,000 and included site visits, documentation and a final report to the Treasurer and the Board of Supervisors. Legal enforcement of provisions remained the responsibility of the County. One comment provided by the County Housing Authority is that ongoing monitoring is important to take advantage of the momentum that can be gained by actively contacting “for sale” affordable unit owners regularly. The County Housing Authority has expressed an interest in conducting this kind of work for the County.

¹ / California Affordable Housing Handbook, California Redevelopment Assn., Ch 6: Designing a Successful Inclusionary Housing Program, p. 97 (2006)

VIII. Funding Sources for Additional Staff and Resources

The proceeds from shared equity sales represents one possible source of funding for the compliance program and additional staff needed. Another source of funding would be general fund money.

In FY 2003-04, there were no shared equity sales. In FY 2004-05, the shared equity unit located at 757 Cathedral Pte, Cathedral Pointe was sold and the County received \$202,063 in proceeds as a result of the shared equity covenant that applied to the unit. In FY 2005-06, the following three properties subject to shared equity covenants were sold: 3670 Corta Bella, Las Brisas (\$22,447), 78 Sommer Lane, Winchester Commons (\$175,485), and 76 Sommer Lane, Winchester Commons \$165,401. The County's share of proceeds are indicated in parentheses. There have been no sales of shared equity units in the current fiscal year.

The total proceeds to the County over the last 3 ½ years totals \$565,376. These funds are placed in the appropriate HMA column in the Fund 0065 spreadsheet and are part of each year's Housing Finance NOFA for projects. The recommendation to the Board is that these funds be utilized for the purpose of monitoring affordable "for sale" units and purchasing price restricted units (properties with restrictive covenants rather than shared equity covenants).

IX. Conclusion

Looking ahead, the Auditor is expected to complete two audits that will be helpful to complete a management review of the department. Delivery of these audit reports are anticipated in November/December 2006. The department will review the audit findings and recommendations upon receipt, and provide a response to findings as necessary.

Housing and Community Development will make quarterly reports regarding monitoring and covenant compliance with respect to the County's "for sale" affordable units to the Board. As quarterly reports are made, the Board will have an opportunity to make adjustments to any aspect of the compliance program and the management policies pertaining to the these units as the Board deems appropriate.

In response to the Board's interest in the goals and outcomes of the Inclusionary Housing Program, it is our recommendation that a Blue Ribbon Affordable Housing Committee be formed to review the goals, policies and outcomes of the Inclusionary Housing Program and alternatives to the Inclusionary Program. Each Supervisor is asked to appoint one non-staff member to the project team. A report of findings and recommendations pertaining to the County's Inclusionary Housing Program will be presented to the Board in 120 days.

Attachment B

Ordinance of the County of Santa Barbara Adding Chapter 46 to the Santa Barbara County Code to Add Owner Occupancy and Enforcement Provisions to the County's Affordable Housing Program

ORDINANCE NO.

AN ORDINANCE OF THE COUNTY OF SANTA BARBARA
ADDING CHAPTER 46 TO THE SANTA BARBARA COUNTY
CODE TO ADD OWNER OCCUPANCY AND ENFORCEMENT
PROVISIONS TO THE COUNTY'S AFFORDABLE HOUSING
PROGRAM

THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA BARBARA DOES HEREBY
ORDAIN AS FOLLOWS:

SECTION 1

Chapter 46, entitled "Affordable Housing Enforcement", Sections 46-1 through and including
Section 46-11 are hereby added to the Santa Barbara County Code:

- 46-1 Purpose and findings.
- 46-2 Definitions.
- 46-3 Applicability of chapter.
- 46-4 Owner occupancy requirements.
- 46-5 Execution and recordation of affordable housing covenants and assumption agreements.
- 46-6 Exempt transactions.
- 46-7 Truth of statements and compliance with affordable housing covenants.
- 46-8 Responses to surveys and audits and cooperation with monitoring.
- 46-9 Proof.
- 46-10 Penalties, remedies and enforcement.
- 46-11 Severability.

46-1 Purpose and findings.

The purpose of this chapter is to ensure that for-sale affordable units, built to provide affordable ownership opportunities required by the County of Santa Barbara, continue to be maintained and available as an ownership opportunity resource consistent with the public purposes that required provision of the affordable units.

