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Sent: Monday, February 19, 2018 1:06 PM
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Cc: Marisa Button <Marisa.Button@floridahousing.org>; Brantley Henderson <Brantley.Henderson@floridahousing.org>
Subject: Comments Regarding Definition of Developer Fee in Rule 67-21

Greetings Trey,

Attached please find my comments regarding the proposed rule change to the Developer Fee definition in Rule 67-21. I am attaching both a memo and the Affordable Housing Study Commission Report on Preservation which was prepared in 2006. This very topic was studied and the Commission recommended that Florida Housing increase the acquisition component of the fee to be equal to the rehab component, and Florida Housing subsequently made this change. If the proposed rule on Developer fee is adopted, it will be a step backward and will hinder preservation efforts at a time when thousands of affordable multifamily units have expired and will continue to expire every year. Florida Housing's current fee of 18% for acquisition and rehab has been widely accepted by tax credit investors, tax attorneys and CPAs and is not otherwise problematic in light of Section 42. Furthermore, there have not been an abundance of 4% bond preservation transactions in Florida in the last decade which is further evidence that it is very difficult to make these issues work from an economic perspective.

I hope you will take the opportunity to review the attached memo and citations from the Study Commission Report. Regards, Helen Feinberg

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M E M O R A N D U M

TO: **FLORIDA HOUSING FINANCE CORPORATION**

FROM: **HELEN FEINBERG**

DATE: **FEBRUARY 19, 2018**

RE: **DEVELOPER FEE**

The purpose of this memorandum is to provide Florida Housing with background on past policy discussions on the role of developer fee in preservation bond transactions and request that the Corporation not make the most recent proposed change in rule 67-21. In 2006 (and in earlier years), Florida Housing imposed a maximum developer fee of 4% on project cost attributable to the acquisition price. This policy was changed after the Affordable Housing Study Commission studied preservation of affordable multifamily properties for a two year period and provided multiple recommendations to enhance preservation opportunities. The applicable recommendation suggested that FHFC increase developer fee on the acquisition portion of the development cost to coincide with the fee on the rehab portion in order to facilitate the viability of preservation developments. I am attaching the 2006 Affordable Housing Study Commission Report for your reference (see pages 11- "Barriers to Preservation" and 23 - Recommendation). I would encourage that Florida Housing not reduce developer fee at a time when the state should be doing everything it can to use 4% housing credits to preserve affordable properties.

The following represent various considerations in this regard:

- **Acquisition/Rehab Transactions are Difficult in the Current Market:** Numerous developers have stated that the degree of difficulty and developer risk associated with rehabilitation developments can be equal to or greater than that associated with new construction. Oftentimes, the developer must acquire the entire property using interim financing when accessing affordable financing sources such as bonds and tax credits because property sellers are not "patient" in the State of Florida under current market conditions. This strategy requires a significant financial commitment by the developer. In addition, there can be unforeseen costs once renovations commence.

- **4% Credits Should be Maximized:** Policy makers such as Florida Housing would like to encourage the preservation of existing multifamily properties. This is best accomplished using bonds and 4% LIHTC given the preference to use scarce resources such as SAIL and 9% credits to create new affordable housing inventory. Bonds and 4% credits alone can and have been used to finance acquisition/rehab transactions, but it is exceedingly difficult to make these transactions financially viable with no other sources of subsidy. The 4% credits are a relatively shallow subsidy and developers need to perform rehab of at least $25,000 per unit in order to satisfy issuer and investor requirements. Therefore Florida Housing should identify ways to maximize the availability of 4% credits on bond transactions rather than establish policies to reduce the available equity.

- **Financial Incentives are Needed in Tax Credit Transactions where Risk is Present:** The best means of encouraging developers to pursue a desired public purpose is to provide a financial incentive.

- **Developer Fee is Viewed by Lenders and Syndicators as a "Reserve":** As lenders and tax credit syndicators will note, the presence of developer fee is a crucial element in the underwriting of a transaction. The fee serves to motivate the developer to complete the rehabilitation and lease up and serves as a reserve of sorts in the event that there are any problems that arise during this process.

I believe that there is a general misconception regarding developer fee in tax credit deals. To the extent that "deferred developer fee" is present in a transaction, this is really nothing more than "cash flow". For example – let us examine a sample transaction that generates $100,000 cash flow after debt service per year for 10 years. In Scenario A, there is a $1,000,000 deferred developer fee. In Scenario B, there is no deferred developer fee. In either case, the developer will receive $1 million in cash over the ten year period. The difference is simply how the cash payment is classified for accounting purposes (in Case A, it is developer fee and in Case B, it is cash flow). However, there is a big difference from a tax perspective in that developer fee is includable in eligible basis on which tax credits may be earned. For this reason, in an environment where transactions need subsidy, it is important to earn tax credits on as many eligible costs as possible. In this simple example, the transaction that classifies the $100,000 per annum as developer fee will earn an additional $325,000 in tax credit equity. Assuming this additional equity is used to fund additional rehab, the increase in basis will generate another $100,000 in additional tax credit equity. Therefor this transaction will receive an additional $425,000 in 4% tax credit proceeds which could mean the difference between having a financially viable transaction or not.

For a more striking example, let us examine a larger acquisition/rehab transaction. Let's assume the acquisition portion of the issue is $20,000,000 and Florida Housing as a policy matter reduces developer fee from 18% to 4%. In this case, the developer fee would be reduced by $2,800,000 and due to reduction in Qualified Basis, 4% credits would be reduced by approximately $900,000. If those lost credits caused a reduction in rehab, another $295,000 in credits would be lost. Therefore in this example, the change in Florida Housing policy would cost the transaction approximately $1.2 million in tax credit equity. Said another way, 4% credits generated from developer fee are frequently used for other purposes than paid developer fee – rather they are frequently used to fund rehab costs. Therefor a policy designed to limit developer fee may have the unintended effect of substantially limiting the resources available for rehab.

In summary, I believe a modification in policy resulting in the reduction of developer fee would have the unintended consequences of limiting and reducing opportunities to preserve existing affordable multifamily housing at a time when thousands of affordable units are expiring each year. Please feel free to call me at (727) 895-8892 if you would like to discuss these conclusions.

THE AFFORDABLE HOUSING STUDY COMMISSION
Dedicated to Promoting Affordable Housing in Florida Since 1986

Final Report 2006

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July 17, 2006

The Honorable Jeb Bush
Governor of Florida
The Capitol, Suite PL05
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The Honorable Tom Lee
President, Florida Senate
409 Capitol
Tallahassee, Florida 32399-1100

The Honorable Allan G. Bense
Speaker, Florida House of Representatives
420 Capitol
Tallahassee, Florida 32399-1300

Dear Governor Bush, President Lee, and Speaker Bense:

On behalf of the Affordable Housing Study Commission, I am pleased to submit our final report for 2005-2006. The report fulfills the requirements of Section 420.609, Florida Statutes, and provides the Commission's findings and recommendations for a comprehensive policy that may be used by the State to preserve affordable rental housing into the future. As Florida's affordable housing stock ages, and as numerous market rate rental units are converted to condominiums, the Commission believes that it is of vital importance to the State of Florida to establish a preservation policy.

Preservation was initially considered by the Commission in 2004 as we reviewed strategies to improve the availability of rental housing for Florida's extremely low income households. The Commission quickly noted the importance of preserving housing that leverages federal subsidies in the form of project based rental assistance payments and made several recommendations on preservation strategies for these units in our 2004 Report. The 2005 Report summarized extensive data collected for various affordable housing rental programs and detailed the barriers that have hindered preservation efforts to date.

The 2006 Final Report draws together the Commission's multiple years of study and testimony to offer a statewide comprehensive preservation policy. To develop this strategy, we have examined Florida's existing funding programs, notification statutes and preservation funding from around the country as well as data collection efforts. We hope that the resulting recommendations will be used as the foundation of the State of Florida's strategy for addressing this urgent issue.

Speaking for all members of the Commission, I extend our appreciation for the opportunity to serve the Citizens of Florida.

Sincerely,

Helen Feinberg
Chairperson

The Affordable Housing Study Commission 2005-2006 Membership

Helen Feinberg
Chairperson

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The Affordable Housing Study Commission would like to thank the Shimberg Center for Affordable Housing at the University of Florida and the staff of Florida Housing Finance Corporation for their assistance.
Special thanks are also due to Vince O'Donnell, LISC, Gideon Anders and Jim Grow, National Housing Law Project, Doug McCree, First Housing Development Corporation; Debra Reyes, Neighborhood Lending Partners; Stan Fitterman and Wight Greger, Florida Housing Coalition; and Ethan Handelman, Recap Advisors.

Mission Statement of the Affordable Housing Study Commission

The Affordable Housing Study Commission recommends improvements to public policy to stimulate community development and revitalization and to promote the production, preservation and maintenance of safe, decent and affordable housing for all Floridians.

The Commission's Legislative Charge

Section 420.609, Florida Statutes, charges the Commission to recommend solutions and programs to address the state's acute need for housing for low- and moderate income residents, elders and homeless people. The Commission believes its charge also extends to other Floridians with special housing needs, including extremely low income residents, farmworkers and people with disabilities. The Commission's analysis is to include, but is not limited to:

- Offering low-interest and zero-interest loans for the development or rehabilitation of housing;
- Educating the public and government officials to understand and appreciate the benefits of affordable housing;
- Use of publicly owned lands and buildings as affordable housing sites;
- Coordination with federal initiatives, including development of an approved housing strategy;
- Streamlining the various state, regional and local regulations, and housing and building codes governing the housing industry;
- Stimulation of public and private cooperative housing efforts;
- Implementation or expansion of the programs authorized under state law;
- Discovery and assessment of funding sources for low-cost housing construction and rehabilitation; and
- Development of such other solutions and programs as the Commission deems appropriate.

In performing its analysis, the Commission is also charged to consider both homeownership and rental housing as viable options for the provision of housing and to give consideration to various types of residential construction including, but not limited to, manufactured housing.

Introduction

Affordable housing received a great deal of attention during the 2006 legislative session. Much of the focus was on home ownership and the pace at which the price of a single family home has outstripped the earning power of Florida's citizens. The trend of converting rental units to market rate condominiums has also left its mark on the affordable housing industry. While condominium conversion has brought home ownership within reach of some, it has displaced many lower income families from apartments that provided reasonable rents.

While the Study Commission recognizes the importance of affordable home ownership, it is also true that many of Florida's families rely on affordable rental housing for their homes. The state's affordable housing programs have successfully financed thousands of units over the years, but now affordability restrictions on many affordable rental units are expiring each year and a significant number of properties in the affordable inventory are over 20 years old, making their physical condition a concern. The aging and escalating loss of affordable multifamily housing is a trend with serious implications for Florida's low income population. These families struggle to afford their housing, and extremely low income families are especially hard hit by high rents, which can consume over half of their monthly income.[1]

Preservation deserves to be a policy priority for a number of reasons. As Chapter One shows, Florida is losing thousands of affordable rental units from its housing stock each year. While there are federal programs to preserve affordable housing, funding for these programs has decreased over the years. The remaining programs are often complex, and some preserve the physical stock without maintaining the affordability of the property. Limited funding has made it more difficult to address deferred maintenance needs and upgrade worn or obsolete amenities without increasing rents paid by low income residents. Preserving existing affordable housing stabilizes communities by promoting a sense of place and continuity. Moreover, it is generally less expensive to preserve existing housing than to construct new units.

The impact of the 2004-2005 hurricane season has exacerbated the need to preserve existing homes. By the end of September 2004, four hurricanes and one tropical storm had struck Florida, damaging more than 700,000 homes. The Governor's Hurricane Housing Work Group noted that roughly 400,000 of those affected by the hurricanes had annual incomes below $30,000, and the housing stock that served the state's elderly population suffered disproportionate levels of damage.[2] One member of the Study Commission, a public housing administrator, shared that her entire public housing inventory had been destroyed in the 2004-2005 hurricane season.[3]

If Florida is to ensure that citizens who cannot afford to purchase their own home have decent housing, it must implement a preservation strategy. This strategy should develop funding resources that can respond to the unique challenges of preservation transactions and establish priorities for the application of funding and technical assistance resources. The state must also addresses the challenge of maintaining comprehensive data for affordable rental housing.

The Commission's definition of "Preservation"

The Commission's deliberations and recommendations built on a two-part definition of preservation:

1) Maintain an affordable rent on a unit. This is usually accomplished by income and rent restrictions imposed by federal and state funding sources; and
2) Keep properties as safe and decent housing. This can be accomplished through maintenance, upgrades or rehabilitation.

The Study Commission began looking at preservation of affordable multifamily housing in 2005. The 2005 final report provided an overview of the existing affordable housing rental stock in Florida and the programs that financed the construction and operation of this housing. The report also outlined some of the key pressures and barriers that have limited preservation transactions.

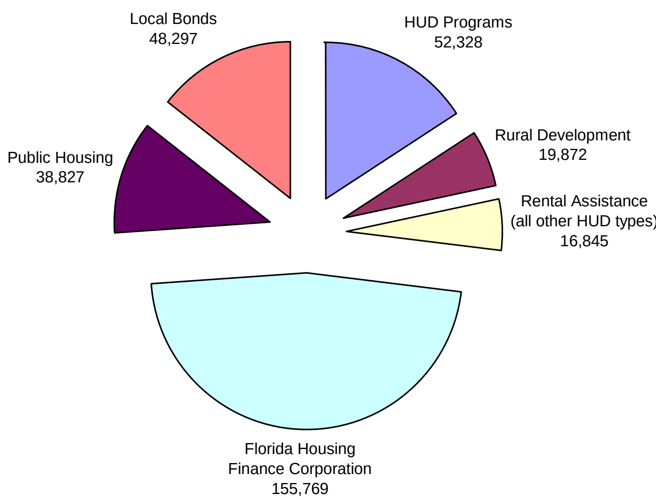
Chapter One of the 2006 report summarizes the aging and expiration data for Florida's affordable rental stock and the barriers that complicate preservation. Chapter Two looks at the state and federal preservation programs already available to developers and owners, and Chapter Three presents the Commission's recommendations for a comprehensive statewide preservation policy for Florida.

