

REPORT TO THE BOARD OF SUPERVISORS
COUNTY OF SANTA BARBARA



INCLUSIONARY HOUSING
COMPLIANCE PROGRAM

PROJECT TEAM
RECOMMENDATIONS

JULY 25, 2006

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As a result of the Preliminary Report on Restrictive Covenant Compliance issued by the Internal Audit Division of the Office of the Auditor-Controller dated March 15, 2006, the Project Team has developed the following Team Recommendations for process improvement with respect to the Inclusionary Housing Program:

I. LOTTERY AND CERTIFICATION

The Auditor's preliminary report noted several deficiencies and inefficiencies in Housing and Community Development's lottery and eligibility policies and procedures. The Auditor's report also noted inconsistent and insufficient application of the existing policies and procedures, as follows:

Auditor Finding: A lengthy and onerous initial application for the lottery process.

Auditor Recommendation: Streamline the lottery process.

Team Recommendation: Develop a simplified application form ("Short Form").

The simplified form is one page, double-sided, and contains all of the information necessary to determine eligibility. A completed form submitted with a loan pre-qualification letter will qualify the applicant for inclusion in the lottery. Substantive review of qualification for specified income levels will occur in the Certification process. This would result in a streamlined process that encourages greater participation in the lottery without impacting or jeopardizing substantive review of the information provided.

Every applicant that turns in a completed application and a bank pre-qualification letter is entered into the lottery. All lottery entrants are randomly assigned a number. If there are 50 completed applications accompanied pre-qualification letters, the applicants would randomly be assigned a number from 1 through 50. Assuming there are 10 units to be sold, applicants with lottery numbers from 1 through 20 (or an additional 100% based on number of affordable units to be sold) would be put through the certification process, thus providing a backup list of certified lottery winners in the event that some of the applicants with numbers 1 through 10 are not deemed qualified buyers during the certification process. Certifications will be processed until all units are filled.

As detailed in the "Preliminary Audit Report", the current lottery process requires that an applicant provide detailed eligibility information upon entering the lottery as part of their multi-page application submission. The product of this current process is a voluminous package of information from each applicant, which is difficult to certify properly given the time constraints for the lottery. It also discourages potential qualified applicants from applying at all. The new lottery selection process is being designed to focus staff time and resources on a detailed review and a true certification of applicants once selected during the Short-Form lottery process, rather than requiring a detailed review of every application before it is determined whether or not the review is even necessary, i.e., whether or not an applicant is selected in the lottery.

It is envisioned that the Short-Form, along with a pre-approval for the required home loan amount from a lender, will provide the necessary information for preliminary program eligibility. All applicants that meet preliminary eligibility criteria will have successfully entered the lottery and will be given a slot on the project's wait list. Wait list applicants will then be randomly selected and given a sequential ranking. HDC staff shall contact the Auditor-Controller's Office to conduct the lottery selection with Auditor-Controller's staff overseeing the process and signing off on the list at the conclusion of the lottery selection process. The individual selected and ranked will be certified by HCD through third-party verification and other means to verify income, residency, citizenship, homeowner status, and other program requirements. If an applicant does not qualify in all respective areas, they will be removed from the wait list and the next sequentially ranked individual will be subject to certification. This process will continue until all available units in a project have certified applicants.

Auditor Finding: Inconsistent application of HCD policies and procedures.

Auditor Recommendations: Implement structured document retention practice; develop complete understanding of eligibility requirements.

Team Recommendations: Implement a multi-part file for collection and retention of certification documents. Add review at the director/management level, and implement a Certification Committee for final independent review of all certifications.

Applicant information and documentation would be compiled in the same manner for every applicant; the certification file for every applicant would be organized in a multi-pocket file folder in a consistent fashion to provide easier access to the desired information for anyone reviewing the certification packet. A retention policy will be developed by the Project Team and included in the final report to the Board of Supervisors in October 2006.

In order to incorporate additional review and control mechanisms, certification would begin in HCD by an affordable housing program staff member assigned to compile documentation detailed in the Public Information Package and independently verify income, employment, and citizenship for program eligibility. Staff's recommendation for certification will and the certification packet would then be presented to the Director of HCD or another member of HCD's management team to review the packet and sign off on certification. Upon review and signature by the department's director or another member of HCD's management team, the packet would be presented to the Certification Committee for final review and approval of certification. The proposed process incorporates two additional levels of review for certification.

