



May 25, 2020

Marisa Button  
Director of Multifamily Programs  
Florida Housing Finance Corporation  
227 N. Bronough Street, Suite 5000  
Tallahassee, FL 32301

Re: 2020/2021 RFA Comments

Dear Ms. Button:

We look forward to the third 2020/2021 RFA workshop on May 29th. Moreover, we applaud the Corporation's move away from an allocation system that encouraged developers to submit a high-volume of applications that merely meet minimum threshold requirements, and in many cases have had very little due diligence conducted at all, toward a process that promotes applications for sites that have been materially evaluated, and demonstrate strong locational characteristics. Undoubtedly, this will result in the expedited delivery of critical affordable housing units across the state.

We offer the following comments for your consideration with the understanding that the Corporation's goals are to limit the total number of applications, limit litigation, and incentive applications that demonstrate a higher level of shove readiness in an effort to reduce rule waivers, credit swaps and request for deadline extensions.

### **Ability to Proceed**

#### **3.b - All RFAs: Applicants that also provide Site Plan Approval form will be awarded 5 points.**

The proposed Local Government Verification of Status of Site Plan Approval form states "*The final site plan, in the applicable zoning designation, has been approved for the above referenced Development by action of the appropriate City/County legally authorized body; e.g. council, commission, board, department, division, etc., responsible for such approval process.*" We suggest requiring "final approval" of a site plan versus "final site plan". It would be difficult to define exactly what a "final site plan" is, and nearly impossible to enforce that nothing materially changes post-award. Alternatively, if FHFC requires verification that a site plan has secured "**final approval**", meaning it requires no further discretionary action by any City/County legally authorized body (e.g. council, commission, committee, or board) that requires a public hearing or vote, it clearly proves that the plan is materially entitled for development.

To effectively tie the verification form to the application, a copy of the approved site plan should be submitted with the application such that, at a minimum, it can be verified that the Development Type is consistent with the application, and the site plan contains at least as many approved units as are being proposed within the application. Likewise, we believe it would be appropriate for the Applicant to provide a certified copy of the entitlement (i.e. stamped site plan



approval, site permit, development agreement, development order, etc.) at the time of application, or as part of the “7-day items” required after an invitation to credit underwriting is issued.

It has been voiced by many stakeholders that “site plan approval” can be drastically different across cities and counties, and therefore providing a single verification form does not provide an equitable metric for shovel readiness/ability to proceed. Further, the disparity in the site plan approval process across municipalities is likely to skew funding award toward those local governments with less rigorous approval requirements. We concur with this sentiment, and agree with the Corporation’s intent is to incentive sites that can demonstrate a high-level of due diligence and planning has been completed. Therefore, we propose that applicants’ should be able to secure equivalent Ability to Proceed points by providing an ALTA boundary survey and a site plan with a similar level of planning/design detail that would go into most submission packages for municipal approval.

At a minimum the detailed site plans should identify all structures, site amenities, location of ingress/egress, parking spaces and driveways; accessible routes; topography - using either existing topographic survey, U.S. Geological Survey, or other database topography; drainage and approximately sized detention/retention areas; location of water and sanitary sewer utility tie-ins; general placement of retaining walls; setback requirements, and any other applicable zoning, land development, and building code ordinances required by the city/county.

In order for an Applicant to secure points for providing such detailed site plan, the Corporation could generate a new Ability to Proceed form that requires a licensed FL civil engineer’s verification that the proposed site plan adheres to all applicable zoning, land development, and building code ordinances without the need for any variances, special or conditional uses that are subject to the discretionary vote by governing jurisdiction, and in their professional opinion, the subject site is suitable for the proposed development program (referenced hereafter as the “Site Plan Feasibility” form). Since the Corporation will not have to opine directly on the site plan, the Site Plan Feasibility form will limit potential litigation.

If the Corporation incentivizes applicants to complete the work necessary to achieve the site plan points utilizing the above-mentioned methodologies, it’s reasonable to anticipate that these points will end up being routinely pursued by developers in order to be competitive. Not only will this result in higher-quality applications, it will naturally control and limit the number of applications submitted under each RFA as there are limited sites on the market with final approved site plans, and the time/cost required for developers to produce numerous detailed site plans is prohibitive. Logically developers will make investments in sites with the highest proximity scores to rank higher in the tie breakers.

**3.d - In the Geographic HC RFAs, SAIL Family/Elderly RFA and Preservation HC RFA: Applications that include a deed or an executed lease with a Local Government for at least 50 years to demonstrate site control will be awarded 5 points.**

We urge the Corporation NOT to award points for applications that provide a deed or long-term ground lease with a Local Government. Simply owning the development land, or having a ground lease, doesn’t translate to the applicant having performed any material due diligence or undertaken the planning and design work to warrant 5 Ability to Proceed points. Defining the limitations of whose name can be on the deed, and the extent of how they can be related to the Applicant will further complicate matters. All applicants are single purpose entities (SPE) so the corporation



would have to devise a rule/guideline to determine the degree that a landowner holding the deed is related to the SPE applicant. Its very plausible that developers will bring the land sellers into the deal as a minority member/partner of the SPE applicant just to achieve the points. We believe this would get very complicated and provoke litigation. Larger developers, and firms with more partners, are more likely to hold interest in (random) land. Logically, they would be inclined to submit these applications and take the 5 points, regardless of the proximity score, as the deed/land lease ability to Proceed points very well could eliminate the need to utilize the proximity tiebreakers. The minimum proximity points required to be eligible are very low in comparison as to the maximum 30 points, please consider increasing the minimums if the Corporation decided to implement deed/land lease Ability to Proceed points.