Chapter One

Part One – A Summary of the Age and Expiration of Florida's Affordable Housing Stock

Florida has over 275,000 affordable multifamily units that have been financed by myriad state and federal programs over the last 70 years. These programs include project based rental assistance for a portion of the units, usually to serve extremely low income residents. This section summarizes aging and expiration data provided in the Commission's 2005 report. Appendix I provides tables with detailed information on the status of the state's affordable housing stock. Table 1 shows when affordability periods for the state's affordable housing inventory are expected to expire while Table 2 provides estimates of the age of the state's affordable rental stock. Tables 3 and 4 show the affordability expiration and aging, respectively, for the units in Florida Housing Finance Corporation's portfolio, which is the state's single largest portfolio.

Florida's Affordable Housing Inventory by Funding Program
Total Units: 276,501



Source: Affordable Housing Study Commission, 2005.
Note that subtotals add up to more than the actual total of 276,501 due to overlapping funding sources.

<u>Units Financed by U.S. Department of Housing and Urban Development (HUD) Programs</u>

HUD's older mortgage programs typically provide grants or low interest loan terms for the acquisition, construction and rehabilitation of properties. In addition, rental assistance has been paired regularly with some or all of the units in these properties to cover operating costs and ensure that the units are affordable to very low income residents. More than 75 percent of Florida's 44,857 HUD financed units are over 20 years old and another 7,200 units are 11 to 20 years old. This makes the physical condition and maintenance of these almost 42,000 units a cause for concern.

Of equal importance is the affordability of these units for low and very low income families. Just over 28,000 units in Florida's affordable housing portfolio have some type of project based rental assistance from HUD to cover operating costs and keep the units affordable. As older rental assistance contracts come to an end, owners have the choice of opting out of renewing their contracts. If an owner chooses not to renew a rental assistance contract, and if there are no other affordable housing programs that maintain affordability restrictions on the property, rents can be immediately raised. Current residents can apply for Enhanced Vouchers, which help pay the increased rent, but this is not a long term solution. Should the renter stop using an Enhanced Voucher for any reason, the voucher is not recycled to help another resident – it is terminated. This means that, over time, fewer residents will be served as owners opt out of their rental assistance contracts and the Enhanced Vouchers are used and then discarded by residents. If a property owner does renew, it is generally for one to five year contracts which are dependent on congressional appropriations.

A small number of units with rental assistance contracts have already lost their affordability restrictions, but the greatest losses are anticipated to occur in two waves. Nearly 24 percent of the project based rental assistance portfolio, representing just over 12,500 units, will expire by 2015 and another 13,000 units will expire by 2030.

Units Financed by U.S. Department of Agriculture Rural Development (RD)

Florida's rural rental housing inventory has been funded and supported through the Section 515 Rural Rental Housing Program, Section 514/516 Farm Labor Housing Loans and Grants and the Section 521 Rural Rental Assistance Program.

Section 515 makes subsidized loans to eligible developers to build, acquire, and rehabilitate rural rental housing. The fact that Section 515 properties constructed after 1989 cannot prepay their mortgages, which focuses preservation concerns on the older stock. These properties are likely dealing with aging infrastructure and the need for capital for renovations and repair. Owners of properties built prior to 1989 are eligible to prepay their 30 year mortgages after 20 years, a move that would end affordability restrictions on those units. There are a total of 15,938 Section 515 units in Florida, and 590 of these units have already satisfied their Section 515 mortgage, allowing affordability restrictions to expire. The greatest percentage of this housing stock – 54 percent – could be lost between 2010 and 2020, although about one-half of these units will remain affordable if they do not lose their rental assistance. In Florida, Rural Housing Services (RHS) obligated $2.8 million for Section 515 repair and rehabilitation for Fiscal Year 2006 and obligated no funding for new construction.[4] By providing no funds to construct new units, RHS appears to be focusing the Section 515 program on preserving the older stock.

Section 514 loans and Section 516 grants are provided to buy, build, improve and repair housing for farmworkers. Approximately 46 percent of Section 514/516 program units receive Section 521 rental assistance. Similar to the Section 515 program, Section 514 loans made after 1989 are not allowed to be prepaid. However, ownership entities eligible to participate in the Section 514/516 programs include nonprofits, farmers and farmers' associations, and these types of owners generally want to maintain their property's affordability. Therefore, it is unlikely they will prepay their loans. For them, preservation becomes an issue of aging and the condition of the units. In Fiscal Year 2004, the latest information available, RHS obligated $2.9 million for Section 514 rehabilitation loans and $2.8 million for Section 516 rehabilitation grants. This suggests RHS is also focusing on preserving its older farmworker housing. Of the 3,934 units of Section 514/516 housing in Florida, mortgages have already been satisfied on two of the largest properties that have 1,355 units between them. Another 1,310 units will be in this position by 2015.

Section 521 Rural Rental Assistance is a project-based rental assistance program used in conjunction with the Section 515 and Section 514/516 programs. Property owners sign 4-5 year contracts with RHS, which subsidize the rental unit for occupancy by low income residents. Subsidies under this program are equal to the difference between 30 percent of the resident's monthly income and the resident's actual rental expenses. Over 56 percent of all RD units, or 11,171 units, receive Section 521 assistance. The funding challenge facing Section 521 is the increase in operating costs combined with caps on rental assistance appropriations. The same amount of funding is being spread over higher rents, reducing the total number of units that can receive this rent subsidy over time. Renewing expiring contracts is RHS' priority use of Section 521 at this time. In Fiscal Year 2006, RHS obligated funds solely to renew rental assistance contracts.[5]

While age-specific data on Florida's RD portfolio were unavailable, it is possible to make assumptions based on mortgage terms. Of the 19,872 total units in the portfolio, 41 percent are estimated to be between 21 and 30 years old. Another 44 percent are estimated to be between 11 and 20 years old, suggesting that the stock in this portfolio is aging and in need of rehabilitation.

Public Housing

Local and regional public housing authorities (PHAs) construct and operate the state's public housing units. Public housing is some of the oldest affordable housing in the country today and provides housing mainly for extremely low income residents. Originally, the federal government was committed to paying acquisition, construction, and capital costs, while PHAs were expected to pay operating costs from their residents' rental payments.

Federal operating subsidies were formally established in 1970 to make up the difference between PHA rental income and operating expenses.[6] As of early 2005, there were 38,827 public housing units in Florida.[7] The majority of these units, 69 percent, are over 30 years old, and only 5 percent are under 20 years old. HUD reports that approximately 1,700 existing public housing units have been or will be rehabilitated with HOPE VI funds.[8]

From a preservation perspective, the threat to public housing is the ongoing deterioration of an aging stock. Additionally, the physical condition of public housing properties is crucial to the ability of PHAs to rent the units and generate revenue.[9] The capital needs of public housing have been chronically under-funded for much of the program's history, and the mechanisms to address maintenance and rehabilitation can be unwieldy. Early in the program's history, too little funding was provided to keep maintenance problems in check and today these long deferred maintenance issues continue to worsen.

Florida Housing Finance Corporation (Florida Housing) Funded Units

Overall, Florida Housing's 166,131 unit portfolio, including units financed by the Low Income Housing Tax Credit, State Apartment Incentive Loan, HOME Rental and Multifamily Mortgage Revenue Bond programs, is newer than the HUD and RD portfolios.[10] Fully 155,769 of these units are set aside for lower income residents. While a majority of the units are 1 to 10 years old, nearly 50,000 of Florida Housing's units are 11 to 20 years old, and another 3,100 units are in the 21 to 30 year old range. For these 53,100 units over 10 years old, physical maintenance issues are a concern.

Florida Housing properties funded before 1991 had affordability periods as low as 15 years, while more recently funded properties typically have extended affordability periods, generally 30 to 50 years. As a result, 86 percent of the portfolio will not begin to expire until 2030. However, from the earliest funding years, there is a group of units now expiring – over 8 percent expired by the end of 2005, and approximately 5 percent more will expire by 2010.

Locally Administered Bonds

Florida's locally administered Bonds portfolio, which totals just over 48,000 units, is relatively young with a just over 70 percent of its units between 1 to 20 years old. A little more than 31,000 units of this 70 percent are aged 1 to 10 years old. Still, the issue of maintaining the physical condition of these units will be a concern in the more immediate future as the effects of normal wear and tear build up.

Due to the relative newness of the units in this portfolio, affordability restrictions are expected to expire for large numbers of units until 2030, when approximately 8,400 units will lose their affordability. The greatest number of units will be lost after 2040, when the affordability of just under 19,000 units expires.

Over the years, data for Local Bonds has not been kept in a standard format, making it difficult to collect up to date information easily. Of the data available, just under 6,700 units had no information to allow the calculation of their affordability expiration.

Part Two – A Brief Review of the Barriers to Preservation

The Commission found that a variety of obstacles complicate preservation transactions.

Financial Barriers

Unsustainably low rents can result in a lack of capital for minor rehabilitation and also suggest that a property may have large capital needs. Flat lined or decreased federal funding for Section 8 subsidies and other rental assistance programs means that owners who do manage to restructure the debt on their properties may be forced to pass on higher rents to residents. There are also properties that receive no rental assistance; in the Section 515 program, for example, more than 100,000 units nationally do not have rental assistance subsidies, making them extremely difficult to recapitalize without rent-burdening their residents.

Most importantly, there are simply not enough financing incentives to promote the amount of preservation needed. While the Commission knows that some preservation transactions already take place using currently available private and public sector financing tools, programs are generally not well positioned to encourage preservation. For instance, Florida Statutes do not allow the SAIL Program to be used for rehabilitation unless the value of the rehabilitation exceeds 40 percent of the value of the dwelling. This limitation means that SAIL is unavailable for more minor repairs that might be part of a preservation transaction.

Restrictions on the profit margin allowed by federal and state programs are a further deterrent to for profit and nonprofit developers who are best positioned to tackle preservation deals. Florida Housing has made changes to its programs over the last few years that make preservation applications more financially feasible and competitive in the funding process. However, funding applications for new construction still outweigh those for rehabilitation by almost 10:1.[11] In 2006, Florida Housing received 95 new construction applications across its four competitive rental programs – HOME, SAIL, Housing Credits and Multifamily Mortgage Revenue Bonds – but only 9 acquisition and rehabilitation applications.

Compared to new construction, preservation deals can be more complex transactions, especially when restructuring requires HUD approvals or review. On the other hand, preservation transactions are generally less expensive. The MacArthur Foundation, which has taken a special interest in the preservation of affordable housing, has analyzed preservation transactions and finds that it costs 50 to 75 percent less to preserve an affordable unit than to build a new one.[12]

Information Barriers

Understanding the status of Florida's assisted housing stock is fundamental to creating and managing a thoughtful preservation strategy. From a regulatory standpoint, knowing existing contractual and regulatory obligations, such as the mortgage status, affordability agreement, and whether and what type of rental assistance contract is in place is critical. However, the variety of program requirements and changes within programs makes it exceptionally challenging to collect, compare and analyze expiration dates and to predict with accuracy when units will be lost from the affordable housing stock. There are no widely available standardized risk analysis tools to assist states and local governments in identifying and examining properties that may be facing expiration and/or opt-out situations. This is a significant lack, because risk analysis tools enable the development of preservation strategies around the specific needs of each property.

Understanding how the property is positioned in the local real estate market is also important – location, market value, and current land uses provide key information on how the current owner is likely to respond to preservation strategies. While data on the age, mortgage status and affordability period of the assisted stock can be collected and placed into a database (indeed, this is currently being done through the Florida Housing Data Clearinghouse) market factors and owner needs constantly change and cannot be tracked. The notice requirements in place for owners wishing to opt out of Section 8 or prepay their federal mortgages do not always provide sufficient guidance to ensure that new owners can be found and ownership transferred to preserve the affordability of the units. No notification is required of property owners wishing to exit the state's affordable housing system.

Finally, the community impacts of aging and expiring affordable housing units are not widely understood by state and local government officials and community leaders. Florida has made strides in acknowledging the need for affordable housing, but most leaders have not been educated about the aging stock in their communities and the impact of losing this housing.

National Project to Develop a Preservation Risk Assessment Tool

In June 2006, the Shimberg Center for Affordable Housing at the University of Florida and Florida Housing Finance Corporation received funding from the John D. and Catherine T. MacArthur Foundation through its *Window of Opportunity: Preserving Affordable Rental Housing* initiative for a project to improve national data collection and analysis related to the preservation of subsidized rental housing.

The project seeks to develop a national consensus on the design of a national preservation data infrastructure that will allow data to be aggregated at the state and national level for purposes of prioritizing and tracking preservation efforts over time. As part of this effort, the Shimberg Center will identify the data on subsidized properties that provide the most useful information for policy decisions and program delivery and develop tools that use these data to help policymakers and housing professionals identify properties most at risk of loss to the inventory.

Funding for the project will also allow the Shimberg Center to increase its efforts to collect these data for subsidized properties in Florida localities and provide public access to this information through the Florida Housing Data Clearinghouse.

See Appendix 3 for program description.

