SONOMA COUNTY COMMUNITY DEVELOPMENT COMMISSION

LOAN POLICIES

- Affordable Housing Development
- Affordable Housing Acquisition & Preservation
- Multi-family Housing Rehabilitation
- Community Facilities

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I. INTRODUCTION

A. Purpose & Objectives:

1. The purpose of these Loan Policies is to create a standardized reference for origination, modification, and administration of real estate loans made by the Sonoma County Community Development Commission (Commission), either on its own behalf or on behalf of the County of Sonoma (collectively referred to herein as Commission loans), using federal, state, and/or local funds. These Policies govern the following real estate lending programs:

   a. Affordable housing development (rental and for-sale)
   b. Affordable housing acquisition and preservation (rental and for-sale).
   c. Housing rehabilitation of five units or more (projects of four units or less are governed by the policy document entitled HOUSING REHABILITATION PROGRAM DESIGN: OWNER-OCCUPANT AND RENTAL HOUSING).
   d. Community facilities sponsored or owned by community-based, 501 (c) (3) non-profit agencies (e.g. senior or teen centers or homeless services facilities), except those funded by Redevelopment tax increment revenues administered by the Commission.

2. The primary objective of these Loan Policies is to provide an efficient mechanism for providing public funds to the community for the purpose of developing and preserving affordable housing and financing community facilities.

B. Authority:

1. These Policies have been adopted concurrently by the Sonoma County Board of Supervisors and the Commissioners of the Sonoma County Community Development Commission, and apply exclusively to funds managed by the Community Development Commission. No revisions may be made hereto without the express action of the Board of Supervisors and Commissioners.

2. The Executive Director of the Commission is hereby authorized to accept and process loan applications per the provisions of these policies and applicable funding source rules, guidelines, and regulations, to interpret these policies, and to make policy exceptions pursuant to the criteria established in Section VII of these policies.

3. Where a funding source policy, regulation, rule or guideline conflicts with the policies described herein, the funding source policy, regulation, rule or guideline will prevail.

C. Conflict of Interest:

No member of the governing body of the County of Sonoma or the Commission and no other official or employee or agent of the County government, Commission, or any other local government agency who exercises any decision-making functions or responsibilities in connection with the planning and implementation of the real estate lending activities governed by these Loan Policies shall directly or indirectly be eligible to participate in or benefit from said lending programs governed.

II. DEFINITIONS

Affordable Housing Agreement - A contract with the Commission executed by the developer of a residential project that limits the sales price and/or monthly rent of specified dwelling units within the project, limits the income level of the household occupying the specified units, establishes a time period during which the specified units shall continue to be sold and/or rented at affordable prices, and which may contain administrative, enforcement, or other provisions to ensure that the specified units are sold and/or rented to targeted households at affordable sales prices and/or monthly rent over the entire term of the agreement.

Amortized Payment Loan – A loan to be repaid, with interest and principal, by a series of regular payments that are equal or nearly equal, without any special balloon payment prior to maturity.

Covenant – An agreement or promise to do or not to do a particular act or to use or not use property in a certain way (See Affordable Housing Agreement).

Deferred Payment Subordinate Loan - A loan that is due and payable, with principal and either accrued interest or a share of appreciation, upon sale or transfer of the property or upon maturity on the loan. No regular payments are required with the final payment being due upon maturity as a balloon payment.

Density Bonus - A density increase allowed pursuant to the Sonoma County Zoning Regulations (Density bonus programs) over the otherwise maximum allowable residential density permitted in the applicable zoning district.

Fair Market Value (FMV) - For purposes of the initial sale of affordable ownership units, the fair market value as defined in of the Sonoma County Zoning Regulations. For purposes of resale of affordable ownership units, the fair market value as determined according to the procedure set forth in the Option Agreement.

Incentives - A modification of zoning code requirements (e.g., minimum open space, minimum lot size, setbacks, parking standards) or an allowance of other regulatory incentives or measures granted in exchange for the provision of affordable ownership housing or affordable rental housing pursuant to the Sonoma County Zoning Regulations.

Lien – A form of encumbrance that usually obligates specific property as security for the repayment of a debt.