The Board of Supervisors hereby finds and determines:

1. That some owners of single-family homes and other individual ownership units produced under the County's affordable housing programs have been rented out instead of being sold to a new household when the household that purchased the unit vacated it, thereby depriving other individuals and families of the opportunity to purchase the unit.
2. That California Government Code section 65302(c) and various other state-adopted policies encourage and provide for adoption of local policies designed to provide for the housing needs of all economic segments of the community. The promotion of home ownership, owner occupancy,

and the maintained availability of affordable ownership housing units are recognized as valid purposes of the County's police power.

3. That the protection of a residential environment has long been recognized as a valid purpose of the County's police power, including zoning regulations.

4. That the County of Santa Barbara Housing Element, Housing Element Implementation Guidelines and implementing ordinances and resolutions have established various programs to increase home ownership opportunities for very low, low, moderate and workforce households. These programs include an inclusionary housing program, an affordable housing overlay program and a density bonus program, all of which result in the development of new affordable ownership housing units. The County of Santa Barbara and the Redevelopment Agency of the County of Santa Barbara also increase affordable ownership housing opportunities through the below market rate sale of land to low income housing developers and through loans to low income housing developers. All of these programs produce ownership units at below-market rate prices, affordable to very low, low, moderate, and middle income households. The public purpose of these programs is to provide ownership housing opportunities for households that would not otherwise be able to live in Santa Barbara County or would be forced to live in sub-standard conditions. These public purposes continue to be served only if the affordable units are owner-occupied and not purchased or owned by investors.

5. That the public purpose that is provided by the County's affordable housing programs shall not unduly profit any household, including through the acceptance of rent for an affordable ownership unit that was purchased at a below-market affordable housing price, through a County affordable housing program.

6. That an occupancy requirement ensures availability of affordable units to income-eligible households at the units' initial and subsequent sales. The County and redevelopment agency's affordable housing programs also provide for affordable rental units that are separate from and in addition to the affordable ownership housing units produced by these programs.

7. That in approximately the last ten years there has been a dramatic increase in the price of homes in California, particularly in Coastal areas such as Santa Barbara County, making it one of the least affordable counties in the country to purchase a home in.

8. That the effects referred to above tend to:

Create an incentive for owners of price-restricted affordable ownership units to rent out, rather than sell, their unit when circumstances cause them to relocate.

Detrimentially affect the stock of available residential ownership units within the County in general and, in particular, detrimentally affect the availability of for-sale affordable units to persons of low, moderate, or middle incomes desiring to purchase and occupy such units.

9. That owners of affordable ownership units in the County received the benefit of being able to purchase a home for a below-market price in exchange to agreeing to be bound by certain restrictions, including the representation that they intended to reside in their unit.

10. That the County's purpose in imposing restrictions on affordable for-sale units is to assure that those properties remain affordable and available for purchase by low and moderate income and workforce families and this can only occur if the properties are not rented out.

46-2 Definitions.

For purposes of this chapter, the following words shall have the meanings ascribed by this section:

1. "Affordable ownership unit" shall mean any individual residential ownership unit which is subject to an affordable housing covenant or a judgment pursuant to an action that the County and/or County redevelopment agency was a party to which imposes use and/or affordability and/or price restrictions on the unit. The term applies to existing units in the County and also includes new affordable ownership units as defined below. The term "affordable ownership unit" includes units priced to serve very-low, low, moderate, and middle income households, as well as other household groups that the County and/or redevelopment agency finds to be underserved by the market or identifies as a public purpose within a specific project.

2. "Affordable housing covenant" refers to a document recorded against the title to an individual residential ownership unit which restricts the price at which the unit may be sold and/or the income level of allowed purchasers of the unit and which may impose additional restrictions relating to the sale and ownership of the unit, as required by the County's affordable housing programs or other County or redevelopment agency imposed conditions restricting the price and/or ownership of the unit.

3. "County affordable housing ownership programs" refers to all County and redevelopment agency programs and projects that require the production of affordable ownership units. "County affordable ownership programs" includes but is not limited to the following programs when affordable ownership units are required: the County inclusionary program, the County affordable housing overlay program, the County density bonus program, developer agreements including redevelopment agency disposition and development agreements, and loan programs through which the County and/or the redevelopment agency has loaned money for the production of affordable ownership housing in the unincorporated County.

