

**PACKARD CONSULTING**

August 29, 2007

Ms. Vicki Robinson, Deputy Development Officer  
Florida Housing Finance Corporation  
227 North Bronough Street, Suite 5000  
Tallahassee, FL 32301

Re: 2008 Universal Application Cycle

Dear Vicki:

Please consider the following comments in connection with potential rule changes as part of the upcoming 2008 Universal Application Cycle.

**Ranking Order**

Florida Housing needs to ensure a more equitable distribution of the Competitive 9% Housing Credits in the Large County Geographic Set-Aside. Based on the 2006 and 2007 UAC rankings, the majority of Competitive 9% Housing Credits have been (or will be) allocated only to developments located in Miami-Dade County. Proponents of the current system support this greatly based on their belief that Competitive 9% Housing Credits are the only funding mechanism available to develop affordable rental housing in that location; however, there are other areas in the state of Florida where Competitive 9% Housing Credits are similarly required to develop affordable rental housing. Proponents assert that MMRB/SAIL deals do not work in Miami-Dade County; therefore, the system should ensure that the Competitive 9% Housing Credits are directed specifically toward that area by changing the ranking order such that SAIL deals are funded before Competitive 9% Housing Credit deals. Alternatively, I advocate a change in the allocation system that would identify common characteristics (i.e., high densities, type of construction, urban location, etc.) so that a proposed development outside of Miami-Dade County with common development characteristics that needs the subsidy afforded by the Competitive 9% Housing Credits can effectively compete.

Moreover, I recommend a 50% limitation (applied as a percentage of the available Large Geographic Housing Credit Allocation) on the allocation of Competitive Housing Credits to any one Large County prior to allocating Competitive Housing Credits to other Large Counties with eligible applications. This concept was introduced in the 2007 UAC; however, the 50% limitation was applied as a percentage of the total Competitive Housing Credit Allocation which resulted in only one county (i.e., Miami-Dade) receiving a disproportionate share of Competitive Housing Credits. The Shimberg Study identified Miami-Dade as having 34% of the Large County Cost Burdened Renter Households while the allocation of Competitive Housing Credits to Miami-Dade under the 2006 and 2007 UAC's was 71% and 68% of the Competitive Housing Credits allocated to Large Counties, respectively.

**Public Housing Authorities ("PHA's")**

I strongly encourage FHFC to automatically award 7.5 tie breaker proximity points to an application that contemplates the revitalization of an existing or former public housing site. As you are aware, an increased number of PHA's are actively seeking to participate in FHFC's programs. This stems from an acknowledgement by the

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development community with concurrence from the Florida legislature that PHA's play a unique and presently expanding role in Florida's affordable housing delivery system. Historically, PHA's have been relegated to serving only extremely low income or disabled households through operating traditional public housing and administering the Section 8 housing choice voucher program. Due to changing expectations imposed on PHA's by HUD, they are now empowered to expand their role and actively seek ways to diversify income streams, revitalize their existing public housing portfolios, and create additional opportunities for affordable and workforce housing in their communities. As a result of recent legislative changes to Florida PHA's governing statutes and HUD policy, they now have the ability to effectively create affiliates that are needed to undertake such activities. HUD is encouraging the formation of new and innovative public and private partnerships to ensure long-term sustainability of public housing developments and the leveraging of public and private resources to transform communities. A PHA's ability to create or expand affordable housing opportunities in their communities can easily be accomplished within the current confines of any of FHFC's programs. A PHA's ability to revitalize their existing public housing portfolios meets with a different set of challenges.

When a PHA undertakes the revitalization of an existing or former public housing site, it brings a tremendous commodity – land. And in many instances, a lot of it. However, this land is located in areas that might not necessarily meet all of FHFC's criteria to score the necessary tie breaker points for proximity to services to be a competitive application. The majority of the desired services do exist in close proximity to these PHA sites and are currently serving the needs of the public housing residents who reside there; however, they may not necessarily be located within a 1-mile radius. And because land is not a variable in the equation for the revitalization of an existing public housing community, a PHA sponsored application under FHFC's UAC should not be inadvertently penalized. Albeit HUD's recent directives to PHA's are clear (i.e., revitalize your existing housing portfolios), there is no additional funding being made available to do so; therefore, PHA's must look to the resources of the state and private markets to undertake this much needed task.