Option Agreement – An agreement granting the Commission a first right either to purchase an affordable ownership unit or a unit of special needs ownership housing for the unit's fair market value (FMV), or to assign the Commission's first right to an eligible buyer to purchase the affordable ownership unit or the unit of special needs ownership housing for its FMV.

Reconveyance –An instrument used to transfer title to real property from a trustee to the equitable owner, when title is held as collateral security for a debt.

Share of Appreciation - A specified share of the appreciation in value of a particular affordable ownership unit equal to the ratio of the principal amount of the deferred payment subordinate loan to the FMV of the affordable ownership unit that the loan financed, at the time the loan was made, multiplied by the difference between the FMV at the time of resale and the FMV of the affordable ownership unit at the time the loan was made. To the extent permitted by applicable law, regulations, and the senior mortgage lender(s), the promissory note evidencing the deferred payment subordinate loan, a recorded covenant between the buyer and Commission, or another instrument shall require the seller of an affordable ownership unit, at resale, to pay the Commission the Commission's share of appreciation due under the promissory note, notwithstanding any prior prepayment by the seller of any principal or interest due on the loan.

Special Needs Housing Agreement - A contract with the Commission executed by the developer of a residential project that limits occupancy of specified dwelling units within the project, and which may contain administrative, enforcement, or other provisions to ensure that the specified units are sold and/or rented to targeted households over the entire term of the agreement.

III. LOAN TERMS AND CONDITIONS

The Commission will use a variety of funding sources to offer deferred-payment loans with either a share of appreciation or below-market interest rates as prescribed by the approved guidelines for each specific funding source.

A. <u>Maximum Loan Amount</u>: Maximum loan amounts shall be determined per the approved guidelines for each specific funding source. In any event, the maximum loan shall not exceed the minimum amount of funding necessary to achieve project feasibility.

B. <u>Term:</u> The loan term shall be consistent with local, state and federal law and regulation and may correspond to the requirements of other lending sources. If a covenant is required (e.g., a housing affordability covenant) the term of said covenant may be longer than the term of the loan but the term of any covenant shall not be shorter than the term of the loan. All Commission loans can be paid in part or in full prior to the date of loan maturity without penalty.

C. Interest Rate: The fixed interest rate for all Commission deferred-payment loans subject to these policies is 3%, simple-interest. At the discretion of the Commission, affordable rental housing deferred payment loan rates may be lower, including a rate of zero, for projects utilizing federal Low Income Housing Tax Credits (LIHTC's) provided that all of the following conditions are met:

a. It is demonstrated by the project proponent that a lower interest rate is required for federal income tax purposes to reasonably attract investor equity;
b. At least one senior lender's loan interest rate is as low or lower that the proposed Commission rate; and
c. The project is not financially feasible without the LIHTC investor equity.

Interest shall accrue on the unpaid principal balance from the date on which the Promissory Note is executed.

D. Share of Appreciation: If required by a particular affordable housing for-sale program, a Share of Appreciation shall be used in the place of an interest rate. Please see the Sonoma County Affordable Housing Program Homeownership Policies Share of Appreciation Approach.

E. Loan Security: All loans shall be secured by a Deed of Trust.

1. Seniority: Commission loans shall be senior to all loans of lesser principal amounts, and to loans that recapture the value of a County Density Bonus or other regulatory incentives.

2. Appraisals: All appraisals must be prepared by a Certified General Appraiser or by a Certified Residential Appraiser if the project is exclusively residential. An appraisal is generally considered current if it not more than six months old.

a. Except when allowed under the guidelines of a specific funding source, loans for site acquisition costs require a current site appraisal that demonstrates that the "as is" value of the property will fully secure the loan.
b. Loans for predevelopment costs require a current site appraisal that demonstrates that the sum of the principal amount of the Commission loan and other loans and financial liens senior to the Commission loan may not exceed one hundred fifty percent (150%) of the "as is" value of the property.
c. Loans for construction costs require a current post-completion appraisal that demonstrates that the value of the completed project will fully secure the loan.