4. "Completion of purchase" and "Completion of sale" refer to the close of escrow and the transfer of title to the purchaser or in the alternative, the date of the first installment payment of the purchase price or interest thereon.

5. "Developer" refers to any person who owns real property within the unincorporated County and who constructs, causes to be constructed, or permits to be constructed on such property one or more individual residential ownership units.

6. "Individual residential ownership unit" shall refer to any residential living unit (including condominiums and split lot units) which may be separately owned, or which is owned by a stock cooperative as defined in section 11003.2 of the Business and Professions Code, or owned as a community apartment project as defined in section 11004 of the Business and Professions Code.

7. "New affordable ownership unit" means a unit identified as a price restricted for-sale affordable unit pursuant to an agreement entered into by a developer and the County, but against which an affordable housing covenant has not yet been recorded.

8. "Occupy" refers to the activity of living at one designated location on a full-time basis.

9. "Person" refers to an individual, group of individuals, family, partnership, or any other entity.

10. "Principal place of residence" means that the place where a person or persons reside on a full time basis such that they do not stay at other locations on a regular basis except during vacations or visits..

11. "Purchase" and "Sell" refer to the execution of a binding and enforceable agreement (deposit receipt, contract of sale, agreement of sate, tease with an option to purchase, etc.) to purchase or sell a specific individual residential ownership unit for an agreed price.

12. "Purchaser" refers to any person or persons who acquire title to an individual residential ownership unit.

13. "Redevelopment agency" refers to the Redevelopment Agency of the County of Santa Barbara.

14. "Sale" refers to the sale or transfer of an affordable ownership unit by a developer or an owner of the unit.

46-3 Applicability of chapter.

This chapter is enacted pursuant to the general police power of the County and is for the purpose of ensuring that affordable ownership housing units be provided and maintained as an affordable ownership opportunity resource, in an effort to fulfill the public purpose under which the affordable units were required. This chapter is applicable to new and existing affordable ownership units in the unincorporated County.

46-4 Owner occupancy requirements.

1. Owner occupancy duration. All original and subsequent owners and purchasers of affordable ownership units shall occupy his/her or their unit as his/her or their sole place of residence for the entire duration of his/her or their ownership of the unit, unless the unit is exempt pursuant to Section 46-6 or otherwise approved by the County in writing. Such occupancy must commence within three months following completion of the purchase of the unit.

2. Required occupancy declarations. Each purchaser and owner of an affordable ownership unit must execute a declaration of occupancy and subsequent declarations, as required by the County.
3. Vacancy of affordable ownership unit. It is unlawful for an owner to vacate an affordable ownership for more than 60 days, without requesting and gaining an approved exemption from the County.
4. No trusts or corporate ownership. Affordable ownership units shall not be put into trusts including living trusts. Title to affordable ownership units must be vested in individuals and shall not be held by partnerships or corporations.

46-5 Execution and recordation of affordable housing covenants and assumption agreements.

1. Affordable Housing Covenant required for new affordable ownership units. It is unlawful to sell, to purchase, or to act as the real estate agent, escrow agent, or broker for a seller or buyer of a new affordable ownership unit without obtaining and recording at the completion of sale, an affordable housing covenant, in a form approved by County Counsel executed by the buyer(s) of the new affordable ownership unit and the County.
2. Affordable housing covenant or assumption agreement required for resales of affordable ownership units. It is unlawful to sell, to purchase, or to act as the real estate agent, escrow agent, or broker for a seller or buyer of an affordable ownership housing unit that is already subject to an affordable housing covenant, without obtaining and recording at the completion of sale an assumption agreement or new covenant as determined appropriate by the County in a form approved by County Counsel and the buyer(s) of the affordable ownership unit and the County.

46-6 Exempt transactions.

1. Foreclosures. This chapter shall be inapplicable to affordable ownership units that are no longer subject to an affordable housing covenant because a foreclosure or deed in lieu of foreclosure on the affordable unit had the legal effect of nullifying the affordable housing covenant pursuant to the specific terms contained therein. However this chapter shall continue to be applicable to affordable ownership units that are subject to a foreclosure of deed in lieu of foreclosure which does not have the legal effect of nullifying the affordable housing covenant recorded against the unit and to units which are subject to a legally binding judgment that imposes affordability restrictions on a unit.
2. This chapter shall be inapplicable to affordable ownership units that are no longer subject to an affordable housing covenant because the term of the affordable housing covenant including any extensions as provided for in the affordable housing covenant has expired.
3. Inheritance or bequest. This chapter shall not invalidate transfers of affordable ownership units by inheritance or bequest, but shall apply to anyone who receives title through such transfer.