<u>Capacity to Carry Out Preservation Transactions</u>

Across Florida's affordable housing delivery system, stakeholders generally lack the tools and experience to handle preservation transactions. Many believe that nonprofit developers and public housing authorities may be more likely to carry out preservation transactions, especially on properties that save extremely low income units. Nonprofits and public housing authorities tend to target their housing activities to meet the needs of lower income families, and they seek to create housing with permanent affordability, often in neighborhoods in which it is difficult to develop.[13] However, most nonprofit developers are rather small and have neither the capital nor the expertise to expedite these transactions, and many public housing authorities do not have development experience. The return on investment in preservation deals will often be smaller, and serving extremely low income tenants will remain risky, especially in those properties that continue to rely on federal rental assistance programs, which must be appropriated annually by Congress.

<u>Condominium Conversions</u>

The intensity of the condominium conversion trend gained national attention in 2005 and has remained prominent in 2006. Older, conventionally financed units, combined with subsidized rental housing, have provided low cost rental housing for Floridians, but developers across the state have been acquiring and renovating apartment complexes into condominiums at an astounding pace. In 2005, the Florida Department of Business and Professional Regulation approved the conversion of 26,717 units to condominiums throughout Florida. As of February 2006, 109 notices of intent to convert had been filed with the Department.[14]

Condominium conversions have impacted the price of acquiring affordable housing properties; owners of affordable housing properties nearing the end of affordability restrictions can cash in on their land's increased value by selling to a condominium converter. Developers interested in preserving affordable housing are often shut out of the game, unable to afford the cost of acquiring sites. While there are signs that the conversion boom is slowing down and returning to the levels experienced before speculation heated up the market, the state must still confront the fact that thousands of units that were providing affordable rental housing for Florida's families have been lost.

Chapter Two
Overview of Existing Preservation Efforts and Programs

Introduction

Before developing its recommendations for a preservation policy, the Commission examined existing state and federal preservation efforts and programs. The sections below provide brief descriptions of the programs available to rental property owners and developers in Florida. Understanding how these state and federal efforts provide, or fail to provide, the refinancing and rehabilitation funding needed to complete a preservation transaction sets up a framework that can help identify the best use of the state's finite resources.

Florida Housing Finance Corporation's Preservation Efforts

Florida Housing has acknowledged the need to incorporate preservation strategies into its programs. However, the agency has made few broad changes to date, choosing instead to wait for the Study Commission's recommendations on the subject.

Universal Application Cycle

Over the past few years, Florida Housing has made some changes to its Universal Application Cycle in an attempt to make acquisition and rehabilitation applications more competitive. Acquisition and rehabilitation applications automatically receive two points for energy conservation features in the Amenities and Features section of the application, and proximity points are not deducted from these applications if the existing property happens to be located near a property funded with state administered programs. These concessions are helpful in a process where a single point can make or break an application. However, they are not enough to counteract other barriers in the Universal Application, including space absorbing amenities that favor new construction.

State Administered Funding Programs

In the SAIL program, Florida Housing's preservation efforts have focused on renegotiating or extending the repayment terms of loans that have reached maturity. Interest on SAIL loans is paid from a property's available cash flow, with a lump sum principal payment due at the end of the loan term. Early SAIL loan terms were set at 15 years, and these loans are starting to come due now. For owners who cannot pay the final lump sum, Florida Housing requires the owner to pay the accrued interest, and may extend the repayment period or renegotiate the loan terms for repayment of the principal balance. With either of these options, Florida Housing generally imposes deeper set-asides, which match today's updated program requirements. An additional affordability period is also placed on the property. While there is no standard affordability period for these situations, Florida Housing will extend the affordability periods for renegotiated SAIL loans for either an additional 30 years or to match the term of their primary funding source, which can be longer than 30 years. Florida Housing has seen a few owners pay their SAIL loans in full on the original due date. If these properties are not subject to an extended affordability period, or do not have some other affordable program that imposes affordability, owners are free to convert or sell the property to market rate rentals or condominiums.

From a preservation perspective, the key issue for Housing Credit properties is maintaining the condition of the properties. The affordability of the units in this portfolio is protected through extended use agreements, which have been placed on the majority of Florida Housing's Housing Credit properties.

In general, properties financed with Housing Credits after 1990 have an extended use agreement in force which protects the affordability of units for 30 or more years. Many properties financed after 1994 also waived their right to request a qualified contract package in exchange for points on their Universal Cycle applications. By waiving this right, the owners of these properties cannot initiate the sale of the property after the tax credit benefit has expired. The properties that have not waived their right to request a qualified contract package have the option to initiate a qualified contract process. In this process, Florida Housing has one year to find a buyer for the property at or above a purchase price based on a formula developed by the IRS. However, no owners have completed this process to date, which leaves all affordability restrictions in place for those properties.

It is possible to apply for Bond funding for a preservation transaction through both the Universal Application Cycle and the Supplemental Bond Cycle. The Supplemental Bond Cycle is a non-competitive source of tax-exempt Bonds which begins following the close of the Universal Application Cycle. While the Supplemental Bond Cycle may receive fewer applications overall than the competitive Universal Cycle, 6 of the 9 Bond closings that have taken place in 2006 in the Supplemental Bond Cycle were preservation deals. Three years ago, Florida Housing reduced the required rehabilitation expenses from a minimum of $20,000 per unit to a minimum of $10,000 per unit for Bond transactions, to encourage the use of abundant Bonds as a preservation tool. While owners can refinance existing Bonds and include some rehabilitation work in the new bond issue, more extensive rehabilitation work usually requires an additional funding source, such as SAIL funds. Adding SAIL funds would require a transaction to go through the more onerous Universal Application Cycle.

Section 420.5087(3)(d), Florida Statutes, requires a portion of SAIL funds to be set aside to fund the Elderly Housing Community Loan Program. The EHCL program provides loans to make life safety improvements to existing affordable rental housing for elders. These funds are available for sanitation repairs or improvements required by federal, state or local regulation codes, and for life safety or security related improvements. 2005 legislative changes increased the per-loan limit from $200,000 to $750,000 and lowered the amount of required local match. The increase in the per-loan limit may prove useful for individual properties, but the total amount of funding for EHCL has been approximately $1.2 million each year (set by statute as 10 percent of the SAIL Elderly set-aside), which does not fund many deals.

Section 202 Elderly Housing Bond Demonstration

The Section 202 Elderly Housing Bond Demonstration takes advantage of Florida Housing's plentiful supply of Bonds to preserve affordable rental housing for elders originally financed with HUD's Section 202 program. Through a combination of 4% Housing Credits, tax-exempt Bonds and HOME funds, this demonstration program can pay off an existing Section 202 loan and provide funding for repairs and upgrades. Older Section 202 properties often require a large infusion of rehabilitation money to create larger units, redesign bathrooms and kitchens and install life safety features. HOME funds, based on a per unit limit that changes by county, are used to provide these upgrades. Affordability will be preserved in Section 202 Demonstration properties through a use agreement that requires the units remain affordable for the life of the Bond term, generally 30 years. Any existing rental assistance on a property will remain in place following the closing.

To keep Bond issuance costs down, the Section 202 Demonstration seeks to pool several requests into a single Bond issue that will be credit enhanced through the Section 223(f) Federal Housing Administration mortgage insurance program. Pooling multiple Bond allocations into a single issue can be a lower cost method for providing refinancing and rehabilitation funding, but there have been few responses to Florida Housing's two requests for proposals. Some of the nonprofit owners of Section 202 properties are unfamiliar with the refinancing process, which makes them hesitant to participate in this program. Others choose not to tie long term affordability periods to their properties, preferring to have the option of selling a property and using the proceeds to either build brand new housing or support the organization's mission in some other way.

This demonstration program is a promising use of Bonds but none of the transactions have closed yet, making it is too early to tell if this approach is viable in the long term to address the preservation needs of older and/or small properties.

Federal Preservation Programs

Federal programs aimed at supporting preservation have taken one of two approaches: boost a property's operating income or reduce expenses by refinancing the original mortgage to lower the monthly debt service payments. FHA mortgage insurance supports lower interest rates on loan refinancings, which further reduces expenses. The ultimate goal of both approaches is to improve a property's available cash flow for repairs and maintenance.

<u>Section 8 Preservation Programs</u>

Congress has created a trio of programs for project based Section 8 properties designed to improve cash flow. This is accomplished by either increasing Section 8 rents that have fallen below the comparable market rent rates in an area, or by providing financial incentives to promote debt restructuring in properties where Section 8 rents have risen to an artificially high level.

Mark Up to Market/Mark Up to Budget

The Mark Up to Market and Mark Up to Budget programs work on the same basic principle. Owners are allowed to raise Section 8 rents to match comparable market rents up to a cap of 150 percent of the HUD-established fair market rent. Raising the rental income increases a property's cash flow, and the additional funds can be put towards a variety of uses. These include rehabilitation or repairs, deferred maintenance, capitalization of reserves or acquiring additional debt.

Mark Up to Market serves for profit owners and imposes only a five-year Housing Assistance Payment (HAP) contract, which the owner is not required to renew. This means the affordability restrictions on the units can end five years after completion of the Mark Up to Market process. Mark Up to Budget, which serves nonprofit owners, requires a 20-year HAP contract and a use agreement from HUD that extends existing federal affordability restrictions for another 20 years.[15]

While the two Mark Up programs represent a reasonable approach to preserving Section 8 properties, they are not being used wholesale by Section 8 property owners. The process of applying for these programs is lengthy and cumbersome. A property located in a neighborhood with lower comparable market rents may not be able to generate enough additional cash flow to fully address its rehabilitation needs. Moreover, guaranteed affordability on properties owned by for profit entities is limited to only five years.

Mark to Market

HUD began renewing expiring, long term Section 8 contracts in 1994. At that time, a number of properties were charging rents well above market rate, a trend which had developed over the course of a number of years. These properties often carried FHA insured mortgages underwritten to the higher rental income, and lowering rents on these properties would create a default situation for the owners. The Mark to Market program was HUD's response to this dilemma.

Mark to Market is a set of financial incentives designed to encourage nonprofit and for profit owners to restructure the debt on their properties, underwritten to a lower rent. Incentives range from funds for predevelopment costs and recapitalizing reserves, to the forgiveness of deferred second mortgages for certain nonprofit owners. Any property that goes through the Mark to Market program enters into an agreement which maintains the units' affordability for 30 years. Nonprofit owners who take advantage of the forgiveness of a deferred second mortgage must agree to an additional 20-year use agreement, bringing the total affordability period for those properties to 50 years.

Mark to Market certainly provides strong protection for affordability, but some owners have been reluctant to use this program because the process can be lengthy and complicated. Still, 123 properties in Florida have gone through the Mark to Market process, and it is an effective preservation tool for those Section 8 properties that must lower their rents to meet comparable market rate rents. Mark to Market is set to expire September 30, 2006, but legislation is pending that seeks to extend this program for another 5 years.

FHA Mortgage Insurance Programs

Three FHA mortgage insurance programs are most commonly used for preservation transactions: 221(d)(3), 221(d)(4) and 223(f). These programs support the refinancing of existing debt on a property by using credit enhancement to lower the costs of a rehabilitation loan. This provides more funds from the new loan to carry out rehabilitation activity.

Section 221(d)(3) is targeted to nonprofit owners or cooperatives, while Section 221(d)(4) targets for profit owners. Both programs credit enhance long-term mortgages of up to 40 years and allow funds to be used for substantial rehabilitation of rental housing.[16] The 223(f) program, on the other hand, provides credit enhancement for only limited rehabilitation transactions. In order to receive 223(f) credit enhancement, any substantial rehabilitation on a property must have been completed at least three years before the date of application for the mortgage insurance. Additionally, the funds can be used to replace only one major system on the property and long-term mortgages of up to 35 years are allowed.[17]

These FHA mortgage insurance programs are flexible refinancing tools that lower the cost of preservation transactions through their credit enhancement feature. However, none of them impose affordability restrictions to keep the units accessible to low income families or provide any additional subsidy to allow an owner to reduce rents. Unless there is a rental assistance contract on the property or an affordable housing program layered into the financing, affordability is not guaranteed.

Section 236 Interest Reduction Payment (IRP) Decoupling

Active from 1968 through 1975, the original 236 program provided developers with a mortgage interest rate subsidy that paid the difference between the actual debt service of the mortgage and 1 percent of the mortgage payment. In return, owners were required to maintain an affordability period equal to the term of the mortgage.

Section 236 Interest Reduction Payment Decoupling allows an owner to refinance the existing mortgage and apply the interest reduction payment stream from the original mortgage to the new mortgage. The increased cash flow can be used for rehabilitation on the property or to fund reserve accounts. Section 236 IRP decoupling, unlike the FHA mortgage insurance programs, does impose affordability restrictions. A new use agreement extends the original 236 use restriction period at least 5 years beyond the original mortgage maturity date. Additionally, the original 236 income limits are maintained.

The 236 decoupling program does protect affordability, and owners of eligible 236 properties have been using it to refinance their properties and create funds for rehabilitation activity. However, the youngest 236 properties are just over 30 years old and their remaining Interest Reduction Payment stream is decreasing every year. The effectiveness of the decoupling process is based on how much is left in the property's IRP stream, so the decoupling program becomes a less attractive refinancing option over time. Additionally, for those 236 properties with high debt and low rents, it will not be possible to obtain new debt, making the 236 decoupling program inaccessible to them.

USDA Rural Development Preservation Programs
The regular Section 515 Rural Rental Housing loan program and Section 521 Rental Assistance program are both flexible enough to support preservation. These loans, administered by Rural Housing Service (RHS), are funded from RD's annual allocation, and provide 30 year loans at 1 percent interest. Loans are repaid from the property's cash flow, and affordability restrictions are extended 20 years from the closing of the loan.