There are tremendous benefits that could accrue as a result of automatically awarding 7.5 tie breaker proximity points to an application that proposes the revitalization of public housing including the ability to maximize available density. In many instances, the existing or former public housing site was built to land development standards of the 1930's, which means a higher number of units can now be constructed as a result of the revitalization process. The ability of a PHA to do this successfully; however, is directly related to their competitiveness in FHFC's funding programs. Without significant additional (but presently unavailable subsidy from HUD), the Competitive 9% Housing Credit program is the only funding mechanism available to a PHA to undertake the revitalization of public housing units. And if the land where public housing has served a community since the early decades of the last century does not meet FHFC's current proximity to eligible services requirements, then the PHA is left without any ability to address the needs of their residents, their community, or comply with HUD's directives.

The logistics of determining a potential application's eligibility for automatic points can be easily implemented into the rules and application and is verifiable. To that end, I suggest you add a definition of "Public Housing" in rule chapter 67-48.002, F.A.C., which states "Public Housing as defined in Section 3(b) of the United States Housing Act of 1937 and shall be eligible to receive the benefit of Operating Fund assistance provided to a public housing authority by HUD pursuant to Section 9(e) of the Act." Additionally, I have attached marked up pages from the 2007 UAC application and instructions for your consideration which includes:

1. On page 2 of the Application at Part II.A.2.e., amend the question to read: “Is the Applicant or one of its general partners an Affiliate of a public housing authority created by section 421.04, Florida Statutes?”
2. On page 6 of the Application at Part III.A.2., add before subsection b. the following: “Does the Development contemplate the revitalization of an existing or former Public Housing community? If “Yes”, state the name of the community and attach a copy of the Declaration of Trust behind a tab labeled Exhibit \_\_\_\_\_.”
3. On page 14 of the Instructions, add the following statement: “An Application that proposes a Development which contemplates the revitalization of an existing or former public housing community (at Part III.A.2.b.) will automatically receive 7.5 proximity tie-breaker points for this section.”

It is simply logical and fair to make necessary adjustments in the tie breaker scoring process to enable an application, which contemplates the revitalization of an existing or former public housing community, to be competitive because of the inherent value that revitalization encompasses but cannot be changed – the underlying land.

Additionally, there are modifications to the site control requirements specifically related to PHA’s undertaking the revitalization of former or existing public housing communities that should be forthrightly addressed in the application. All public housing sites are encumbered by a Declaration of Trust (“DOT”) in favor of HUD. This document will be modified as part of the mixed-finance closing and is the equivalent of a Land Use Restriction Agreement or Extended Use Agreement utilized by FHFC. The process for obtaining HUD’s approval for the modification of the DOT is not an impediment to a proposed Development’s ability to proceed. A PHA simply needs to prepare and submit a Demolition/Disposition Application to HUD’s Special Applications Center (“SAC”) in Chicago, IL. The risk of requiring a proposed PHA-Applicant to obtain Demo/Dispo approval prior to obtaining funding is the phase down of operating subsidy that occurs after approval has been granted. A PHA that proposes to revitalize currently occupied public housing units cannot risk having its operating subsidy reduced without an assurance that funding (adequate to allow for a complete revitalization) has been awarded. Therefore, I strongly encourage FHFC to modify the program requirements related to site control such that modification of the DOT is an acceptable contingency. In order to ensure adequate progress in obtaining SAC’s approval, I suggest you make Demo/Dispo submittal a requirement of meeting the 10% test for successfully awarded Competitive 9% Housing Credit applicants.

