

REQUEST FOR APPROVAL

To: **Howard Levenson**
Deputy Director, Materials Management and Local Assistance Division

From: **Shirley Willd-Wagner**
Branch Chief, Financial Resources Management Branch

Request Date: **December 14, 2012**

Decision Subject: Approval of Expenses to Protect the Collateral on a Recycling Market Development Zone Loan for Summit Sales, Inc. (Recycling Market Development Revolving Loan Subaccount, FY 2012/13)

Action By: **December 31, 2012**

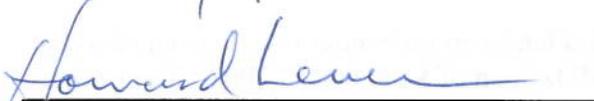
Summary of Request: Staff requests approval to obtain foreclosure services, property preservation services, building repair, property insurance and a Phase I environmental report. These actions are needed to protect the State's collateral interest in the defaulted Recycling Market Development Zone (RMDZ) loan to Summit Sales, Inc. (Summit). The request is more fully described in the background and findings section. There may be subsequent requests for approval of additional expenses as the situation develops.

Recommendation: Staff recommends approval to pay up to a total of \$37,700 for the following: up to \$4,900 to obtain foreclosure services, up to \$17,500 for property preservation services for maintenance and site security, up to \$7,500 for roof and building repair, approximately \$2,000 to obtain property insurance for the site, and \$1,800 for a Phase I environmental report.

Fund Source: RMDZ Loan Subaccount	Amount Available	Amount to Fund Item	Amount Remaining	Line Item
FY 2012/13	\$33,700	\$33,700	\$ 0	RMDZ

Deputy Director Action: On the basis of the information and analysis in this Request for Approval and the findings set out herein, I hereby approve the expenditures to protect the state's interest in the collateral securing a Recycling Market Development Zone loan to Summit Sales, Inc., of up to \$33,700. I further direct staff to proceed to contract for these items under applicable emergency contracting procedures.

Dated: 12/18/12



Howard Levenson
Deputy Director, Materials Management and Local Assistance Division

Background and Findings

Statutory Authority for Protecting Collateral

The Recycling Market Development Zone (RMDZ) Program was established by Senate Bill 1322 (Bergeson, Statutes of 1989, Chapter 1096) and codified in Public Resources Code sections 42010-42024. Program regulations are found in Title 14 of California Code of Regulations (CCR), Sections 17900-17939.5.

Public Resources Code (PRC) Section 42023.1 (f) authorizes the Department of Resources Recycling and Recovery (CalRecycle) to approve RMDZ loans to eligible businesses and not-for-profit organizations located in designated zones.

PRC Section 42023.1(j) further specifies: “The department, pursuant to subdivision (a) of Section 47901, may set aside funds for the purposes of paying costs necessary to protect the state's position as a lender-creditor. These costs shall be broadly construed to include, but not be limited to, foreclosure expenses, auction fees, title searches, appraisals, real estate brokerage fees, attorney fees, mortgage payments, insurance payments, utility costs, repair costs, removal and storage costs for repossessed equipment and inventory, and additional expenditures to purchase a senior lien in foreclosure or bankruptcy proceedings.” CalRecycle relies on this statutory authority to fund activities to protect CalRecycle’s collateral when loans are in default.

Statutory Authority for Emergency Contracting Provision

As explained below, this site is unsecured and poses hazards to public health and safety. Addressing this as expeditiously as possible requires rapid emergency contracting, which is allowable under the following provisions. Emergency is defined in Public Contract Code § 1102 as “a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property or essential public services.”

The State Contracting Manual describes contracting procedures to be followed in cases of emergency:

“3.10.1. EMERGENCY CONTRACT PROCESSING PROCEDURES:

- A. Agencies are not required to obtain three bids or advertise before entering into a contract in the event of an emergency.
- B. NCB approval is not required to enter into a contract in the event of an emergency.
- C. Ordinarily, consulting services contracts should not be commenced before formal approval by DGS/OLS if dollar amounts require DGS/OLS approval. However, in emergency circumstances an award may be made with the approval of the agency head without DGS/OLS approval. Thereafter, the contract should be sent to the DGS/OLS for approval. Other required approvals may be deferred in the same manner.”

Description of Defaulted Loan

Summit Sales, Inc., a manufacturer of plastic pipes and landscaping bender boards from recycled feedstock in Gustine, Merced County received an RMDZ loan of \$400,000 in 2001. The business has ceased operation and has defaulted on the RMDZ loan. The loan is secured by a first deed of trust on the business real property located at 7744 South Ingomar Road, Gustine, CA 95322. Title to the property is currently vested under the name of Gilmar Properties, Inc, owned by Mitchell

Giles, who also owns Summit Sales, Inc. CalRecycle has issued a notice of default declaring the loan in default.

Recommended Use of Funds and Scope of Work

Because of public health and safety issues related to the site and to protect its collateral, CalRecycle should take the actions described below in an expeditious manner, particularly in light of the small fire that occurred on October 10, 2013, at the property. If approved, loan staff will proceed under the emergency contracting exception, which allows for contracting without the need to advertise or obtain multiple bids.

Foreclosure Services: Staff recommends that CalRecycle proceed to foreclose on the real estate, because of the severity of the loan default and the fact that the owner, Mitchell Giles, does not have the funds to maintain the real estate or resolve the loan delinquency. The real estate is titled in the name of Gilmar Properties, owned by Mitchell Giles. Gilmar Properties (Gilmar) is not able to transfer title because the business is not in Good Standing with the California Secretary of State for various reasons including failure to file state tax returns. Loan staff will obtain the services of a property foreclosure company to start the foreclosure process. The process would take a minimum of 120 days (by law). The estimated cost is up to \$4,900.

Property Preservation Services: Loan staff will obtain the services of a Property Preservation company or contractor to maintain the building as necessary. Additional services may include regular site inspections to ensure that the property is free of trespassers and is not subject to further damage. After the repairs are completed, it may be possible to obtain insurance on the building. The estimated initial cost is up to \$17,500 for the first year.

Building Repair: Loan staff will obtain the services of a contractor, Jasso Construction, to secure the building and repair the roof, due to fire damage. The estimated initial cost is \$7,500.

Property Insurance: If the property is insurable, CalRecycle could consider paying for an insurance policy on the building. The policy will insure the building against further damages, protecting CalRecycle's collateral interest. Since the property is currently owned by Gilmar Properties, Gilmar Properties will be the insured party. The estimated cost is \$2,000. If CalRecycle obtains title to the property, insurance may not be necessary from that point forward, because the State is self-insured.

Phase I Environmental Report: Loan staff will obtain the services of an environmental professional to prepare a Phase I environmental report. This report will ensure that there are no environmental problems at the property that could impede a sale and will also provide certain legal protections if CalRecycle ultimately takes title to the property. The report will be required to sell the real estate. Currently, no known contamination is suspected. The estimated cost is up to \$1,800.

Current Cost Projections

Foreclosure Services	Up to \$4,900
Property Preservation	Up to \$17,500
Jasso Construction	Up to \$7,500
Insurance	\$2,000
Phase I Environmental Report	\$1,800
Total	≈ \$33,700