As stated earlier, the challenge facing the Section 521 program is the combination of increased operating costs and federal caps on rental assistance appropriations. The same amount of funding is being spread over higher rents, which decreases the number of units that are renewed over time and prevents RHS from providing rental assistance to new units.

RHS also offers a Section 515 Preservation Revolving Loan Fund. This demonstration program is in its second year, and provides loans to nonprofit intermediary organizations or housing finance authorities. The Revolving Loan Fund has only $6.3 million to allocate across the entire country, for an average of $126,000 per state. It is intended to be matched with other sources of funding rather than being the only funding source for rehabilitation and maintenance needs.

Recently, RD announced the launch of the Multifamily Housing Preservation and Revitalization Restructuring Demonstration Program, designed to support preservation of Section 515 rental properties. There is a menu of options for repositioning 515 properties under this demonstration program. The core tool is a 1 percent interest loan, with deferred payments for up to 20 years. [18] The funds that are freed up by the deferred payments can then be redirected to reserve accounts to help meet the physical needs of the property. Initial funding for this demonstration program has been set at just under $174 million nationally. The program seeks to preserve 200 Section 515 properties across the country in its first year.

While these programs are providing rental assistance and rehabilitation resources for aging rural properties, their effectiveness is blunted by limited funding, and it is too early to tell how well the two newest programs will perform.

Public Housing Preservation Programs
Public housing authorities have access to three main rehabilitation and unit replacement programs: HOPE VI, Replacement Unit Fund Factor and Capital Funds. PHAs can use these funds to maintain, upgrade and redevelop public housing units. It is even possible to acquire sites using some of these funds. Ultimately, however, they fall short as tools for preservation. Years of underfunding have contributed to an intractable backlog of repairs and deferred maintenance. These rehabilitation needs could easily absorb all of the available funding, but PHA administrators must also meet their on-going maintenance and administrative costs.

The fact that PHAs have not received their full Operating Subsidy from HUD for years further exacerbates the situation. Operating Subsidy is one of the main subsidies of income for a PHA and is meant to make up the difference between the property's rental income and actual operating expenses. In reality, Congress has funded this subsidy below the level actually needed for several years. This has contributed to the ever deepening deficit with which public housing administrators must contend.

<u>HOPE VI</u>
Enacted in 1992, HOPE VI promotes the redevelopment of severely distressed public housing through a program of demolition, reconstruction and resident services. These activities are financed through grants to PHAs which are leveraged with other sources of public and private financing.[19] Even as it has been hailed as a breakthrough in revitalizing public housing, some have questioned whether HOPE VI is truly preserving public housing. The program has resulted in a net loss of housing units, and some units have

been re-targeted to middle income families to create mixed income communities. HOPE VI's limitation as a preservation program is rooted in its funding constraints. 2006 funding for HOPE VI will provide just under $72 million for the entire country, and HUD has announced that four grant applications will be funded from this allocation.[20] In Fiscal Year 2005, eight grantees received HOPE VI funding and only one of these grantees was located in Florida.[21]

Replacement Housing Fund Factor

The Replacement Housing Fund Factor (RHF) is a formula driven allocation provided only to PHAs that have demolished units in the past. The funding allows these PHAs to construct replacement units and rebuild their inventory. RHF money can be received in two five-year increments, based on a HUD approved RHF Plan. If a PHA applies for a second five-year increment, substantial leveraging[22] of non-public housing funds must be demonstrated.

Capital Funds and the Capital Fund Financing Program

The Capital Fund was enacted in 1998, under the Quality Housing and Work Responsibility Act. The Capital Fund has been appropriated at $2.9 billion each year nationally for the past five years,[23] and in Fiscal Year 2006, Florida's PHAs received approximately $62 million in Capital Fund Grants.[24]

Capital Funds – An Important but Limited Preservation Tool

The Jacksonville Housing Authority (JHA) began installing air conditioning units in all of its 3,000 apartments in 1994. At a cost of $5-7,000 per unit, this upgrade was estimated to cost at least $15 million. JHA receives an annual Capital Funds allocation of $3-$3.5 million. Assuming JHA dedicated all of its Capital Fund to installing air conditioners, it would take 5 years to complete the project. In reality, the agency has had to distribute its Cap Funds across several maintenance projects with the result that it has taken 10 years to complete installing air conditioners in all of its units.

Source: Ellen Ramsey, Chief Financial Officer, JHA, and member of the Affordable Housing Study Commission.

Capital funds can be used for activities related to the upgrade, demolition, replacement and increase of the public housing inventory. In certain cases, these funds can also be used for operational costs.[25] While Capital Funds may be used to acquire sites for preservation, any property acquired with these funds becomes public housing and if there is a Section 8 HAP contract on the property, it will be terminated.

The Capital Fund Financing Program allows a PHA to borrow private loans based on up to 33 percent of its future Capital Funds allocation, subject to appropriations from Congress.[26] The proceeds of these loans can be used for improvements to a property but, because they are payable from future allocations, this strategy does not increase total funds available for capital improvements. Rather, it is a financing mechanism that allows PHAs to leverage future allocations today.

Conclusion

This chapter outlines on-going state and federal efforts to preserve affordable rental housing. While HUD provides a number of options for supporting the fiscal health of these properties, the programs provide limited protection for extended affordability. RHS's programs are flexible and capable of preserving the rural affordable housing stock, but they are underfunded and the focus on preservation has slowed or stopped production of new units. Congressional appropriations for HUD and RD programs continue to shrink, and affordable housing advocates face a constant battle proving that funding should be maintained. Florida Housing has begun to address preservation to a limited degree, but its programmatic responses are still in the early stages, and therefore affect a very small number of properties. Finally, PHAs have found that their allocations permit only piecemeal upgrading of their units.

Congress has not been entirely silent in addressing preservation. Legislation to create a national Affordable Housing Trust Fund, ease the impact of exit taxes and provide federal matching dollars to states that invest in affordable housing preservation activities were all introduced in 2005, although none have passed.

Chapter Three
A Comprehensive Preservation Strategy for the State of Florida

Introduction

The Commission has devoted the better part of two years to understanding the scope of the preservation issue and to developing recommendations for a meaningful preservation strategy for Florida. Certain guiding principles emerged over the course of the Commission's study:

- The most efficient producers of multifamily affordable housing, namely experienced nonprofit and for profit developers, are discouraged from taking on preservation due to a lack of financial incentives and an uneven playing field in the state application process;
- Existing federal funding programs for preservation fall short in several areas, including the lack of funding, minimal affordability restrictions and lengthy processes that drive owners away from taking advantage of the programs; and
- Gaps in the state's housing data are hobbling the ability of housing advocates and providers to assess the condition of the housing inventory, identify where and when affordability may be expiring and formulate a prompt and effective response.

As part of its discussion, the Commission took up the issue of the conversion of affordable rental units to condominiums. Several developers have asked Florida Housing to terminate the long term affordability requirements on units built with funds from the state's affordable housing programs. In one case, the request included a proposal to convert the rental units to affordable condominiums. Releasing these units from the affordable rental housing inventory represents an important and, in the opinion of the Commission, unwelcome precedent.

It may be possible to describe the solutions to preserving multifamily affordable housing in fairly simple terms: provide more money to support developers' acquisition and rehabilitation of properties and maintain reliable, timely data about the condition of the inventory, including the regulatory requirements that govern affordability. However, as the pressures and barriers outlined earlier make clear, addressing the preservation dilemma is a multi-faceted undertaking. While it is accepted that preservation transactions generally cost less to complete than new construction, it is also true that preservation transactions are often more complex and risky. A preservation project holds many more unknown factors, any one of which could translate into increased costs. An effective preservation policy must protect families, promote the participation of experienced developers and encourage the constant development of information and knowledge about the affordable housing stock.

Part One – Encourage Private Sector Involvement in Preservation

Private developers are key players in the construction of new affordable housing, and preservation transactions can also benefit from the participation of experienced and efficient developers. It is important to recognize that preservation deals bring their own challenges:

- Acquisition and rehabilitation applications are disadvantaged in Florida Housing's funding process by having to compete with new construction applications;
- The developer fee for acquisition and rehabilitation deals does not provide a financial incentive to take on either the risk or predevelopment expenses; and
- Banks and financial institutions do not offer an affordable bridge loan product designed to acquire at risk properties and maintain affordable rents.

Florida Housing has focused for a number of years on financing new units of affordable rental housing to meet the needs of the state's increasing population, and today hundreds of thousands of units exist due to these efforts. Now, as these units are aging and affordability periods are beginning to expire, the state must shift some of its focus to keeping units in the affordable housing inventory. This means the state must commit resources to the development of tools that will attract private sector stakeholders to preservation transactions.

Recommendation – Florida Housing Finance Corporation should create a Preservation Set-Aside for 9% Housing Credits to fund no less than 4 preservation deals or 400 units, whichever is greater, each year.

Creating a preservation set-aside addresses several of the disadvantages that a preservation transaction faces under the current system. The first issue is proximity points. Currently, the Universal Application Cycle awards more points to developments that are located closer to facilities and services such as grocery stores, pharmacies, recreational spaces and local transportation. By definition, preservation applications involve existing buildings that were placed in service before proximity to these kinds of services were a policy priority for the state. Developers of new construction often build on open land advantageously located in relation to services and facilities.

The second issue deals with on-site features and amenities. The Universal Application Cycle provides a list of required and optional on-site feature and amenities which can garner between 9 and 12 points for an application, depending on the development type. Acquisition/rehabilitation applications can receive double points for certain features and amenities, which mitigates the advantage of new construction applications to a certain degree. However, many required and optional features demand large amounts of land, which is a clear bias towards new construction. Older properties, particularly ones located in urban areas, are unlikely to have existing amenities such as community centers, pools or car care areas. To include these amenities an owner would have to demolish units to free up land, reducing both the overall number of units and the rental income needed to support the property’s operating expenses.

A preservation set-aside will allow preservation applications to be compared to one another, eliminating the unfair advantage of new construction. The Commission also discussed the fact that urban properties are more likely to be near services and amenities, giving these properties a possible advantage over rural preservation deals in this new set-aside. Florida Housing is encouraged to consider ways to equitably compare urban and rural preservation applications.

In its discussion about this set-aside, the Commission touched on the subject of the Universal Application Cycle “set aside unit limitation” (SAUL). This concept helps Florida Housing distribute its funding resources around the state. The Commission recognized that funding for preservation units should also be spread throughout the state and encourages Florida Housing to develop a mechanism to achieve this. However, the Commission also agreed that preservation units should not be counted against a county’s new unit SAUL.

Finally, creating a preservation set-aside will also encourage developers to submit more acquisition and rehabilitation applications. In the 2006 Universal Cycle Application, Florida Housing received 95 applications for new construction and only nine for acquisition and rehabilitation. The Universal Cycle application, with its annual rule development process and commitment to public input, remains the best mechanism for allocating resources to preservation deals. Once the new preservation set-aside has been implemented, it should be reviewed each year to determine if 9% Housing Credits alone are successful in financing preservation transactions. If Florida Housing finds that they do not provide sufficient funds, the set-aside should combine SAIL and 9% Housing Credits. There is already a precedent for this combination to support affordable housing transactions in lower median income counties and for certain demographic targeting.

Recommendation – Florida Housing Finance Corporation should combine the acquisition and rehabilitation costs of a preservation transaction into a single total development cost and award a developer fee equivalent to that received for new construction.

Currently, the developer fee on the acquisition portion of a preservation deal is capped at 4 percent with 10 percent for the rehabilitation portion. By contrast, the developer fee for new construction is capped at 16 percent if the deal includes 9% Housing Credits and 18 percent for all other deals. If Florida Housing wishes to promote preservation of existing units, it must invite the developer community to the table with a developer fee that acknowledges the inherent risks and challenges of these transactions.

Typically, developers purchase an option to buy empty land which provides a window of opportunity for due diligence into the condition of the property. Recently, developers have been buying land outright. While this requires substantial capital, there are still many uses for the undeveloped property, and several exit strategies can be pursued if financing to construct affordable housing is not acquired. Purchasing existing buildings, on the other hand, immediately reduces the options for an exit strategy. In the market conditions created by condominium conversions, sellers do not have to settle for a future option to buy. They can sell their properties quickly and for a healthy profit.

In new construction situations, the developer can take full advantage of the economies of standardized design and architecture. Open land is easier to survey and map, and provides a blank canvas on which infrastructure and buildings can be placed. Environmental issues are easier to identify in new construction projects, and the costs of addressing any such issues are easier to quantify and build into the project's expenses at the beginning. A key indicator of the lower level of risk involved in new construction is the fact that contingency costs, i.e., the amount of money required to absorb cost overruns or unforeseen expenses, can be less than 5 percent. In sharp contrast, the contingency costs for preservation transactions often run between 10 and 15 percent.

Preservation deals are more likely to involve older buildings. While a physical needs assessment will identify certain necessary repairs and upgrades, others may be uncovered once rehabilitation starts. For instance, units may contain asbestos or lead based paint. There will likely be significant effort in transitioning in new management teams. Preservation generally involves an occupied property, and moving residents to accommodate the rehabilitation work being done on the property usually requires some kind of rent support from the owner or placing the family in an alternate unit.

The bottom line is that preservation transactions are far riskier than new construction, and the Commission strongly believes that it will take a competitive developer fee to draw experienced developers into these complex transactions.

Recommendation – The Florida Legislature should appropriate $25 million for the creation of an affordable housing preservation bridge loan program, to be matched by private lenders to create a program totaling a minimum of $50 million. This appropriation should not supplant funding for existing affordable housing programs.