Based on discussions with some of the local developers, it was determined that a buyer education program would benefit program participants and the community at large. The buyer education program would likely focus on the application process, the loan process, and the responsibilities of homeownership. The project team will continue to develop the details of a buyer education program and will contact People's Self Help to determine if buyer education through People's Self Help is an option for the Inclusionary Housing Program.

An updated administrative manual is currently being drafted to document written policies and procedures for all aspects of the Inclusionary Housing Program including lottery and certification processes. Detailed information pertaining to the policies and procedures relevant to the administration of the Inclusionary Housing Program will be drawn from the Housing Element, the Housing Element Implementation Guidelines, the Inclusionary Housing in the manual. Additional review of the policies and procedures for the lottery process, as well as organized staff training, will be developed at future project team meetings and presented in a report to the Board in October 2006.

II. COMPLIANCE MONITORING

Auditor Finding: HCD does not maintain a complete listing of all affordable units under its authority. The lack of a complete inventory limits management's ability to properly account for and safeguard County shared assets.

Auditor Recommendation: Develop and implement formal policies and procedures to compile and maintain a complete and accurate inventory of affordable units.

Team Recommendation: Develop a database for inventory tracking and management.

The project team has reviewed the database of the existing Inclusionary Housing projects in the County and developed a framework for a more accurate and efficient database to maintain information about existing and future projects. 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. 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 will allow more efficient tracking of all affordable units in the Inclusionary Housing Program. One example of its usefulness pertains to the sharing of information among County departments. For example, the County of Santa Barbara Assessor has initiated a comprehensive review of their policies and procedures for the identification of affordable resale restricted properties in the County of Santa Barbara. The review will ensure that the Assessor's office is aware of a property's resale restricted status and that it is being properly assessed for property tax purposes. Division Manager Pamela Smith has directed Assessor's staff to obtain information on the process used to restrict affordable properties and for a list of affordable resale restricted properties.

The web-enabled SQL database is in its first phase of development. This initial version of the database now tracks the identified 408 for-sale affordable units that have been built as part of the Affordable Housing Program. Based on a series of reviews by HCD staff and comparison to available records including Assessor records, we are reasonably certain that the database now includes a complete list of units in the Inclusionary Housing Program. One of the benefits of the database, however, is the ability to add new units as they are built as well as older units if and when they are discovered.

The next phase of the database will include the development of the web front end. From web front end, the database project will then move to accessibility over the Internet. The final version of the database is intended to allow multi-departmental and public access to the database for information and reporting purposes.

Based on an inquiry by a constituent, the initial Phase One version of the database was recently used to develop additional information about participants in the Inclusionary Housing Program. HCD has a list of county employees that currently own affordable units that are part of the Inclusionary Housing Program. Out of 408 identified affordable units now entered into the database, 18 owners in the Inclusionary Housing Program were identified by Human Resources as county employees.

A recent request from the Assessor's office highlights the need for a central database for affordable housing units that is available to multiple county departments. In response to the request from the Assessor's office, HCD staff provided the Assessor's staff with affordable unit homeowner names, addresses, APN numbers, affordability levels, restrictive covenant instrument number and affordability expiration dates for homes in the program. HCD staff continues to work cooperatively with the Assessor's office in the identification of the resale restricted units, the affordability level and values of the homes. With the development of a web-enabled SQL database, the Assessor's staff will eventually be able to access the database and obtain the information needed by the department directly.

Auditor Finding: HCD has failed to create a comprehensive compliance monitoring and enforcement program.

Auditor Recommendation: Develop a comprehensive, recurring compliance monitoring and enforcement program.

Team Recommendation: Implement Project Team recommendations for compliance monitoring, and coordinate with County Counsel and District Attorney to pursue all legal remedies available for enforcement.

The detailed recommendations of the Auditor's report include annual surveys, random on-site visits, public record searches, and inquiry of interested parties. The Project Team recommendation is consistent with the Auditor's recommendation. Annual surveys sent via certified mail will be utilized to document receipt of the survey at the address of the affordable unit. Online certification forms have also been proposed, and the database will be designed to accommodate online completion of the surveys. The database can also be used to generate a quarterly report to the Board of Supervisors in order to track progress in the Compliance Monitoring and Enforcement Program.