3. Homebuyer Finance:

a. The value of the unit must secure fully the principal amount of a long-term loan to a buyer of an assisted ownership unit. When the buyer borrows funds to pay any portion of the buyer's reasonable and customary closing costs, the loan can be unsecured by the amount of the funds borrowed to pay those closing costs.

b. Option Agreements: In the same escrow in which an eligible homebuyer purchases a unit assisted with a Commission loan, the Commission will record an option agreement granting the Commission the first right to purchase the unit at resale for thirty (30) years. The option period may exceed 30 years if specified by the requirements of other federal, state, or local programs that assist the ownership project.

F. <u>Loan Fees</u>: The Commission may collect loan origination and modification fees as established by these Policies and as subsequently amended by the Sonoma County Board of Supervisors from time to time. Except as prohibited by the primary funding source, as amended by the Board, and/or as provided in Section VI. F. of these Policies, the current loan origination fee is 1% of the Commission's principal loan amount and the fee for modifications, subordinations, assignments and assumptions shall be an amount sufficient to off-set the actual costs to prepare such modifications, subordinations, assignments and assumptions, up to 0.5% of the lesser of the then outstanding balance of the Commission's principal loan or the Commission's original principal loan amount.

G. <u>Use of Funds</u>: Funds shall only be used in accordance with the approved guidelines for each specific funding source.

H. <u>Loan Approval</u>: Commission staff shall exercise sound underwriting practices in all loan evaluations.

1. In all instances, the Commission's underwriting standards will be employed in a consistent, equitable manner. The Commission will at all times utilize sound judgment in making loans to ensure that the public funds are adequately protected. The Commission's underwriting standards will normally follow private lending practices but may in some cases be more lenient if in doing so, public policy objectives will be achieved.

2. Loan applications shall be subject to normal commercial underwriting criteria by the Commission. Such criteria may include, but are not limited to: credit reports, risk analyses, appraisals, title reports, cash-flow analyses, review of loan documentation from other project lenders, etc.

I. <u>Discretion of Commission Staff:</u> It shall be within the purview of the Commission Executive Director, or designee, to disapprove any loan application at any stage of processing through any formal or informal action which is consistent with sound underwriting practices and fair housing lending procedures.

J. Insurance/Property Taxes: Borrower shall maintain adequate hazard, liability, and automobile insurance, as required by County policy. Property Taxes and all assessments must be paid current throughout the life of the loan.

K. Relocation Requirements: Borrowers must agree to comply with all applicable federal, state, and local relocation laws and regulations, as applicable.

L. Affordability and Use Restrictions: All projects receiving Commission loans are subject to the affordability, special needs, and/or facility or land use restrictions as required by the funding source or local policy. A regulatory covenant will be recorded against the assisted property restricting the continued occupancy or use of the property per the laws and regulations of the particular funding source and approved local policy, and shall run with the land.

M. Financial Feasibility: The project must demonstrate that due to market location, prevailing economic conditions, the proposed use, or property operating cost, that the development would be economically infeasible but for some degree of public financial assistance. The Commission may provide assistance to projects in the *least amount* required to create financial feasibility.

N. Leverage Objective: Project sponsors shall demonstrate efforts to effectively leverage the use of public and private funds for the proposed project by identifying other available private and public financing programs and designing the project to qualify for those sources of assistance.

O. Contingency Requirements: Proposed construction projects must demonstrate that a minimum soft cost contingency of 5% and a hard cost contingency of 10% are included by providing the Commission a Development Budget including a Sources and Uses Table. For facility rehabilitation or renovation loans, or for projects with an unusual degree of risk or uncertainty, the amount of the required contingency budget may be higher as reasonably established by the Commission Executive Director.

P. Funding Conditions: Prior to disbursement of loan funds, the Commission must have received the following:

1. Original or certified copies of executed loan documents, including but not limited to Promissory Notes, Deeds of Trust, Grant Deeds, an Affordable Housing Agreement or other required covenants.

2. Proof of current property tax payments.

3. Proof of insurance meeting Commission insurance requirements.

4. Title insurance meeting Commission standards.

5. Proof of required environmental clearance or compliance.

6. Proof of compliance with prevailing wage requirements, as applicable.

7. Proof of commitment of all required funding for acquisition and/or construction.

Q. Prevailing Wages and Related:

1. Federal: Where the source of Commission loan proceeds is from a federal government source, the project must comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon and Related Acts as amended, the provisions of Contract Work Hours and Safety Standards Act, the Copeland “Anti-Kickback” Act (40 USC 276a-276a-5; 40 USC 327 and 40 USC 276c). The project shall also comply with the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices to journey workers.

