



# RURAL NEIGHBORHOODS

*Building Livable Places for Working Families*

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June 20<sup>th</sup>, 2019

Ms. Marissa Button  
Director of Multifamily Allocations  
Florida Housing Finance Corporation  
227 North Bronough Street  
Suite 5000  
Tallahassee, FL 323401

**Re: Comments on CDBG-DR Monroe County RFA 2019-101 and RFA 2019-102**

Dear Ms. Button:

Thank you for the opportunity to provide comments regarding draft RFA 2019-101. Rural Neighborhoods, Incorporated, is a 501(c)(3) housing and community development corporation having among its purposes the establishment of land trusts and the development and preservation of affordable housing throughout rural Florida and the Florida Keys. RN recently purchased and preserved Tradewinds Hammocks located in Key Largo through Tradewinds Key Largo, LLC, a controlled corporation, extending its affordability period for an additional 99-years. RN commends Florida Housing Finance Corporation in its strategic use of community land trusts and other institutions in its disaster response to an attempt to increase the affordability period for rental communities.

## **RFA 2019-101 Page 7 of 116. Item (a)(i) Applicant Structure**

- **Paragraph 2** requires the Applicant Entity to be a Joint Venture with Local Government, PHA or CLT AND a Single-Purpose Entity as one variation of the Applicant Structure.

Rural Neighborhoods questions the need to include Local Government, PHA or CLT as part of the Applicant Structure. First, it seems unwieldy to form a Single-Purpose Entity in which Local Government chooses to serve as a Member or Partner in a limited liability, partnership or similar entity. To require their participation in the Applicant Structure in order to serve as the title holder of the land may preclude local government from serving in the latter role which is indeed desirable for perpetual affordability.

Though the latter two parties (PHA or CLT) are more simply included in a Single-Purpose Entity, their role as stewards for the rental communities' perpetual affordability is served as title holder and lessor of the subject parcel.

Should FHFC require the PHA or CLT to participate in the Applicant Structure, RN recommends the establishment of minimum financial benefits for those entities. The present RFA requires de minimis economic benefits accrue the title holder or lessor of the subject properties (\$10.00 per annum times 99 years). This is arguably inadequate to ensure the entities perform this role throughout the affordability period. Should these entities be required to serve as co-applicants, RN recommends minimal economic benefits be established. We recommend not less than 25% of project cash flow (rather than Developer Fee) be allocated to such entities. Given these entities are not expected to serve as the Developer and their expected role is perpetual, a cash flow percentage seems a better mechanism over the economic life of the project.

#### RFA 2019-101 Page 11 of 116. Item (5). Community Land Trust Experience

- **Bullet 1** requires the CLT demonstrate that it has existed since September 10, 2017 or earlier.

Use of Hurricane Irma's landfall as the date by which the CLT must be formed seems arbitrary. There is perhaps a sound public purpose in negating so-called "*disaster opportunism*" by precluding the formation of such structures as RFAs are released for workshops and FHFC's award strategies become clearer. Nonetheless, our experience in the aftermath of Hurricane Andrew in 1992 and no less than eight subsequent storms suggest new strategies and entities are validly formed in months following landfall for truly impactful purposes. It would have been nonsensical for funders to preclude Miami-Dade's We Will Rebuild Foundation from being a grantee or award recipient as it led the Miami governmental, business and charitable response to Andrew. In the Florida Keys, one or more organizations were formed post-September 10<sup>th</sup>, 2017 including an emerging land trust. These groups were formed in advance of FHFC or DEO's intention to utilize such structures. More importantly, one or more of such groups raised funds, acquired and preserved land, initiated multiple housing starts and obtained certificates of occupancy in advance of the RFA.

**Recommendations:** Rural Neighborhoods concurs with the comments of the Florida Housing Coalition and recommends an alternate date of June 28<sup>th</sup>, 2018 corresponding to U.S. HUD's Hurricane Irma Action Plan or November 2<sup>nd</sup>, 2018, the RFA 2019-101 initial workshop date in which the notion of permanent affordability was raised.