The Commission's proposed revolving bridge loan program would be administered by Florida Housing and fund predevelopment, acquisition and rehabilitation activities. The state's funding subsidy would be matched through a Request for Proposals process to find a lending consortium that would both match the state's investment with another $25 million from private financial institutions and administer the program. The program would offer 2-3 year loans to give a developer acquisition financing as well as the time to stabilize and position a property for more favorable permanent financing. Loan to value ratios in this program would be higher than those available in the private market. The Commission discussed two options for the use of the state's funding in this program: hold it in reserve to pay for any losses stemming from a borrower's inability to secure affordable financing, or loan it directly to a borrower to make preservation transactions financially feasible. If the subsidy is used for direct loans, the state would take a second mortgage position to the private lender's financing.

In today's market of quick sales, developers may be required to purchase a property outright, in order not to lose the preservation opportunity. Florida Housing's primary funding cycle takes place once a year and may not be open at the time of the purchase, leaving the owner to carry the property as long as 18 months without any access to affordable financing tools. Furthermore, preservation transactions are most likely to fall apart in the very early stages, when a new or potential owner does not have funds for the acquisition and predevelopment costs. Nonprofit owners and PHAs often do not have upfront cash to purchase a property outright, but these are the kind of mission driven organizations that should be encouraged to do more preservation transactions.

Traditional bridge loans are available in the market place as short term loans, usually lasting one year or less, which can be used to provide up front acquisition and predevelopment financing. However, the short term nature and flexibility of traditional bridge loans come at the price of higher interest rates, which increases the overall cost of the loan. The higher cost ultimately trickles down to the residents in the form of increased rents to cover debt service. Traditional bridge loans also provide loan amounts of only 75-80 percent of a property's value. Preservation deals may need a greater infusion of up front cash.

Flexibility is one of the most important characteristics of a successful preservation funding program. These deals can require predevelopment money for property acquisition and other soft costs, rehabilitation funds to pay for repairs, deferred maintenance or capital improvements or recapitalization for depleted reserves. Anything that can be done to streamline the actual process of the loan, such as standard underwriting applied by a single loan servicer, will make the program a more responsive tool and better support preservation transactions. A faster process may convince a seller interested in completing the sale as quickly as possible to sell to a preserving entity.

Florida Housing's request for proposals should go to state and national intermediaries and ask them to specify:

- Their history and successes in making loans for affordable housing;
- Sources of private funds to match Florida's seed money; and
- How standard underwriting processes and loan policies will be developed with Florida Housing's involvement.

The Commission did not determine a minimum loan amount, although conversations with the National Housing Trust Community Development Fund brought up a figure of $500,000 per loan. [27]

Recommendation – The Florida Legislature should revise Section 420.5087 (6)(l), Florida Statutes, to allow moderate rehabilitation in the SAIL program, defined as repairs and upgrades equaling a minimum of $10,000 per unit with a maximum amount equal to 40 percent or less of the appraised as-is value of the property, excluding land.

Many preservation transactions require refinancing, acquisition funding and extensive rehabilitation. However, there are aging properties that owners want to maintain as affordable, but which require additional funding for more moderate rehabilitation needs. Replacement reserves that are required to be set aside each year from operating income will handle a variety of replacement needs, but the current per unit reserve amount of $200 that Florida Housing requires is likely not enough to address the full range of physical plant needs on rental units with long affordability periods. Property owners generally agree that somewhere around a property's fifteenth year, additional funding would be helpful to ensure long term use of a property. The need for this type of funding is exacerbated by even lower per unit reserves in properties financed by entities other than Florida Housing.

Currently, HOME funding could be used for this purpose, as is being tried in Florida Housing's Section 202 Demonstration Program. Another source of funding could be the SAIL program, but the current statute only allows substantial rehabilitation, defined as improvements that exceed 40 percent of the value of the existing dwelling.

This 40 percent definition creates a situation in which a property owner facing less intense rehabilitation must either overspend for unnecessary work in order to make the 40 percent threshold or allow the property to continue declining until this point is reached. Allowing the SAIL program to fund moderate rehabilitation could provide a more efficient way of preserving housing over time, and it offers an opportunity to require additional affordability restrictions as appropriate. Such moderate rehabilitation funding should be based on a physical needs assessment, with the funding used specifically for the actual repairs or upgrades specified in the assessment.

Part Two – Make Existing State Funding Programs and Processes More Preservation Friendly

To understand whether existing state programs and processes can meet the needs of preservation transactions, the Commission reviewed the use of the Low Income Housing Tax Credit, SAIL, Bonds and HOME programs, singly and in their most common combinations. The Commission created a model preservation scenario, Preservation Place Apartments, with income and expense assumptions for a 100-unit property, as well as acquisition and rehabilitation costs for the development and both nonprofit and for profit scenarios.

The Commission sought to answer the following questions:

- Do these programs provide enough financing to cover the costs of acquisition and rehabilitation?
- Are there any regulatory barriers that make a program less effective as a preservation tool?
- What changes would make these existing programs more "preservation friendly"?
- What are the Commission's recommendations to Florida Housing for prioritizing the use of these funding resources?

Preservation Place Apartments

Preservation Place Apartments is 100 units of affordable multifamily housing, with 20 1-bedroom, 60 2-bedroom and 20 3-bedroom apartments. Located in a stable neighborhood, the property earns a net operating income of $248,680.

A preservation owner could reasonably expect to pay $50,000 per unit to acquire the property and $30,000 per unit to pay for rehab costs for a total preservation cost of $8,000,000.

<u>Recommendations for State Administered Funding Programs</u>

Bonds combined with 4% Housing Credits and SAIL gap financing at 0 or 1 percent interest provided enough financing to preserve our fictitious property. 2006 legislation now gives Florida Housing the option of providing a 1 percent SAIL loan. The Commission strongly encourages Florida Housing to use this lowest interest rate to finance preservation applications.

The SAIL program is most often used for gap financing, although nonprofit developers can use SAIL as the only funding source for a preservation transaction, provided they are able to obtain a 10 percent match from a local source. However, there are some obstacles to using only SAIL. The first is the leveraging issue. One tiebreaker Florida Housing uses in the Universal Cycle Application to fund developments is the percentage of SAIL as a percentage of total development cost being requested by an applicant. Using less SAIL per development is an advantage in this analysis. Ultimately, using SAIL for more than 25 percent of total development costs negatively impacts the development's ability to compete in the Universal Cycle. The second obstacle to using only the SAIL program is the $4 million cap on the amount of SAIL any one development can request – at $8 million to preserve our fictitious property, SAIL can only provide half of the funding needed to acquire and rehabilitate the units.

Recommendation – Florida Housing Finance Corporation should allow HOME funds to be combined with other state administered funding programs to make preservation transactions financially feasible.

In the Commission's preservation scenario, the HOME program could cover the total development costs of the transaction without any additional funding if the loans are made at 0-1.5 percent interest rates. The Commission also noted that HOME funds generally cannot be layered with other Florida Housing funds. An exception to this is the Section 202 Elderly Housing Demonstration Program, which combines 4% Housing Credits, Bonds and HOME to support the rehabilitation of existing Section 202 affordable housing for elders. Florida Housing has targeted HOME funds to non-Participating Jurisdictions which do not receive local entitlement HOME funds. The Commission suggests that this focus be maintained with changes to support preservation deals in these more rural areas.

Recommendation – Florida Housing Finance Corporation should prioritize the preservation of project based rental assistance in its preservation funding efforts.

The remaining question was how Florida Housing should prioritize the use of its funding resources. The Commission is not suggesting that each and every preservation opportunity should be funded. The on-going financial feasibility of a preservation transaction is an important consideration. Highest priority should go to the preservation of properties with project based rental assistance. Once this federal subsidy expires, it is permanently lost to the state. Most of the households living in these units have extremely low incomes, and while residents in those units with rental assistance would receive Enhanced Vouchers to maintain rents at an affordable level if a property opted out, residents in units without rental assistance would either be displaced or severely rent burdened. It is critical to maintain federal support for extremely low income units whenever possible.

<u>Recommendations for the Universal Application Cycle</u>
After reviewing the state administered funding programs, the Commission also examined the Universal Application Cycle for areas where preservation deals may be disadvantaged. The major issues have been addressed by other recommendations, but the Commission noted a few items deserving of separate attention.

Unit Cap on Elder Development – Florida Housing Finance Corporation should eliminate the cap on the number of units that can be allowed in existing developments targeted to elders.

The Application Instructions state that rehabilitation transactions targeted to developments for elders cannot have more than 160 units. There are aging elder developments with more than 160 units in need of preservation funding, and the number of units in the development should not be a factor in whether these existing developments are funded.

Set-Aside Commitment Compliance Periods – Florida Housing Finance Corporation should allow owners more time to bring a preservation development into compliance with its set-aside commitment. For properties with federal funding, the grace period should be the federally required 12 months. For SAIL or other state funding programs, this grace period should be 14 months.

Currently, developments that receive funding must be in compliance with their set-aside commitment at closing. This is very difficult to accomplish because it can take time to turn leases. There should be a grace period of 12 months for properties with federal funding, and 14 months for properties with SAIL or other state funding, to allow owners enough time to income certify and move in residents who comply with set-aside commitments.

Recommendations for the State Housing Initiatives Partnership (SHIP) Program

The Commission spent most of its time considering federal and state programs which are used more often to fund properties with a large number of units. The following recommendations are intended to encourage local governments and SHIP staff to direct more resources towards preserving smaller properties that cannot take full advantage of state administered programs.

Recommendation – The Florida Legislature should revise Section 420.9075(3)(e), Florida Statutes, to increase the per unit loan or grant limit on rental units which triggers annual monitoring and tenant income certification in the SHIP program from $3,000 to $15,000.

Currently, the SHIP statute states that any loan or grant in the original amount of $3,000 or less shall not be subject to annual monitoring and determination of tenant eligibility requirements. Only the initial renter must be income eligible and pay an affordable rent. This minimal requirement acknowledges that local SHIP administrators generally have limited resources to carry out ongoing income certification and monitoring on rental properties. The SHIP statute should be amended to raise the rehabilitation expense limit on properties of 10 units or less from $3,000 to $15,000 per unit similar to what was implemented for the Hurricane Housing Recovery Program.

Recommendation – The Commission strongly encourages local governments to consider how unrestricted SHIP program income can support preservation of smaller affordable and conventionally financed housing properties.

The Florida Statutes prioritize home ownership in the initial allocation of SHIP funding to local governments each year. However, program income generated by SHIP activities is not subject to these requirements, which gives local governments the flexibility to spend these funds according to local priorities. There are a number of smaller properties throughout the state, consisting of 5 units or less, which provide families with reasonable rents and which would benefit from some upgrading. Many of these “mom and pop” properties are conventionally financed and have no affordability restrictions. The SHIP program could address the need to maintain these units, being careful to ensure that such properties will likely remain affordable over time.

Recommendation – The Florida Legislature should revise Section 420.9072(6), Florida Statutes, to increase the administrative fee allowed on unrestricted SHIP program income to 10 percent to match the administrative fee allowed under the initial SHIP allocation.

This recommendation acknowledges that local SHIP administrators will incur administrative costs if their local governments choose to utilize SHIP funds for the preservation of rental properties.

Part Three – Knowledge is Power

As stated earlier, understanding the status of Florida's assisted housing stock is fundamental to creating and managing a thoughtful preservation strategy. It is critical to know the regulatory and market issues of a particular development.[28] Details about existing contractual and regulatory obligations, such as the mortgage status, affordability agreement, and whether and what type of rental assistance contract is in place informs the development of a project-specific preservation strategy. Understanding how the property is positioned in the local real estate market is also important – location, market value, and current land uses provide key information on how the current owner is likely to respond to preservation strategies.

Recommendation – Florida Housing Finance Corporation should prioritize comprehensive data collection on the properties in its portfolio and make this information available to the public through the Florida Housing Data Clearinghouse.

The Florida Housing Data Clearinghouse includes a database called the "Assisted Housing Inventory," which provides basic information on all subsidized properties in Florida financed through HUD, RD, Florida Housing and local housing finance authority programs. While the HUD and RD data are fairly complete, Florida Housing's data lack key variables for preservation analysis, such as loan maturity dates and affordability periods.

Collecting and maintaining Local Bond data is another challenge. While the Shimberg Center has been able to gather some information through surveys and phone calls to local housing finance authorities, the data on units financed with Local Bonds still has many gaps. The requested information is not kept in standard formats, and obtaining the maturity date on a Local Bond deal often requires personnel time to research hard copy Bond documents. In the most recent data, there are just over 6,600 units for which affordability cannot be calculated due to a lack of information. The majority of these units, approximately 6,500, are funded only with Local Bonds, underscoring the difficulty in maintaining up to date information on this housing portfolio. The state must present compelling reasons for requesting this information to persuade overworked county or city staff that knowing Bond maturity dates is vital to maintaining housing for a community's families.

Ideas for Making the Florida Housing Data Clearinghouse's Assisted Housing Inventory More User Friendly

- ✓ Delete Shimberg identification numbers from the website or hide them from view when search results are brought up
- ✓ Provide column totals without having to download to an Excel worksheet
- ✓ Search results should come up in alphabetical order, with an option to order them in chronological order (by expiration date)
- ✓ Address and contact information should be hyperlinked to the property name, to eliminate unnecessary columns
- ✓ The rent supplement information should identify the type of subsidy program
- ✓ A column should be added showing the actual funding programs (e.g., Section 202, Section 236, SHIP, HOME, etc.)

Recommendation – The Florida Legislature should adopt a notice policy with a minimum notification period of 12 months, covering prepayments and opts outs for all affordable rental housing of 5 units or more with permanent financing from the state. The policy should pertain to developments funded after the date of policy adoption.