Another matter related to PHA’s is the validity of a Local Government Contribution when the funds proposed are from HUD programs (i.e., HOPE VI, Capital Funds, Replacement Housing Factor Funds) in a Development when an affiliate of the PHA will also receive a portion of Developer Fees. I encourage FHFC to continue to accept HUD funds as valid Local Government Contributions. The analogy likening this scenario to one in which a developer offers consideration to the local government in exchange for a contribution is simply erroneous. PHA’s are regulated governmental entities subject to federal oversight that impose explicit limitations related to program income. The developer fee received by an affiliate of a PHA is not only highly regulated but does not inure to the benefit of any individuals. HUD’s Cost Control and Safe Harbor Standards mandate that PHA’s or PHA Affiliates that serve in a developer capacity, “can only receive fees if they are first returned to the project, and to the extent that funds

are remaining, subsequently classified as program income and use for low-income housing purposes.”<sup>1</sup> It is worth noting additionally that any funding from HUD must be used in conjunction with public housing only. Therefore, FHFC can be assured that if HUD program funds (i.e., HOPE VI, Capital Funds, Replacement Housing Factor Funds) are contributed, it is being done so in a proposed Development that will contain public housing units, which serve extremely low income households well beyond the programmatic requirements of the UAC.

Finally, an Annual Contributions Contract (“ACC”) should be considered Project Based Rental Assistance (“PBRA”). An existing development with an ACC contract meets the goals of the Preservation Set-Aside in every way (i.e., age requirements, rehabilitation, etc.). I do suggest; however, that any development with an ACC contract be allowed to request a Supplemental Loan because operating subsidy payments under an ACC are significantly below other PBRA contract rents. In reality, by including ACC as eligible PBRA, FHFC may not receive a large number of applications (or any at all) because in the end, substantially rehabilitating ACC units may not be financially feasible but they shouldn’t be prohibited from the onset.

#### **HC Special Set-Asides**

I recommend that the Florida Front Porch Community Special Set-Aside be discontinued.

I recommend that the Preservation set-aside be increased to \$5 million.

Additionally, there are modifications to the site control requirements specifically related to Preservation that should be forthrightly addressed in the application. All sites with Project Based Rental Assistance (“PBRA”) are required to obtain HUD’s approval for the assignment and assumption of that contract by the new Buyer, which is also the Applicant. This approval and the corresponding assignment of the PBRA contract are done as part of the closing. The process for obtaining HUD’s approval for assignment and assumption of PBRA is not an impediment to a proposed Development’s ability to proceed. It is incongruent that a PBRA contract would be assigned to a prospective Buyer prior to obtaining funding and precedent to a closing on the acquisition of the property. I encourage FHFC to modify the program requirements related to site control such that assignment and assumption of the PBRA contract is an acceptable contingency. Any contract submitted under the Preservation Special Set-Aside that does not forthrightly address the issue related to obtaining HUD’s consent to the assignment and assumption of the PBRA contract is materially misrepresenting the facts.

Moreover, any development that qualifies for the Preservation Set-Aside that was initially financed by HUD must obtain HUD’s consent to the prepayment of the HUD-insured mortgage. HUD also imposes a subsidy layering review as part of the evaluation process for consenting to a transfer of ownership. None of these required HUD approvals should be deemed as an impediment to proceeding on the acquisition/substantial rehabilitation of a development but rather ancillary requirements when PBRA is involved. Again, any contract for a development in the Preservation Set-Aside that does not forthrightly address such issues is materially misrepresenting factual information.

Additionally, the Housing Credit limit for Preservation developments should be adjusted downward to no more than \$10,000 per unit.

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<sup>1</sup> Cost Control and Safe Harbor Standards for Rental Mixed-Finance Development Revised: April 9, 2003, page 3

### **HC Non-Profit Goal**

The goal of awarding at least 12% of the state's HC allocation to qualified non-profits should not be increased. FHFC obviously needs to ensure compliance with the federal requirement of 10% but exceeding that beyond the existing limit is not necessary. If FHFC is concerned with the lack of qualified non-profits engaged in the process, I would suggest that the definition of Non-Profit in rule chapter 67-48.002 be expanded to the legal extent permissible to encompass Public Housing Authorities and their affiliated entities.