Regarding local government land leases, most leases have explicit processes and approval requirements stipulated under the lease that can delay and slow the development well beyond an arm's length land conveyance. Furthermore, there are certain counties and RFAs where Local Government land leases will unquestionably dominate the scoring and provide a disproportionate advantage. For instance, in Miami-Dade there are numerous Local Government land leases already in place with affordable housing developers, it would be virtually impossible to score competitively without the Deed/Lease points.

Overall, having a deed or lease with a Local Government does not imply a public benefit; there are no guarantees that the site is more shovel-ready, or in a more marketable location.

**5. - Changes regarding Related Applications Florida Housing will allow a maximum of three Priority I Related Applications in the 2020/2021 Miami-Dade Geographic RFA and the Small/Medium Geographic RFA. The following proposed definitions will be used to define "Related Applications".**

We support continuing to limit Applicants in the Miami-Dade HC RFA to three Priority 1 applications. Although I personally believe the intent of Priority 1 system remains clear to competent developers, we appreciate the Corporation's current efforts to tighten up definitions and language regarding related applications/parties/interest in an attempt to limit the blatant disregard by developers with less integrity. So that there is a means for competing developer's to challenge any "bad-actors" we like Fransisco Rojo's recommendation of adding a provision to the "Applicants Certification and Acknowledgment" that requires Applicants to affirm that they will comply with the Priority I restrictions.

For the Small/Medium Geographic HC RFA we do not recommend that the Corporation implement a Priority I application system. There are 29 medium counties and 31 small counties, limiting developers to three (3) Priority 1 apps, that will then be ranked by the proximity tiebreakers, may result in the smaller medium counties not being able to effectively compete. As mentioned above, if some form of the suggested Ability to Proceed site plan points are implemented, developers will naturally limit the number of (competitive) applications they can submit due to time, cost, and capacity requirements required to provide the detailed site plan. If a Priority 1 application system is implemented for Small/Med HC RFA we believe that six (6) is a more number of Priority 1 applications to proportionately cover the large number of small/medium counties.

## **8. - Local Government Contribution Amounts**

We request the minimum LGAO amounts remain the same or are lowered from the 2019/2020 RFAs levels. Many Local Governments are going to be faced with budget deficits due to Covid-19. Since each Local Government may only select one development a small monetary increase does not translate to a greater level of support for the project.

### **11.a - Awarding Proximity Points to all Transit and Community Services**

We are excited to see the proposed changes to proximity scoring and the use of proximity levels as tie breakers. This will drive development into more desirable and marketable locations.

We suggest redefining Public Parks such that it can include Public Community Centers. Community Centers open to the public provide a similar utility and value as parks and are often operated by the same Local Government departments. If a Community Center meets the material definition of Public Park (i.e. *“has been listed with and maintained by a Local Government department that manages parks for at least five years, and for which no admission fee is required.”*) it should be considered for points.

### **11. b - Proximity Level System Description**

We suggest breaking the Proximity Levels into terciles instead of quintiles for the Miami-Dade HC RFA. There are far less applications submitted in the Miami-Dade in comparison to Small/Medium HC RFA, the County Award Tally isn't a factor, and proximity scores will exhibit a lower standard deviation given the an abundance of community services and public transportation options throughout the densely populated county.

### **11. e - Tiebreakers to be used in Preservation HC RFA, SAIL Family/Elderly RFA, and three Geographic HC RFAs when not selecting Applications to meet the LGAO or Revitalization Goal.**

The agenda states tiebreakers will be applied in the order listed below. With heavier weight already given to Transit Score (max 6 pts versus 4 pts for community services) we do not believe its necessary to give it additional weight within the tiebreakers for Transit.

- Per Unit Construction Funding Preference;
- Development Category Funding Preference(used in the three Geographic HCRFAs);
- Either A/B Leveraging Classification(used in the Preservation and Geographic HCRFAs) or SAIL Leveraging Levels, as applicable;•Proximity Level or Proximity Funding Preference, as applicable;
- Preference for Applications that are within two miles of a Grocery Store. Applications within two miles of a Grocery Store will receive preference over Applications that are not.
- The Application's actual proximity points for the two highest scoring Community Services.
- In the Geographic HCRFA for Large Counties (Miami-Dade, and the other six large counties RFAs), the next tiebreaker will be the Application's actual Transit Score.**
- Florida Job Creation Funding Preference; and
- Lottery

## 12.a Goals

Giving a preference to cities/counties that continue to support the same unfunded LGAO development in 2019 is an equitable position to take, it demonstrates a high level of support for a particular development and location. We suggest extending the preference to previously submitted 2018 deals as well and adding additional preference for Counties that have not had an HC application funded since the LGAO goal was implemented in 2018.

In defining “previously submitted” applications, we suggest the Corporation require that the 2020 applications be located on the same site, as confirmed by utilizing the same DLP, and have at least as many proposed units as were in the 2018 or 2019 LGAO application. Both merits can be easily confirmed by the Corporation’s scoring committee.

We noted that many 2019 LGAO applications also qualified for the Revitalization goal last year. We recommend that the Revitalization goal and Sunrail goal be met if any of the five applications selected under the LGAO goal also qualify for the Revitalization or Sunrail goal. There are 10 independent funding goals proposed in the Small/Medium HC RFA while only 11 development were funded in 2020. This provides a little more room for developments outside of the goals to be funded.

We truly appreciate the opportunity to provide comments on the allocation process. Please do not hesitate to reach out with any questions.

Sincerely,



Chris Shear  
COO