The Congressional response to the preservation crisis started in 1987 when the Emergency Low Income Housing Preservation Act (ELIHPA) was enacted. This legislation was replaced by the Low Income Housing Preservation and Resident Homeownership Act (LIHPRHA) in 1990.

ELIPHA placed a two year moratorium on all mortgage prepayments, hoping to minimize the involuntary displacement of residents and retain units as affordable housing to low income families while Congress developed a more permanent solution.[29] LIHPRHA offered these solutions in the form of financial incentives to owners to keep their properties affordable and technical assistance for residents to help them form resident associations and purchase their buildings. LIHPRHA also maintained the moratorium on prepayments, a component that was protested strongly by the owners of affordable housing.

Owners of affordable housing properties ultimately challenged the moratorium on prepayment of their mortgages in court, claiming that suspending their right to prepay the 40 year mortgages broke the contractual understanding under which the owners agreed to build the affordable housing in the first place. In 1996, Congress issued a public notice re-authorizing prepayments and requiring notice of at least 150, but no more than 270, days to HUD, tenants and local governments.

Some state legislatures determined that the federal notice period did not provide enough time for preservation strategies and funding to be developed when an owner decided to prepay a mortgage or opt out of a rental assistance contract. There was a concern that low income families were being displaced and affordable rental units permanently lost from the housing inventory. In response, these states passed legislation requiring longer notice periods for properties financed with state and federal affordable housing programs and with rental assistance programs attached to the units.

Property owners have challenged these state notice statutes in almost every one of these states under the argument that the notice provisions of the federal ELIPHA or LIHPRHA statutes pre-empts state law. The cases that have been heard on notice statutes have not provided clear precedent, and it is difficult to predict how Florida's courts would rule. However, the existing case law centers around a state's attempt to place more restrictive notice requirements on federal housing assistance programs. The Commission's recommendation is restricted to state administered programs, which could prove to be an important distinction should an owner seek to challenge this statute. Ultimately, the Commission believes that it is critical to ensure families are not displaced when an owner prepays a mortgage or opts out of a project based rental assistance contract. Furthermore, the Commission believes it will take every day of a year to put together financing for a preservation transaction. Finally, a state notice statute can also serve as an important information tool; interested parties at the state and local level will be informed of which properties are at risk of losing affordability.

The language of the Commission's recommended notice statute can be found in Appendix 2.

Part Four – Encourage Nonprofit and Public Housing Authority Participation in Preservation

In the national preservation discussion, many believe that nonprofit developers and public housing authorities may be more likely to carry out preservation transactions, especially those that save extremely low income units. At this point in time, more for profit developers have experience with complex financing structures, dealing with local governments and regulations, negotiating debt and equity options and overseeing construction and rehabilitation projects. However, the profit margin of some preservation transactions can become too low to attract for profit involvement, and the lack of trained non profit developers will be keenly felt when no one is ready to fill this need.

Across Florida's affordable housing delivery system, with the exception of a few larger organizations, most nonprofit developers are rather small and have neither the capital nor the infrastructure to pursue and execute preservation transactions. Limited operational funding may make it difficult for them to retain skilled development staff and, if they do not focus solely on development work, this may reduce the time spent by an already small staff on the complicated task of developing and financing preservation deals.

Recommendation – Florida Housing Finance Corporation should broaden the field of experienced and efficient developers by using the Affordable Housing Catalyst Training and Technical Assistance Program to provide a series of preservation workshops for nonprofit developers, public housing authorities and local governments.

The skills needed to complete a preservation transaction include knowing how to analyze the economic feasibility of preserving a given property, knowledge of the available financing programs and their requirements, awareness of the challenges of managing an affordable multifamily property, knowing how to deal with local governments, land use regulations and building community coalitions in support of affordable housing.

The Affordable Housing Catalyst Training and Technical Assistance Program provides community based organizations and state and local governments with technical assistance, including training on how to develop affordable housing and creating successful public/private partnerships. Using this highly successful program as a model, the Commission recommends that Florida Housing use the Catalyst Program to ensure that a preservation training series is created. This preservation series should consist of several workshops including:

- The trends and data that show why preservation is needed and how it affects a local community;
- How to evaluate a property in the areas of financial stability, physical condition, market location and other pertinent elements;
- Overview of federally assisted housing;
- Overview of the programs, both state administered and federal, that finance Florida's housing stock;
- Financing tools for preservation;
- How to develop coalitions and partnerships in support of local preservation efforts; and
- Management issues (marketing, income eligibility, program compliance, property maintenance and planning for capital improvements).

Florida Housing's efforts to expand the universe of trained and informed developers interested in, and capable of taking on preservation efforts, will be time and money well-spent.

Part Five – Converting Affordable Multifamily Housing into Condominiums: Friend or Foe?
During the two years the Study Commission has focused on preservation, the rapid pace of condominium conversions has gained national attention. While condominium conversions are providing affordable home ownership for some, they are siphoning off rental housing that was providing lower income residents with housing at reasonable rates. As stated earlier, the Florida Department of Business and

Professional Regulation approved the conversion of more than 26,000 units of rental housing to condominiums in 2005 and the trend has started to seep into the affordable multifamily stock. Florida Housing has received several requests from developers for permission to convert rental units constructed with state administered programs to condominiums.

Recommendation – Florida Housing Finance Corporation should deny any requests for termination of a Land Use Restriction Agreement or an Extended Use Agreement for the purpose of converting affordable rental units into condominiums.

Owners who receive funding from Florida Housing usually sign Extended Use Agreements (EUAs) or Land Use Restriction Agreements (LURAs) under which the owner voluntarily commits to maintain the property as affordable housing for 30 or more years. The affordable multifamily properties that are targeted for conversion are likely to be located in neighborhoods with rising property values and a strong demand for home ownership. Surrounding properties may also be able to command high market rate rents, making it difficult or impossible for low income families to find housing in the area.

In consideration of the fact that Florida Housing has committed finite funding resources to owners for the express purpose of supplying safe, decent affordable rental units, requests to convert such units to condominiums should be denied unless the owner can present a compelling reason why permission should be granted. Releasing an owner from a LURA or an EUA can mean disrupting residents from long time homes and communities. This can be especially difficult for elders, people with disabilities and others with special needs who rely heavily on those around them to carry out daily activities.

A recent request for permission to convert affordable rental units to condominiums came with an offer to replace each of the "released" units with two affordable rental units in a new location. On the surface, this kind of two for one trade is attractive, but it raises a number of questions.

- Where are the new units to be located?
- Is the new community comparable in services and school quality to the original location?
- What is the owner's plan for relocating residents in a smooth manner?
- What amenities and resident services are being offered at the new location?
- What new affordability restrictions will the owner commit to?

Overall, the Commission found that it is more important to maintain the stability of communities and families and hold owners responsible for their commitment to maintain long term affordability for rental housing.

Conclusion

The Affordable Housing Study Commission has raised the issue of preservation in past reports. In its 1998 report, the Commission included preservation of existing affordable housing in its Comprehensive Affordable Housing Policy for Florida. In the 2004 report, the Commission noted that preserving existing multifamily housing is important for maintaining access to housing for extremely low income families. As stated earlier, both home purchase prices and rents have outstripped the earning power of Florida's citizens and the 2004-2005 hurricane season exacerbated the situation by destroying thousands of homes lived in by vulnerable populations, namely elders and the working poor. The Commission hopes that the recommendations offered in this report will be used as the foundation of the state's strategy for addressing the urgent preservation issue.

2006-2007 Study Year

The Study Commission has decided to carry out a review of the State Housing Initiatives Partnership program for its 2006-2007 study year. The SHIP program was enacted as part of the William E. Sadowski Act of 1992 and is one of Florida's flagship affordable housing programs. This program provides all 67 counties and 50 cities with funds derived from proceeds from a portion of the documentary stamp tax on real estate transactions. Since its inception a total of approximately $1.4 billion has been appropriated by the Legislature to the SHIP program.

A national model, the SHIP program will turn 15 years old in 2007, and the Commission believes this is a perfect time to examine its successes and consider what changes, if any, are needed to make this program even more responsive in the coming years.

Endnotes

[1] National Low Income Housing Coalition at http://www.nlihc.org/research/heatup/statedata.pdf.
[2] For more information about the work of the Hurricane Housing Work Group and a copy of its report and recommendations, see: www.myflorida.com/myflorida/governorsoffice/Hurricane/.
[3] Ellington, Dorothy. From a discussion with Affordable Housing Study Commission staff on June 26, 2006.
[4] Housing Assistance Council Florida Data Sheet at www.ruralhome.org.
[5] Housing Assistance Council's website at www.ruralhome.org.
[6] Orlebeke, Charles J., "The Evolution of Low-Income Housing Policy, 1949 to 1999," *Housing Policy Debate*, Vol. 11, Issue 2, 2000, Fannie Mae Foundation.
[7] U.S. Department of Housing and Urban Development, Jacksonville and Miami Offices, 2005. In Florida Housing Finance Corporation's 2003 analysis of Florida's affordable rental supply compared to need, 2002 data from HUD showed over 41,000 public housing units, suggesting that more than 2,000 units have been demolished over the last three years. Anecdotal evidence supports this.
[8] The HOPE VI program was created in 1993 to redevelop deteriorating public housing and promote community redevelopment more generally.
[9] Lockwood Williamson, Anne, et. al., *Public Housing Authorities in Florida: An Analysis of Selected Issues*, Technical Note Series 04-01, Shimberg Center for Affordable Housing, February 2004, p. vi.
[10] Data for this section were compiled by Florida Housing Finance Corporation, based on properties in Florida Housing's Housing Project Portfolio database, March 2005.
[11] Florida Housing Finance Corporation, April 2005.
[12] *Window of Opportunity: Preserving Affordable Rental Housing*, The John D. And Catherine T. MacArthur Foundation, n.p., no date, www.macfound.org/programs/pri/affordable_housing.htm.
[13] Mayer, Neil, "Preserving the Low Income Housing Stock: What Nonprofit Organizations Can Do Today and Tomorrow," *Housing Policy Debate* Vol. 2, Issue 2, Fannie Mae Foundation, pp. 502-504.
[14] Florida Department of Business and Professional Regulation website at http://www.myflorida.com/dbpr/lsc/index.shtml.
[15] http://www.hud.gov/offices/hsg/mfh/progdesc/purchrefi223f.cfm.
[16] http://www.hud.gov/offices/hsg/mfh/progdesc/rentcoophsg221d3n4.cfm.
[17] Ibid.
[18] Applicants must be able to provide 2 percent of the total development costs for use as initial operating capital. Other restructuring tools are revitalization grants of up to $5,000 per unit, a 0 percent interest rehab loan and soft second mortgages for capital needs.
[19] Popkin, Susan J., *A Decade of HOPE VI: Research Findings and Policy Challenges*, The Urban Institute and The Brookings Institute, May 2004.
[20] HUD Notice of Funding Availability, *Federal Register*, Vol. 71, No. 69, April 11, 2006.
[21] HOPE VI granted just under $157 million to its eight grantees in Fiscal Year 2005; http://www.hud.gov/offices/pih/programs/ph/hope6/grants/revitalization/05/grantawardees.cfm.
[22] According to HUD Notice PIH-2005-22(HA), issued June 24, 2005, "substantial leveraging" is defined as an amount of non-public housing funds at least equal to one-third of the total RHF funds in the first 5-year increment received by a PHA.
[23] National Association of Housing Redevelopment Organizations, http://www.nahro.org/programs/phousing/capitalfund/index.cfm.
[24] Http://www.hud.gov/offices/pih/programs/ph/capfund/grants/2006/fl.cfm.
[25] Ibid. Large PHAs can use up to 20% of Capital Funds for operational costs, while small PHAs, those with 250 units or less, can also use all of their Capital Funds allocation for operational costs such as salaries, consultants or utility bills.
[26] Http://www.hud.gov/offices/pih/programs/ph/capfund/cffp.cfm.
[27] The National Housing Trust Community Development Fund is an arm of the National Housing Trust and provides predevelopment and bridge loan financing to affordable multifamily housing around the country.
[28] Achtenberg, Emily P., *Stemming the Tide: A Handbook on Preserving Multifamily Subsidized Housing*, eds. Neil Carlson and Vincent O'Donnell, Knowledge Sharing Initiative of Local Initiatives Support Corporation, September 2002, p.4.

[29] Peiser, Richard B., “The Fallout from Federal Low Income Housing Preservation Programs: A Case Study in Estimating Damages”, *Housing Policy Debate*, Vol.10, Issue 2, 1999, published by the Fannie Mae Foundation. ELIPHA also created a process for increasing the rent subsidy to compensate owners for the loss of the prepayment right. According to Mr. Peiser’s article, this process was so cumbersome and lengthy that few owners even bothered to initiate the process which severely hampered its effectiveness as a means of compensation.