2. State: For all projects, regardless of funding source, project sponsor shall adhere to all State of California laws and regulations regarding payment of prevailing wages, as applicable, and shall certify to the Commission, in writing, said compliance.

R. Environmental Assessment and Clearance: All projects must complete the appropriate level(s) of state and/or federal environmental review before funds may be released. If federal funds are involved in the project through a Commission loan or from some other source, no construction activities may take place after application submittal and prior to the completion of the federal environmental clearance process and associated public notification requirements.

IV. LOAN ADMINISTRATION

A. Subordination: The Commission’s Executive Director is authorized to subordinate Commission loans, with County Counsel review and approval as to form, provided that the loan remains in a secure position as required by Section III E. and as demonstrated by appraisal or by other means that is satisfactory to Commission, and provided that the ongoing public purpose of the development is protected and the transaction will not adversely affect the security of the Commission’s deferred payment subordinate loan in any way.

The Commission will accept a subordinate position to a new senior mortgage if all of the following conditions are met:

1. The owner will not take cash out of the transaction.

2. The refinancing objective is to obtain a new senior mortgage with a fixed interest rate lower than the interest rate of the current senior mortgage.

3. The principal amount of the new senior mortgage will not exceed the sum of the payoff amount of the current senior mortgage plus the owner's share of the closing costs to refinance the current senior mortgage.

B. Loan Modification, Assignment and Assumption: The Commission's Executive Director is authorized to modify, assign and approve assumption of Commission loans, with County Counsel review and approval as to form, provided that the loan remains in a secure position as required by Section III E. and as demonstrated by appraisal or by other means that is satisfactory to Commission, and provided that the ongoing public purpose of the development is protected.

C. Due at Maturity: Commission loans shall be due and payable in full at the time of loan maturity. See Section VI for guidelines specific to mature loans.

D. Prepayments: Borrower may make prepayments on existing loans to repay the outstanding balance, or any portion thereof, at any time without penalty. Payments will first be credited towards any outstanding fees or penalties due, then to the interest due, and then to reduce the original principal amount of the loan.

E. Conversion: Upon written approval of the Commission's Executive Director or her/his designee, a borrower may choose to have a deferred payment loan converted to a fully amortized loan for the remainder of the loan term or 15 years, whichever is less. The borrower will be required to make pre-determined monthly payments of principal and interest each month for the balance of the loan term. The Commission will use underwriting standards detailed in Section III.H. in determining whether to approve a borrower's request to convert a deferred-payment loan to an amortized loan.

F. Reporting Requirements: Reporting requirements shall be determined per the approved guidelines for each specific funding source.

G. Loan Consolidation: Where a project receives multiple Commission loan awards, the Commission may consolidate loans.

V. COLLECTIONS

A. Amortized Loan Collections: The borrower shall make regular monthly payments directly to the loan-servicing agent as specified by the Commission. The Commission Executive Director shall have the authority to select an outside loan-servicing agent or to collect loan payments in-house.

B. Deferred-Payment Loan Collections: When due, the borrower shall make full repayment of the loan directly to the Commission.

C. Loan Defaults

1. If a borrower appears to be in default of one or more of the loan terms contained in the Promissory Note, Deed of Trust, or any other loan

document, the Commission Executive Director shall consult with the Office of the Sonoma County Counsel.

2. Upon default in any loan terms, fraud or misrepresentation in any loan application, or transfer of the underlying real property or security interest without the written approval of the Commission, or for any other reason specified in the borrower's promissory note, the principal balance may be accelerated and made immediately due and payable at any time without further notice.

   If the Commission Executive Director determines that the borrower is in material default of one or more of the loan terms and is not reasonably likely to cure the default, the Commission Executive Director, with the advice of County Counsel, shall initiate foreclosure proceedings.

   a. The Commission may contract with a trust deed service company to carry out a Notice of Default and Sale on behalf of the Commission.

   b. If the loan is reinstated, any collection or foreclosure expenses will be the responsibility of the owner as a condition of reinstatement, if permitted by the terms of the loan documents.