The annual survey component of the compliance program will be conducted in three phases. First, survey forms will be mailed via certified mail to each homeowner in the Inclusionary Housing Program with a "Do Not Forward" instruction and a requirement that the survey be completed and returned within 10 days of receipt. Second, homeowners that fail to return a completed survey within 20 days (5 days for mailing by the County + 10 days to complete and return + 5 days for mailing by the homeowner) of the original survey mailing date will receive a second notice via certified mail with a "Do Not Forward" instruction. The same deadlines will apply to the second mailing. The third and final phase of the survey component of the program will entail personal delivery of the annual survey by an independent, third-party process server.

Failure to provide the required certification will result in additional contact from HCD, including but not limited to employee visits to the home for the purpose of inspection consistent with the existing covenants and proposed ordinance (see below).

In light of the Project Team's recommendations, County Counsel is revising the covenants for the County's most recent project to allow for inspection of financial records and credit information for buyers and to provide the County with the right to inspect the property to ensure compliance with covenants.

A few enforcement components of the Compliance Program are generally discussed below. Coordination efforts with County Counsel and the District Attorney are already underway. Please note that recommendations for enforcement of the Inclusionary Housing Program covenants will be the primary focus of the project team in preparation for a return to the Board of Supervisors in October 2006.

III. HCD IDENTIFIED PROBLEM UNITS

Auditor Finding: Of the 26 homeowners tested, the Auditor concluded that 7 are in violation of the occupancy or rental clauses in the covenants.

Auditor Recommendation: The Auditor will continue inquiries to substantiate suspicion of noncompliance. The Auditor's final report will document the results of the examination.

Team Recommendation: The County Executive Office proposes to actively review the Auditor's list of Identified Problem Units on an ongoing basis and work with County Counsel to pursue all available remedies to enforce the applicable covenants.

The preliminary audit findings have identified a list of 7 cases comprised of substantial evidence of violation of the occupancy and rental prohibition covenants. 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.

These efforts have already resulted in a Notice of Intent to Sell to the County for one of the seven properties identified in the Auditor's report. The proposed repurchase of this property by the County is scheduled for Board consideration on July 18, 2006. A second property owner on the Top 7 list is being notified by certified mail of the need to cure noncompliance of the Owner Occupancy restriction, and an offer to repurchase the property will be included with the notice.

IV. ENFORCEMENT

Additional recommendations from the Project Team pertaining to enforcement of covenants are as follows:

Ordinance

A sample ordinance to enforce covenants has been drafted by County Counsel for consideration by the Board of Supervisors. 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 10 out of 12 months each year 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.

Buyback Program

The project team recommends implementation of a mandatory buyback program to ensure that affordable housing units remain in the program for the entire term of the restricted resale provision. The County can exercise its right of first refusal reserved as part of the restrictive covenant. The program would utilize funds in the Affordable Housing Trust Fund to repurchase the affordable units and then find a qualified buyer to purchase the affordable unit at an appropriate restricted price. The implementation of a mandatory buyback program will give the County maximum control over the resale of affordable units. It will also give the County an opportunity to update the covenants applicable to a unit participating in the buyback program.

Investigations by the Office of the District Attorney

The Office of the District Attorney has assigned staff so that suspected cases of fraud can be referred for investigation and possible criminal prosecution.

V. NEXT STEPS

The Office of the Auditor-Controller is proceeding with its audit of the Inclusionary Housing Program. As findings and recommendations are made by the Auditor's office, the project team will review the areas identified for improvement and address the findings and recommendations in the Auditor's final audit report.

The Project Team will continue to meet and develop additional enforcement policies and procedures and present final recommendations for a comprehensive Compliance Monitoring and Enforcement Program to the Board of Supervisors in October 2006. The project team's recommendations will include a draft administrative manual presented for the Board's approval, details of a Buyback Program, and details of a buyer education program. The project team will also address HCD's organizational structure and return to your Board to make recommendations regarding HCD staffing needs in order to provide a greater level of compliance monitoring and enforcement of Inclusionary Housing Program covenants.

In addition to the upcoming report to the Board in October, a quarterly report will be provided to the Board on the results of the Inclusionary Housing Compliance Program. This will give the Board an opportunity to track the progress of the program and evaluate the results. As quarterly reports are made, the Board will have an opportunity to make adjustments on any aspect of the Compliance Program, such as the need for the use of certified mail to all affordable unit owners in the first phase of the annual survey.