Appendix I

TABLE 1. When Are AFFORDABILITY PERIODS in Florida's Housing Stock Projected to Expire?								
Program	**Total # Units**	**Mortgage Already Satisfied**[1]	**Next 5 Years**	**Next 10 Years**	**Next 15 Years**	**Next 25 Years**	**Next 35 Years**	**36+ Years**
FEDERALLY ADMINISTERED PROGRAMS		By 2005	By 2010	By 2015	By 2020	By 2030	By 2040	After 2040
HUD Programs	**52,328**	**151**	**1,142**	**12,553**	**4,185**	**13,078**	**7,953**	**994**
Section 202	24,510	0	205	3,997	3,518	10,310	5,703	777
Section 236	8,025	151	136	7,294	188	0	256	0
Section 811	745	0	0	0	0	0	528	217
Section 221(d)(3) & (4)[2]	7,471	0	801	1,262	479	2,768	1,466	0
Section 8 (project-based) ONLY[3]	11,577	(This rental assistance is generally provided now via 1-5 year contracts to properties)						
Rental Assistance (all other HUD types)[4]	16,845							
Rural Development	**19,872**	**1,945**	**4,131**	**3,738**	**5,540**	**3,814**	**704**	**0**
Section 514/516	3,934	1,355	865	445	221	816	232	0
Section 515	15,938	590	3,266	3,293	5,319	2,998	472	0
Section 521 (project-based rental assistance)	11,171	(This rental assistance is provided via 4-5 year contracts to properties)						
STATE ADMINISTERED PROGRAMS	**Total # Units**	**Affordability Period Expired**	By 2010	By 2015	By 2020	By 2030	By 2040	After 2040
Florida Housing Finance Corporation[5]	**155,769**	**13,567**	**7,257**	**755**	**582**	**24,878**	**24,796**	**83,934**
LOCALLY ADMINISTERED PROGRAMS	**Total # Units**	**Affordability Period Expired**	By 2010	By 2015	By 2020	By 2030	By 2040	After 2040
Local Bonds[6]	**48,297**	40	992	440	52	8,457	12,779	18,847
Minus Duplication (Units supported by more than one program)[7]	-38,592	0	-564	-296	-1,398	-6,682	-9,007	-18,090
TOTAL UNITS EXPIRING OVER TIME[8]	**237,674**	**15,703**	**12,958**	**17,190**	**8,961**	**43,545**	**37,225**	**85,685**

Source: Compiled by the Shimberg Center for Affordable Housing and Florida Housing Finance Corporation, 2005

TABLE 1. NOTES

[1] "Mortgage already satisfied" means that the mortgage period is complete and the loan has been paid off. These units generally remain part of the affordable housing stock due to the continuing presence of some type of project-based rental assistance.

[2] Mortgage insurance and credit enhancement programs are generally not included here because they simply provide additional support to units financed by the programs listed in this table. The notable exception is the Section 221(d) program in its earlier years, which then provided below market interest rate loans, but now functions solely as a credit enhancement program for bond developments. Note that the unit total for this program includes 695 units with unknown expiration dates. Another 1,954 units also financed through Florida Housing programs are not included in this section, but are included in the Florida Housing unit count later in the table.

[3] In most cases, project-based rental assistance is provided IN ADDITION to some type of mortgage assistance. However, the 11,577 units in this section receive project-based Section 8 alone without any subsidized mortgage or other program assistance. Therefore, their affordability is solely dependent on their Section 8 contracts being renewed, and no attempt is made to show their expiration periods here, for reasons stated in Note #4.

[4] Includes all other HUD project-based rental assistance that is provided in addition to some other type of mortgage or program assistance, including Sections 202, 236, 811, 221(d), 515, Florida Housing, etc. As such, this total adds no additional units to the overall HUD Program unit count, but it does provide perspective on the number of units that are likely serving residents with extremely low incomes. Because most of these contract periods now run five years or less and are typically renewed, no attempt is made to show expiration information over time.

[5] Units financed through all Florida Housing Finance Corporation's mainstream rental programs are simply summarized here, because so many of these units are funded by more than one program. Table 3. provides a break out of units by program.

[6] The Local Bond total shown includes 6,690 units with no available data to determine expiration. The majority of these units, 6,518, are funded only with Local Bonds.

[7] The duplication total includes 2,383 units that receive project-based Section 8 rental assistance AND programmatic assistance from Florida Housing Finance Corporation. Thus while they are part of the total duplication count, they are not categorized by expiration date in cells to the right of the total. It is likely that these units are in older properties that have been refinanced through Florida Housing programs, maintaining the project-based Section 8 rental assistance on the units.

[8] To obtain the totals at the bottom of the table, the numbers in BOLD are summarized, then duplication from program overlap is accounted for by subtracting units funded by more than one program to get the final totals. The overall total number of units is different from the final sum of the subtotals in each expiration period, because a number of units in the total column are not included in the year columns to the right, as outlined in the notes above. The grand total in this table is less than Table 2., because this table does not include public housing, which is owned by government entities and is part of the affordable housing stock until it is demolished. Tenant-based Housing Choice Vouchers (Section 8), which are generally used in the private market, are not included in either table.

TABLE 2. Summary of the Estimated Age of Florida's Affordable Housing Stock, as of 2005[1, 2]						
Program	**Total # Units**	**1-10 Yrs Old[3]**	**11-20 Yrs Old**	**21-30 Yrs Old**	**31-40 Yrs Old**	**Over 40 Yrs Old**
HUD Programs	52,328	3,174	9,061	25,552	13,846	0
Public Housing[4]	38,827	1,033	996	9,336	14,515	12,302
Rural Development Programs	19,872	1,162	8,697	8,068	1,231	714
Florida Housing Finance Corporation Programs[5]	155,769	110,191	42,479	3,099	0	0
Local Bonds[6]	48,297	31,131	3,067	4,649	2,946	108
Minus Duplication (Units supported by more than one program)7	-38,592	-28,801	-4,848	-1,066	-1,359	0
TOTAL	**276,501**	**117,890**	**59,452**	**49,638**	**31,179**	**13,124**
Source: Compiled by the Shimberg Center for Affordable Housing and Florida Housing Finance Corporation, 2005						

NOTES

[1] Unit age had to be estimated for HUD and Rural Development units based on the date of mortgage satisfaction. The HUD program category includes 11,577 units of project-based Section 8 rent assistance with no other subsidy/program attached. Without mortgage term information, age of these units was estimated to be 21-30 years based on the program's run in the late 1970s-early 1980s. Over 2,800 of these Section 8 units appear to have been rehabilitated using Florida Housing programs, maintaining the Section 8 rent assistance into the future. Ages for another 695 units could not be estimated.

[2] While this table estimates the overall age of Florida's affordable housing stock, the table does not provide any sense of how many units in each age category have been rehabilitated since they were originally constructed.

[3] The "1-10 Yrs Old" column includes units funded through 2004, but not yet constructed.

[4] The Public Housing unit total includes 595 units of unknown age. HUD estimates that 1,668 of these units have been or are in the process of being rehabilitated with HOPE VI funds.

[5] Age information in the Florida Housing Finance Corporation portfolio is based on when a property was awarded funding, so if a property has received funding in more recent years for rehabilitation or refinancing of Bonds, the data will show the more recent funding rather than the original date of construction. As a result, the portfolio as a whole looks younger than it is. It is reasonable to assume that there are properties older than 30 years, and more properties are in the 21-30 year category than is shown by the data. However, the FHFC portfolio is still relatively young when compared to the federal portfolios.

[6] The Local Bond unit total includes 6,396 units with no available data to determine aging. All of these units were financed using Local Bonds only, suggesting that they are 15-25 years old, but this estimate is not included in the 10-year subtotals.

[7] The duplication table includes 2,518 properties of indeterminate age.

TABLE 3. When Are AFFORDABILITY PERIODS in FHFC's Housing Portfolio Projected to Expire?								
STATE ADMINISTERED PROGRAMS	**Total # Units**	**Affordability Period Expired**	By 2010	By 2015	By 2020	By 2030	By 2040	After 2040
Florida Housing Finance Corporation[1]	**155,769**	**13,567**	**7,257**	**755**	**582**	**24,878**	**24,796**	**83,934**
9% HOUSING CREDITS	61,353	687	3,359	270	0	15,008	78	41,951
4% HOUSING CREDITS	50,797	388	334	320	568	8,310	21,657	19,220
SAIL	47,095	0	1,242	305	17	2,079	128	43,324
HOME	6,704	0	883	142	82	442	0	5,155
MMRB	40,476	12,492	2,865	88	363	8,256	9,324	7,088

Source: Compiled by Florida Housing Finance Corporation, 2005

NOTE:
[1] The total unit count of 155,769 represents the total number of units in Florida Housing Finance Corporation's portfolio that are set aside to be affordable. The total portfolio, including unrestricted, market rate units, equals 166,131 units. The sum of the totals in each program category is overall greater than the totals in the Florida Housing category at the top of the table, because programs are often layered together to finance affordable developments.

TABLE 4. Summary of the Estimated Age of Florida Housing Finance Corporation's Affordable Housing Portfolio, as of 2005						
Program	**Total # Units**	**1-10 Yrs Old[3]**	**11-20 Yrs Old**	**21-30 Yrs Old**	**31-40 Yrs Old**	**Over 40 Yrs Old**
9 % Housing Credits	61,353	34,874	26,479	0	0	0
4% Housing Credits	50,797	50,106	691	0	0	0
SAIL	47,095	40,188	6,907	0	0	0
HOME	6,704	3,919	2,785	0	0	0
MMRB	40,476	25,039	12,338	3,099	0	0
SUMMARY OF ENTIRE FHFC PORTFOLIO AGE (UNDUPLICATED)	**155,769**	**110,191**	**42,479**	**3,099**	**0**	**0**

Source: Compiled by Florida Housing Finance Corporation, 2005

NOTE:
This age information is based on when the property was awarded funding, so if a property came in for rehabilitation or Bond refinancing, the data will show the more recent funding rather than the original date of construction. As a result, it is reasonable to assume that there are properties older than 30 years, and more properties are in the 21-30 year category than are shown by the data. However, the Florida Housing portfolio is still relatively young when compared to the federal portfolios.

Appendix II

The Florida Assisted Housing Preservation Act
Proposed Statutory Language

Sec. 1. Short title.
This Act may be cited as the Florida Assisted Housing Preservation Act.
Sec. 2. Purpose.
It is the purpose of this Act is to preserve and retain to the maximum extent possible, as housing affordable to very low, low and moderate income families or persons, those privately owned dwelling units that were provided for such purposes with state administered funding programs, to protect the tenants of these units from displacement resulting from the loss of use restrictions attached to these units and to address the overall lack of affordable housing for very low, low and moderate income families or persons in Florida.

Sec. 3. Definitions. As used in this Act:
"Affected public entities" means: the mayor of the city in which the assisted housing development is located or, if the development is located in an unincorporated area, the chairperson of the county board; the public housing authority in whose jurisdiction the assisted housing development is located, if any; Florida Housing Finance Corporation; and the Shimberg Center for Affordable Housing.

"Affordable" means:

- With respect to a housing unit to be occupied by very-low-income persons, that monthly rents, or monthly mortgage payments including property taxes and insurance, do not exceed 30 percent of that amount which represents 50 percent of the median adjusted gross annual income for the households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the housing unit is located, divided by 12.
- With respect to a housing unit to be occupied by low-income persons, that monthly rents, or monthly mortgage payments including taxes and insurance, do not exceed 30 percent of that amount which represents 80 percent of the median adjusted gross annual income for the households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the housing unit is located, divided by 12.
- With respect to a housing unit to be occupied by moderate-income persons, that monthly rents, or monthly mortgage payments including taxes and insurance, do not exceed 30 percent of that amount which represents 120 percent of the median adjusted gross annual income for the households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the housing unit is located, divided by 12.

"Affordability restrictions" means limits on rents that owners may charge for occupancy of a rental unit in assisted housing and limits on tenant income for persons or families seeking to qualify as tenants in assisted housing.

"Assisted housing" or "assisted housing development" means a rental housing development, or a mixed use development that includes rental housing, that receives funding from any state administered affordable housing funding program.

“Eligible Purchaser(s)” means one or all of the following:

- A formally created tenant association that represents at least a majority of the tenants in the assisted housing development or a tenant-endorsed representative *(selected according to Section 4(b) of this Act)*;
- Florida Housing or a state level purchasing preservation entity endorsed by Florida Housing Finance Corporation;
- A Local Public Housing Authority;
- A 501(c)(3) Non Profit corporation;
- A For Profit corporation.

"Florida Housing" means Florida Housing Finance Corporation.

"Owner" means the person, partnership, or corporation that holds title to an Assisted Housing Development.

"Prepayment" means the payment in full or refinancing of the federally insured or federally held mortgage indebtedness prior to its original maturity date, or the voluntary cancellation of mortgage insurance on an assisted housing development described in paragraphs (2), (3), or (4) of Section 3(d) that would have the effect of removing the affordability restrictions applicable to the assisted housing development.

"Tenant" means a tenant, subtenant, lessee, sublessee or other person entitled to possession, occupancy or benefits of a rental unit within the assisted housing.

"Termination" means:

- the expiration or early termination of an assisted housing development's participation in a state administered program for assisted housing as defined in Section 3 of this act, or
- the expiration or early termination of an assisted housing development's affordability restrictions described in Section 42(g) of the Internal Revenue Code for assisted housing, when that event results in an increase in tenant rents, a change in the form of subsidy from project-based to tenant-based, or a change in use of the assisted housing development to a use other than rental housing.

Sec. 4. Notice of intent to sell.
An owner may not sell or otherwise dispose of its assisted housing development, complete prepayment, or complete a termination unless, not less than 12 months before the prepayment, termination, sale, or disposal, the owner submits to all tenants of the assisted housing and to all Affected Public Entities a notice of intent to complete prepayment, complete termination, sell, or otherwise dispose of the property.

Every notice required under subsection (a) must include the address of the assisted housing, characteristics of the property including the number of units, and the names and addresses of the owners. The notice must also include the date on which the owner intends to sell, lease, complete prepayment, complete termination, or otherwise dispose of the property, as well as a detailed list of affordability restrictions applicable to the property. Florida Housing shall adopt rules concerning the content, format, delivery, and publication of such notices.