### **Local Government Incentives**

I encourage FHFC to re-evaluate the effectiveness and relevancy of requiring the four (4) forms which are executed by a representative of the local government related to planning incentives. These forms have been included as part of the FHFC application process for many years. In the early years immediately following the passage of the landmark William E. Sadowski Act, which created the State and Local Housing Trust Funds, the relevancy of confirming such incentives by the local government was significant. As the SHIP program is well established and all of Florida's 67 counties participate, these planning incentives can be verified through each SHIP participant's AHAP and become somewhat meaningless in the allocation process.

### **OTHER SUGGESTIONS**

As it relates to the Development Category of Acquisition/Substantial Rehabilitation, I recommend that the definition of "Address" and "Scattered Site" be modified to allow Developments applying under this Development Category be able to utilize the existing property address in the municipal 911 system. Generally, improved sites have easements that dissect the overall parcel even if it is comprised of a contiguous parcel; therefore, under the current definition of Scattered Site, every improved site would be considered scattered, which necessitates the creation of a descriptive Address (pursuant to rule chapter 67-48.002, F.A.C.). The reality of this is that municipal agencies do not recognize "descriptive addresses" when being asked to verify infrastructure availability.

In order to encourage the preservation of existing housing, I suggest that Florida Housing remove the eligibility restriction for SAIL funds found at rule chapter 67-48.009(5)(e). SAIL is a valuable resource that should be available to address the preservation needs of existing housing.

Due to the lower SAUL levels in the LVS county category, a proposed Applicant cannot maximize the number of units (to 160) for an Elderly new construction development. The SAUL for Duval and Pinellas counties should be increased to 125.

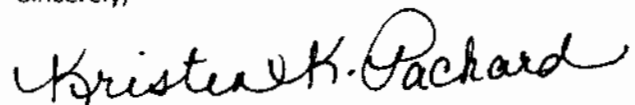
The unit limitation of 160 units for developments (outside of Miami-Dade and Broward counties) that does not constitute an existing occupied Elderly housing facility at Part III.D.1.a.(1)(b), is disadvantageous to the acquisition/substantial rehabilitation of an existing deal using SAIL. If an existing occupied housing facility otherwise meets all of the criteria of an Elderly development (i.e., 50% of the units are one-bedrooms, construction features, market analysis, etc.), it should be able to apply under the Elderly Designation. I recommend that the 250 unit limitation be applied to all Large counties.

Location A requirements should not apply to Acquisition/Rehabilitation Developments. These limitations are counter-productive to preservation utilizing MMRB and SAIL.

Please clarify that all questions in Part III specifically relate to the “proposed Development”, which is the subject of the Application. Although this clarification is provided for certain questions (i.e., Part III.A.3., 4. and 6.), it is conspicuously missing from others (i.e., Part III.A.5. and 9.) and is a source of potential confusion in connection with an application that contemplates a currently completed and occupied development.

Thank you for your thoughtful consideration of these recommended changes. Please do not hesitate to contact me should you have any questions or require additional documentation.

Sincerely,

A handwritten signature in black ink that reads "Kristen K. Packard". The signature is written in a cursive, flowing style with a large initial 'K'.

Kristen K. Packard

- d. If applying for HC: Is the Applicant a limited partnership or limited liability company?
- Yes                       No
- e. Is the Applicant a public housing authority created by section 421.04, Florida Statutes? *→ or one of its general partners an Affiliate of*
- Yes                       No
- f. Is the Applicant applying as a Non-Profit organization?
- Yes                       No

If "Yes", the Applicant must respond to questions (1) and (2) below.  
 If "No", skip Non-Profit status questions and proceed to question 3. below.

(1) Provide the following documentation for each Non-Profit entity:

- (a) attorney opinion letter behind a tab labeled "Exhibit 4";  
and
- (b) IRS determination letter behind a tab labeled "Exhibit 5".