4. Divorce. The owner occupancy requirement of this Chapter shall not apply to owners who do not occupy their affordable ownership unit because of a legal separation or pending divorce so long as one spouse remains in occupancy the affordable ownership unit.

5. Public purpose. This chapter shall be inapplicable to purchases of affordable ownership units by a public agency, including the County, for public purposes, subject to approval by the County.

6. The requirements for owner occupancy set forth in this chapter shall be inapplicable to any owner of an affordable ownership unit who has been granted a personal hardship exception or other exemption by the County in compliance with the County Housing Element and Housing Element Implementation Guidelines as such may be amended.

46-7 Truth of statements and compliance with affordable housing covenants.

1. It shall be a violation of this chapter for a person applying to the County to purchase an affordable ownership unit to knowingly make any false or misleading statement on any documents submitted to the County as part of their application or to knowingly assist an applicant in making a false or misleading statement.

2. It shall be unlawful for any person to: knowingly misrepresent any material fact in; or to date or sign any deposit receipt, sale agreement, contract of sale, lease with an option to purchase, affordable housing covenant or other writing relating to the sale or purchase of an affordable ownership unit so as to indicate that the agreement was executed on a date other than the actual date of acceptance and execution of the sale agreement; or to misrepresent to any person the character of any transaction which would otherwise be subject to this chapter.

3. It shall be unlawful to sell or hold any affordable ownership unit without compliance with each and every provision contained in the applicable affordable housing covenant recorded against the unit.

46-8 Responses to surveys and audits and cooperation with monitoring.

1. Responses to written requests. It shall be a violation of this chapter for an owner of an affordable unit to refuse to, or not respond to, any written County surveys, audits or other requests for information of within 3 weeks of receipt of such survey, audit or other request or to misrepresent any material fact in such response.

2. Cooperation with County. It shall be a violation of this chapter for any person to purposefully evade or fail to cooperate with County employees or agents who are conducting surveys, audits, investigating complaints or otherwise monitoring compliance with this chapter and with affordable housing covenants.

3. It shall be a violation of this chapter for a person to knowingly provide false or misleading information to the County in relation to an affordable housing surveyor, audit, monitoring program or complaint investigation or to knowingly assist in the provision of such false or misleading information.

46-9 Proof.

1. Proof: In all actions brought under this chapter, proof of any of the following shall be presumptive evidence that a violation of Section 46-4 has occurred:

Failure of three-month occupancy deadline. Proof that the purchaser or purchasers of an affordable ownership unit failed to occupy the affordable ownership unit within three months of completion of the purchase of the unit.

Vacated affordable ownership unit. Proof that the purchaser or purchasers of an affordable ownership unit vacated the affordable unit.

Leasing affordable ownership unit. Proof that the owners of an affordable ownership unit rented or leased the unit.

Second ownership unit. Proof that any or all owners of an affordable ownership purchased or own a second ownership dwelling unit.

Not principal place of residence for all owners. Proof that not all of the owners of the affordable ownership unit occupy the unit as their principal place of residence except in the case of legal separation or divorce.

The presumptions set forth above may be rebutted by submission and approval by the County of an application for exemption.

46-10 Penalties, remedies and enforcement.

1. Penalties. Persons who do not comply with the requirements of this chapter may be subject to the penalties included below. Persons receiving an exemption from the County, shall not be subject to the penalty or remedies provisions of this chapter.

a. Civil penalties.

Any person who willfully violates the provisions of this chapter shall be liable for a civil penalty not to exceed 500.00 for each day the violation continues to exist.

In determining the amount of civil penalty to impose, the court shall consider all relevant circumstances, including, but not limited to, the benefit received from the violation, the nature and persistence of such conduct, the length of time over which the conduct occurred and any corrective action taken by the defendant.

b. Criminal Actions and Penalties.

It shall be an infraction for any person to violate any of the provisions of this chapter. Each day of noncompliance shall constitute a new violation.

2. Additional Remedies. The County shall have the ability to, but is not required to request the following additional remedies as part of the enforcement of this chapter.