- **Bullet 2** required the CLT to provide a list of two Developments and/or a list of units that equals at least 50 percent of the units in the proposed Development....

Rural Neighborhoods notes FHFC has historically required the Developer (or principal thereof) to possess the requisite past development experience both in size, scope or timeliness. The CLT is not required to be Developer of the proposed Development and, in many instances, is not engaged in traditional development tasks, e.g. conceptualizing the rental project, obtaining project financing, selecting design professionals, supervising construction management et al. Instead, the CLT undertakes measures to preserve the rental or homeownership communities' long-term affordability. Though CLT roles vary considerably across the nation, the FHFC experience requirement precludes numerous established CLTs.

Recommendations: RN recommends several alternative measures or combination thereof:

- (1) require no CLT experience and require such experience be provided by the Developer. (The RFA currently requires a Developer to have such experience in the RFAs presently.)
- (2) require a Principal of the CLT to have the required experience rather than the corporate entity. (This is consistent with the precedent by which FHFC qualifies a Developer.)
- (3) require the CLT to have completed a minimum of one (1) Development and have obtained a minimum of one (1) Certificate of Occupancy. (This provides reasonable experience criteria to prove bona fides even for recently formed CLTs. Indeed, this may also be a better methodology than date of formation.

**RFA 2019-101 Page 8 (ii) and Page 58 of 116. Item (5). Community Land Trust Definition**

- **Item (ii)** requires the Articles of Incorporation demonstrate that one of the purposes of the Land Trust entity is to preserve affordable housing.
- The **Page 58** definition requires: a 501(c)(3) Applicant which acquires or develops parcels of land for the primary purpose of providing affordable housing in perpetuity through conveyance of the structural improvement subject to a long term ground lease which retains a preemptive option to purchase any such structural improvement at a price determined by a formula designed to ensure the improvement remains affordable in Perpetuity.

The purpose statements utilized by community land trusts vary considerable in form and substance across the nation and state. In addition, nonprofit articles of incorporation are often general in nature and established to meet IRS requirements. Hence, Rural Neighborhoods believes the requirement on Page 8 is more appropriate than the extended statement on Page 58.

RN believes FHFC should require the articles of incorporation of a CLT to denote the entity is formed to “establish a land trust” and “preserve land for (low-income and) affordable housing” in its Articles of Incorporation and permit any greater detail to be set out in corporate By-laws. However, the purpose to “establish a land trust” and “preserve land” should be required in articles otherwise “preservation of affordable housing” alone cannot distinguish a land trust from an affordable housing organization.

Recommendations. RN recommends amending the requirement on Page 8 (ii) to state that the Articles of Incorporation demonstrate that among its purposes are the establishment of a land trust and to preserve land for affordable housing.

Form: Local Government Verification that Development is Consistent with Zoning and Land Use Regulations in Monroe County

- It appears the draft RFA includes a Local Government Zoning form from a prior RFA. RN urges the December 31<sup>st</sup>, 2018 date that has since transpired be updated to an appropriate future date. Given that ROGO allocations and transfers require action at scheduled public meetings, such date should not be less than 90-days post-FHFC board approval of scoring recommendations. For example, though applications to transfer ROGOs between parcels may be submitted prior to the application deadline, transferred ROGOS once executed cause the parcel from which a ROGO is transferred to be non-developable. Hence, parties transferring ROGOS (a normal Monroe County practice) can be reasonably expected to look for initial FHFC action prior to irrevocable transfer.

Recommendations: Rural Neighborhoods recommends:

- (1) for clarification purposes insert the words “or transfer” after the “for the necessary ROGO allocation in the last line of the Certification, and
- (2) the current date of December 31, 2018 be changed to December 31, 2019.

Thank you for continued opportunities to partner with FHFC in building livable places for working families.

Sincerely,

*Steven Kirk*

Steven Kirk  
President