(2) Answer the following questions:

(a) Is the Applicant or one of its general partners incorporated as a Non-Profit entity pursuant to Chapter 617, Florida Statutes, or similar state statute if incorporated outside Florida?

Yes                       No

If "No", is the Applicant or one of its general partners a wholly-owned subsidiary of a Non-Profit entity formed pursuant to Chapter 617, Florida Statutes, or similar state statute if incorporated outside Florida?

Yes                       No

(b) Is the Applicant or one of its general partners a 501(c)(3) or 501(c)(4) Non-Profit entity or is the Applicant or one of its general partners a wholly-owned subsidiary of a 501(c)(3) or 501(c)(4) Non-Profit entity?

Yes                       No

2. Location of Development Site:

a. Address of Development Site:

Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_ Zip: \_\_\_\_\_

Will the Development consist of Scattered Sites?

Yes  No

If "Yes", for each of the sites, provide the Address, total number of units, and a latitude and longitude coordinate behind a tab labeled "Exhibit 20".

Does the location of the proposed Development qualify as an Urban In-Fill Development, as defined in Rule Chapters 67-21 and 67-48, F.A.C.?

Yes  No

If "Yes", to qualify as an Urban In-Fill Development for purposes of this Application, provide a properly completed and executed Local Government Verification of Qualification as Urban In-Fill Development form behind a tab labeled "Exhibit 21".

d. County: \_\_\_\_\_

All Applicants must answer "Yes" or "No" to question (1) below. All HOME Applicants must also answer question (2) below.

(1) Is proposed Development located in the Florida Keys Area?

Yes  No

(2) HOME Applications Only –

Will the proposed HOME Development be located in either Alachua County or Leon County?

Yes  No

If "Yes", complete either (a) or (b) below, as applicable:

b. Does the Development contemplate the revitalization of an existing or former Public Housing development? If "Yes," state the name of the development and provide a copy of the Declaration of Trust behind a tab labeled Exhibit —.

An Application that proposes a Development which contemplates the revitalization of an existing or former public housing development (at Part III.A.2.b.) will automatically receive 7.5 proximity tie-breaker points for this section.

a. Surveyor Certification

To be eligible for proximity tie-breaker points other than those automatically awarded based on paragraph b. below, the Applicant must submit a properly completed Surveyor Certification form, provided behind a tab labeled "Exhibit 25," which includes the Tie-Breaker Measurement Point and services information requested below:

(1) Tie-Breaker Measurement Point:

To determine proximity, the Applicant must first identify a Tie-Breaker Measurement Point on the proposed Development site and provide the latitude and longitude coordinates determined in degrees, minutes and seconds, with the degrees and minutes stated as whole numbers and the seconds truncated after one decimal place. If the degrees and minutes are not stated as whole numbers and the seconds are not truncated after one decimal place, the latitude and longitude coordinates will not be considered. The Application may, however, still be eligible for automatic points as outlined in Part III.A.10.b.(1) of the Application Instructions.

(2) Proximity to services (Maximum 3.75 proximity tie-breaker points):

Applications will be awarded proximity tie-breaker points based on:

- the Demographic Commitment selected and qualified for by the Applicant at Part III.D. of the Application, and
- the size of the County (Large, Medium or Small) where the proposed Development will be located, and
- the proximity of the proposed Development's Tie-Breaker Measurement Point to eligible services.

The eligible services are:

- (a) Grocery Store - For purposes of proximity tie-breaker points, a Grocery Store means a retail establishment, open to the public, regardless of a requirement of a membership fee, consisting of 4,500 square feet or more of contiguous air conditioned space available to the public, which as its major retail function sells groceries, including foodstuffs, fresh and packaged meats, produce and dairy products, which are intended for consumption off-premises, and household supplies, such as Publix Super Markets, Winn Dixie Stores, Super Wal-Mart Stores, etc. "Grocery Store"