If any owner or purchaser is found to be out of compliance with any requirement of this chapter and is given a reasonable amount of time to regain compliance, but chooses not to, the County of Santa Barbara shall have the ability to require the owner or purchaser to sell his/her/their affordable unit within 90 days of the County's notice of noncompliance.

As a separate and additional remedy, violations of this chapter which threaten to continue or to be repeated may be subject to abatement by a restraining order or injunction issued by a court of competent jurisdiction, which order may provide that the violator may not thereafter be a purchaser or obtain any interest in an affordable ownership unit.

The remedies provided herein shall not be exclusive and violations of any provisions of this chapter shall be subject to such other or further remedies as may be provided by law including but not limited to all remedies available to the County from the prosecution of related criminal violations and through the enforcement of provisions and restrictions recorded against affordable ownership units.

3. Enforcement. This chapter may be enforced by the Housing and Community Development Department, County Counsel and District Attorney.

4. No waiver. Failure of any official or agency to fulfill the requirements of this Chapter shall not excuse any applicant or owner from the requirements of this chapter.

46-11 Severability.

If any provision, clause, sentence or paragraph of this chapter, or application thereof to any person or circumstances, be held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or application and to this end, the provisions of this chapter are declared to be severable.

SECTION 2

This Ordinance shall take effect and be in force at the expiration of thirty (30) days from and after its passage, and before the expiration of fifteen (15) days after its passage, it or a summary of it, shall be published once, with the names of the members of the Board of Supervisors voting for and against the same in the Santa Barbara News Press, a newspaper of general circulation published in the County of Santa Barbara.

PASSED, APPROVED, AND ADOPTED this ___ Day of _____, 2006.

AYES:

NOES:
ABSENT:
ABSTAIN:

Signed: _____
Joni Grey
Chair, BOARD OF SUPERVISORS

Attest:
MICHAEL F. BROWN,
Clerk of the Board of Supervisors

By _____
Deputy Clerk

Approved as to form:
STEPHEN SHANE STARK, County Counsel

By _____
Deputy County Counsel

Attachment C

Ordinance Authorizing the County Executive Officer to Exercise the County's Option to Purchase For-Sale Affordable Housing Units

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE COUNTY
EXECUTIVE OFFICER TO EXERCISE THE COUNTY'S
OPTION TO PURCHASE FOR-SALE AFFORDABLE
HOUSING UNITS

WHEREAS, there is a critical need of low and moderate income and workforce housing in the County; and

WHEREAS, the shortage of very low, low and moderate income and workforce housing in the County has lead to overcrowding, increased traffic congestion and a shortage of critical workers; and

WHEREAS, the County has the opportunity, through the purchase and sale of housing units that were produced under the affordable housing programs, to keep those units affordable to very low, low, and moderate income and workforce families; and

WHEREAS, the failure of the County to purchase and resell affordable units would result in a loss of affordable units which would be extremely costly to replace; and

WHEREAS, restrictions imposed upon individual housing units produced under the County's affordable housing programs often contain an option allowing the County to purchase the unit from its owner in the event of certain occurrences such as a home loan default or proposed sale; and

WHEREAS, the time period in which to exercise the County's option to purchase is often short, and does not provide enough time for Board of Supervisor consideration; and

WHEREAS, California Government Code Section 25350.60 authorize the Board of Supervisors pass an ordinance authorizing a county officer to purchase property not exceeding a certain amount.

Now therefore the Board of Supervisors of the County of Santa Barbara ordains as follows:

SECTION 1.

The Board of Supervisors hereby finds that the public interest and convenience require the delegation to the County Executive Officer of authority to exercise the County's option to purchase for-sale affordable housing units.

SECTION 2.

The Board of Supervisors hereby authorizes and directs the County Executive Officer to exercise the County's right of first refusal to purchase affordable for-sale housing units with monies collected under the County's shared equity housing program and other eligible housing funds when the following conditions are met:

1. The County Executive Officer determines that sufficient funds exist to purchase such units, the purchase is in the best interests of the County, and the purchase will help maintain the supply of affordable housing in the County.
2. The County Executive Officer and County Counsel determine that the purchase will not result in a significant risk of liability to the County.
3. The purchase price of the unit is under \$475,000.
4. The County will be able to resell the unit for at least the amount of the option price.
5. The County Executive Officer shall exercise his or her duties under this ordinance through the mailing a notice of intent to exercise option to the owner of the property and through the use of generally accepted procedures for purchase of real property including the use of an escrow agent. Notwithstanding the above, all requirements contained in the covenant and option to purchase applicable to the property shall be complied with.