3. If permitted under the terms of the loan documents and California law, if trustee's sale proceeds minus the amount of any senior liens and the Commission's foreclosure costs are less than the amount of the outstanding loan balance, the Commission shall seek a deficiency judgment for the difference by submitting the matter to Sonoma County Central Collections.

VI. MATURE LOANS (Non-profit Agencies Only)

When an existing Commission loan is at or nearing maturity and a request for a loan term extension, restructuring, or forgiveness is received, the following guidelines shall dictate the Commission's response to such a request. Loan extensions, restructuring or forgiveness will only be approved if all the following criteria are met:

A. <u>Loan Compliance and Property Status</u>:

The borrower has demonstrated material compliance with conditions of the loan over the life of the loan and is in good status with the Commission and all other public entities with regards to the underlying financing and the use and operation of the property.

B. <u>Condition of Property</u>:

The subject property must be in good condition. If significant amounts of maintenance have been deferred, the loan extension, restructuring or forgiveness request will be denied.

C. Project Income and Financial Structure:

The borrower must reasonably demonstrate that projected operating income and reserves are sufficient to finance ongoing operating expenses, including debt service, and capital replacement and maintenance for the period of any proposed loan term extension.

D. Loan Security

The borrower must demonstrate through an appraisal or other means acceptable to Commission staff that the value of the property is adequate to continue to fully secure any extended-term Commission debt.

E. Loan Terms

1. Loans for Permanent Housing:

Existing deferred payment loans for permanent housing projects shall be restructured as fully amortized loans unless the borrower presents compelling evidence that the cash flow from a prudent operation of the property precludes the borrower from obtaining adequate resources to service an amortized loan. In that case, an extended deferred-payment loan term may be approved. The Commission shall not forgive loans for permanent housing projects.

The annual interest rate for all restructured and extended loans shall be 3%. The maximum loan term extension is 15 years.

For existing deferred payment loans that are extended but restructured as fully amortized loans, the debt to be fully amortized is the principal as of the maturity date. The interest accrued, as of the maturity date, will also be repaid in equal installments over the term of the loan extension. That is, if the loan is extended for 180 months, the amount of accrued interest due at loan maturity will be divided by 180 and that amount will be paid monthly in addition to the amount derived from fully amortizing, at 3%, the loan principal amount at the time of loan maturity.

For loans that are extended as deferred payment loans, interest is accrued at 3% simple interest calculated upon the principal balance as of the date of maturity. The interest accrued up to the maturity date will be repayable upon the new maturity date of the extended loan.

2. Loans for Public Facilities:

If all criteria detailed in this Section VI. A. through D. are met, the Commission shall forgive loans for public facilities such as, but not limited to, fire stations, transitional housing and emergency shelters for the homeless, teen centers, senior centers, and similar community facilities. As required by Community Development Block Grant (CDBG) regulations, a deed restriction will be recorded against title to the property stipulating that, in the event the owner chooses to change the use or dispose of the property at any future date, the owner must reimburse the Commission in the amount of the then-current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of and improvements to the property. The property owner shall also continue to abide by all other applicable CDBG regulations.

F. Loan Modification Fee

The borrower shall pay a loan modification fee for any mature loan that the Commission modifies through granting a loan term extension, refinancing or other modification of existing terms. The fee shall be equal to 0.5% of the sum of the outstanding loan principal and accrued interest calculated on the maturity date. Fee payment is required prior to recordation of any loan modification. Payment of the fee is also required if a loan is forgiven.

VII. ALTERNATIVE LOAN TERMS

Where the Commission's Executive Director determines, after consultation with County Counsel, that one or more federal, state and/or local financing programs available to a project will achieve results that are equivalent to, or more effective than, the affordability or other public purpose of the relevant Commission program, and that such financing programs are otherwise compatible with the Commission program and County and Commission policies and objectives, the Commission's Executive Director is authorized to modify Commission loan terms and policies to the degree necessary for the project to utilize those financing sources.