SECTION 3.

This ordinance shall be shall take effect and be in force thirty (30) days from the date of its passage and before the expiration of fifteen (15) days after its passage it, or a summary of it, shall be published once, together with the names of the members of the Board of Supervisors voting for and against the same in the Santa Barbara News Press, a newspaper of general circulation published in the County of Santa Barbara.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Barbara, State of California, this ____ day of _____, 2006, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAINING:

Joni Gray, Chair of the Board of Supervisors
County of Santa Barbara

ATTEST:

Michael F. Brown
Clerk of the Board of Supervisors

By: _____
Deputy Clerk

Approved as to form:

Stephen Shane Stark
County Counsel

By: _____

Attachment E

Recommendations for the Economic Development division's remaining programs are as follows:

A. Retain program and reassign

1. CDBG Program

Recommendation: The Finance Division will assume responsibility for administering CDBG grant funds. The \$1.1 million in grant funding represents funds from three (3) grants. Two of these grants have been closed. One grant in the amount of \$300,000 remains for administration.

2. UCSB Economic Forecast Project Annual Economic Forecasts

Recommendation: (a) Prepare a budget revision to allocation \$12,500 from Budget Unit 990. Prior to the inception of HCD, these forecasts were funded by the County Administrator's Office. (b) Appoint Pat Gabel, Manager of the Finance Division, to the North County Economic Forecast Project Board of Directors.

3. Broadband Task Force

Recommendation: Appoint Jennifer Slayman from GS/IT to lead the Broadband Task Force project.

4. Tourism Marketing Funding

Recommendation: Funds were appropriated for marketing grant recipients, but no funding exists for administration of contracts. County Executive Office will administer contracts for FY 2006-2007. Budget process for FY 2007-2008 will need to allocate sufficient resources for grants and administration by County staff.

5. IntroNetworks Online Business Database

Recommendation: Funded through Fiscal Year 2006-2007. Will need to evaluate program in greater detail for possible revenue opportunities.

6. Vandenberg Air Force Base Economic Impact Analysis

Recommendation: Project near completion. Assign Will Reed, Manager of the Management, Assessment and Planning Division, to monitor for receipt of final report. Close project upon receipt of report.

7. Comprehensive Economic Development Strategy (CEDS)

Recommendation: Update due in 2009. Currently there is no funding to work on the update. Place on hold. If ombudsman proposal from Finance Division is implemented, that function could oversee CEDS update.

B. Discontinue Program

1. UCSB Technology Management Program (TMP)

Recommendation: Discontinue County involvement at this time. There is no funding or staff available to cover this program.

2. Energy Partnership

Recommendation: Discontinue participation. Partnership might be a good fit for the Energy Division in P&D, but there is no funding or staff allocated to this function at this time.

3. Automotive Technician Partnership

Recommendation: Discontinue participation. Allan Hancock is capable of administering this partnership. Send a letter notifying Allan Hancock of termination of Economic Development, and County's intention to turn partnership over to Allan Hancock.

4. Ongoing Grant Applications

Recommendation: Discontinue function, due to lack of funding and staff. Send letters to California Space Authority and Santa Maria Airport District of termination of Economic Development, and turn over application process to entities. There are no pending applications for Department of Commerce, Economic Development Administration funds. CSA and SMAD will need to handle all grant writing and application functions in-house.

5. Los Olivos Business Improvement District

Recommendation: Project is inactive at this time. LOBO does not seem to be interested in establishing a BID. If LOBO becomes interested, the County Executive Office will need to assign an appropriate staff member to form a BID.

6. Development Of Marketing Materials – Central Coast Marketing Team

Recommendation: Discontinue/do not pursue project, due to lack of funding and staff.

7. Other Program Functions (Summits & Economic Analysis For CEO)

Recommendation: (a) Discontinue plans for summits, due to lack of funding and staff. (b) Assign appropriate CEO staff to prepare economic analysis, or discontinue project. Alternatively, UCSB Economic Forecast group may be willing to provide simple economic analysis if the County provides \$12,500 in funding as described in III, above.