Within 60 days after the owner has delivered all notices required under subsection (a), the Tenants may notify the Owner that they have formed a Tenant Association meeting the requirements of this Act and shall designate the name of its representative or representatives in the notice. The Tenant Association may enter into an agreement with a not-for-profit corporation or private purchaser in which the not-for-profit corporation or private purchaser agrees to represent the Tenants and maintain the Assisted Housing Development in a manner that preserves the existing affordability restrictions or would qualify the property as affordable housing as defined in the Florida Statutes. The agreement must set forth the minimum length of time that the affordability restrictions will be in effect. The Tenant Association and individual tenants in the assisted housing shall each have the right to bring an action for specific performance or other injunctive relief for enforcement of the agreement, and the agreement must contain provisions to this effect along with such other remedies for breach as the Tenant Association and the not-for-profit corporation or private purchaser may agree. Once such an agreement is entered into, the not-for-profit corporation or private purchaser shall assume all rights and responsibilities attributed to the Tenant Association under this Act.

Sec. 5. Letter of Interest.
Within 60 days of receipt of notice by Affected Public Entities, any interested Eligible Purchasers shall submit a letter of interest to the Owner indicating their good faith interest in purchasing the property.

Sec. 6. Sale Information Made Available to Eligible Purchasers.

Within 60 days after the Eligible Purchaser has complied with the requirements of Section 4, the Owner shall, before selling, leasing, completing prepayment, completing termination, or otherwise disposing of the property, provide the Eligible Purchaser(s) with the essential terms of the proposed sale, including, at a minimum, the following: the sales price; the terms of seller financing, if any, including the amount, the interest rate, and amortization rate thereof; the terms of assumable financing, if any, including the amount, the interest rate, and the amortization rate thereof; and proposed improvements, if any, to the property to be made by the owner in connection with the sale.

If no Tenant Association has timely provided the notice to owner required under Section 4(b) and there are no timely submitted letters of interest from other Eligible Purchasers, the Owner is released from all further obligations under this Act.

Sec. 7. Notice of intent to purchase.
All Eligible Purchasers shall notify the owner in writing, within 90 days after the receipt of the sale information outlined in Sec. 6(a) of this Act, of an intent to purchase the assisted housing. The Owner shall comply with any reasonable request to make documents available to Eligible Purchaser(s), during normal business hours at the owner's principal place of business, within 15 days of receiving such request from an Eligible Purchaser. Such documents shall include but not be limited to: a floor plan of the development; itemized lists of monthly operating expenses, capital expenditures in each of the 2 preceding calendar years and deferred maintenance costs; the amount of project reserves; utility consumption rates; copies of financial and physical inspection reports filed with federal, state or local agencies; the most recent rent roll; a list of tenants; a list of vacant units; and a statement of the vacancy rate at the development for each of the 2 preceding calendar years.

Sec. 8. Bona fide offer to purchase; in cases of identical offers; contract.
The Eligible Purchaser(s) shall, within 90 days after notifying the owner of an intent to purchase as provided herein, provide the owner with a bona fide offer to purchase evidenced by a purchase contract reflecting a sales price and terms agreed to by the parties or the sales price and terms determined pursuant to subsection (c) of this Section, and an earnest money deposit equal to 5% of the bona fide offer to purchase or a demonstrable ability to provide an earnest money deposit equal to 5% of the bona fide offer to purchase.

In cases where more than one Eligible Purchaser providers the Owner with a bona fide offer to purchase and the terms of the offer are identical, the following priority order shall be used in awarding the final sale:

- Tenant Association or Tenant-endorsed representative;
- Florida Housing or Florida Housing-endorsed entity;
- Local Public Housing Authority;
- Non Profit agency;
- For Profit Corporation.

If the parties are unable to agree to a sales price within the first 60 days of the 90 day period specified in subsection (a), the sale price of the assisted housing shall be based upon its fair market value, based on its highest and best use, without affordability restrictions, as determined by 2 independent appraisers qualified to perform multifamily housing appraisals. One appraiser shall be selected and paid by the owner and the other shall be selected and paid by the Eligible Purchaser. If the appraisers fail to agree upon a fair market value, the owner and the Eligible Purchaser shall either jointly select and pay a third appraiser whose appraisal shall be binding, or agree to take an average of the 2 appraisals. All appraisers shall be MAI certified. The determination of the sales price pursuant to this subsection shall be completed within the 90 day period specified in subsection (a) of this Section.
The Eligible Purchaser shall agree to close on the sale within 24 months of the delivery of the notice of intent to sell as required under Section 4(a) of this Act.

Sec. 9. Exceptions.
The provisions of this Act shall not apply to any of the following: a government taking by eminent domain or negotiated purchase; a forced sale pursuant to a foreclosure; a transfer by gift, devise or operation of law; or an owner's sale or other disposition of assisted housing in a manner pursuant to which the property after the sale or other disposition continues to be assisted housing as defined in this Act.

Sec. 10. Failure of Eligible Purchasers to Act.
If the Eligible Purchaser(s) fails to provide notice to the owner pursuant to Sections 4 or 6 or fails to meet the requirements of Section 7, the owner is released from any and all requirements and obligations under this Act.

Sec. 11. Delivery of Notice.
Any notice provided for in this Act shall be deemed given when a written notice is delivered in person or mailed by certified or registered mail, return receipt requested, to the party to whom notice is given.

Sec. 12. Civil action against owner.
The Eligible Purchaser, or one or more tenants in the assisted housing, may bring a civil action against an owner who has violated this Act. An owner found to have violated any provision of this Act shall, in addition to any other damages, pay a civil penalty to each tenant in the assisted housing in the amount of $500 per tenant, and shall also pay the reasonable attorney's fees and costs incurred in bringing the action.

Appendix III

MacArthur Project for the Research and Analysis of Affordable Housing Preservation Data and the Development of Risk Assessment Tools

By the Shimberg Center for Affordable Housing and Florida Housing Finance Corporation

In April 2006, the Shimberg Center for Affordable Housing at the University of Florida and Florida Housing Finance Corporation made a proposal to the John D. and Catherine T. MacArthur Foundation through its *Window of Opportunity: Preserving Affordable Rental Housing* initiative to fund a project to improve national data collection and analysis related to the preservation of subsidized rental housing. In June, the MacArthur Foundation agreed to fund this proposal.

Over the next 19 months, the Shimberg Center and Florida Housing will implement the following objectives to complete this project—

Develop a national consensus on the design of a normalized, national preservation data infrastructure that will allow data to be aggregated at the state and national level for purposes of prioritizing and tracking preservation efforts over time.

The objective here is to convene a centrally located meeting of thirty to fifty preservation experts from local, state and national levels from around the country to address the following issues:

- To reach a common understanding of the national preservation data infrastructure, identifying where data are available and where information is lacking;
- To understand the accessibility and usefulness of each data resource;
- To identify best practices in preservation-related data collection;
- To discuss factors that impact an owner's decision in favor or against preservation of subsidized units;
- To develop consensus on the usefulness of a scorecard to measure success of preservation efforts, indicators to be measured, and how such a scorecard would be produced; and
- To develop consensus on the minimum data requirements necessary to support preservation efforts.

Identify the data on subsidized properties that provide the most useful information for policy decisions and program delivery, with a particular focus on the factors that flag an individual property as a potential loss to the subsidized housing inventory; and develop tools that use these data to help policymakers and housing professionals identify properties most at risk of loss to the inventory.

In this case the objective is to develop and evaluate a list of factors that may affect multifamily property owners' decisions to retain or terminate affordability restrictions and develop an assessment tool that can be used nationwide to identify individual properties at risk of loss of affordability to assist in targeting preservation efforts. For example, these factors might include the age and physical condition of the property, the level of market rents versus project rents, ownership status, and marketability and area vacancy rates.

Collect these data for subsidized properties in Florida localities and provide public access to this information through the Florida Housing Data Clearinghouse.

The objective of this data collection and maintenance activity is to enhance the Clearinghouse's Assisted Housing Inventory (AHI) and to develop methods for data collection and routine data maintenance with a particular focus on preservation-related information. The purposes for building this expanded database include:

- To provide end-users such as the public, developers, administrators, and state and local policymakers with more comprehensive data for each assisted property and for the overall affordable stock in Florida through a web-based database;

- To enable assessment of the risk of loss of affordability for Florida properties, and to enable targeting of resources for preservation;
- To collect other data, such as tenant characteristics, that are useful in formulating housing policy; and
- To share the methods for data collection, maintenance, and dissemination with state and local policymakers and housing professionals across the country.

Anticipated Outcomes of this Project

- A report and a map based on survey responses of the current national preservation infrastructure, identifying available data resources and gaps, prepared for the national meeting;
- A national meeting to discuss the development of a national preservation data infrastructure;
- A report of the national preservation data infrastructure meeting, including recommendations related to the creation of a national scorecard on preservation successes/losses;
- A list of indicators of the potential for loss of affordable housing from the rental inventory;
- A tool to identify individual properties at risk of loss of affordability;
- A model preservation data set for the state of Florida;
- A method for data collection, data maintenance and dissemination; and
- Statewide and national dissemination of these results.

Appendix IV

Summary of Federal, State, and Local Affordable Multifamily Housing Programs

FEDERALLY ADMINISTERED PROGRAMS

U.S. Department of Housing and Urban Development (HUD)

- **Section 236 –** Provides a subsidy to reduce mortgage interest payments to provide rental housing for 0 to 80 percent area median income (AMI) households.
- **Section 221(d)(3) and (4) –** Originally provided a below market interest rate loan of 3 percent with FHA mortgage insurance. The (d)(3) component targets nonprofits, while the (d)(4) targets for profits. Today the program provides new properties with credit enhancement to lower the overall cost of borrowing capital for the construction and rehab of multifamily rental housing by guaranteeing the payment of mortgages that secure multifamily mortgage revenue Bonds.
- **Section 223(f) –** Provides credit enhancement to lower the overall cost of borrowing capital for limited rehabilitation activity by insuring the lender against loss on mortgage defaults.
- **Section 202 –** Offers interest-free capital advances to nonprofit sponsors to finance development of supportive elder rental housing; generally serves 0 to 50 percent AMI households.
- **Section 811 –** Provides interest-free capital advances to nonprofit organizations for the development of rental housing for very low-income adults with disabilities; generally serves 0 to 30 percent AMI disabled households.
- **Project Rental Assistance Contract (PRAC) –** Provides funds to cover the difference between operating costs for newer Section 202 and 811 properties and the tenants' contribution towards rent; takes place of older project-based Section 8**.**
- **Project-Based Section 8 –** Provides rental subsidies directly to property owners for particular units for a contractually determined period of time; used in concert with Section 202, 221(d), 236 and 811 programs, supports existing units only.
- **Public Housing –** HUD initially funded full construction and operation of new public housing units, but currently funds only operating, maintenance and improvements costs of existing units; units are owned and managed by Public Housing Authorities; primarily serves 0-30 percent AMI households today.
- **HOPE VI –** Provides revitalization and/or demolition grants to aid in rehab or elimination of severely distressed public housing; promotes mixed income communities.
- **Section 8 Housing Choice Vouchers –** Provides rental assistance for families to lease units in the private market; the tenant pays 30 percent of his/her income and the voucher pays the landlord the difference up to a "Fair Market Rent" established by HUD; most tenants are in the 0-30 percent AMI range.
- **Federal Housing Administration (FHA) Mortgage Insurance –** FHA provides mortgage insurance through a number of programs, including its centerpiece program, Section 203 (b), and Title I which supports manufactured home purchases.

U.S. Department of Agriculture - Rural Development (RD)

- **Section 515 –** Competitive loans awarded to developers to provide affordable multifamily rental housing for families, elders and people with disabilities; typically serves 0 to 30 percent AMI households.
- **Section 514/516 –** Provides loans and grants to buy, build, improve or repair housing for farmworkers, and may also be used to construct day care facilities or community rooms, purchase household furnishings and pay construction loan interest; generally serves 0 to 30 percent AMI households.
- **Section 521 –** Provides rental assistance to ensure that qualified elderly, disabled, and low-income residents of multifamily housing complexes financed by RD pay no more than 30 percent of their income for rent; designed to serve 0 to 50 percent AMI households.

STATE ADMINISTERED PROGRAMS

Florida Housing Finance Corporation

- **Low Income Housing Tax Credit Program (9% and 4%)** – Provides a dollar-for-dollar tax credit over 10 years against federal tax liability in exchange for the acquisition and substantial rehabilitation or new construction of affordable rental housing units; federal requirements are less restrictive, but Florida’s program is competitive enough that virtually all units serve no more than 60 percent of AMI, with some units set aside at lower AMIs.
- **State Apartment Incentive Loan (SAIL) –** Provides low-interest loans on a competitive basis to affordable housing developers to bridge the gap between the development's primary financing and the total cost of the development; special targeting to homeless people, farmworkers and elders; while the state statute is less restrictive, Florida’s program is competitive enough that most units serve no more than 60 percent of AMI, with a minimum of 20-40 percent of units set aside for those at 50 percent of AMI and lower.
- **Multifamily Mortgage Revenue Bonds –** Both taxable and tax-exempt Bonds are issued to provide below market rate loans for rental housing; federal requirements are less restrictive, but Florida’s program is competitive enough that most units serve no more than 60 percent of AMI.
- **HOME Rental –** Provides competitive, non-amortized, zero or low interest loans to developers for acquisition and/or new construction or rehabilitation of rental housing; targets small developments in rural areas; targets 20 percent of units at 50 percent of AMI, with balance no higher than 60 percent of AMI.
- **Elderly Home Community Loan Program –** Uses a portion of SAIL Program funds to make small loans for life safety repairs to multifamily properties serving low income elders.
- **Affordable Housing Guarantee Program –** A state credit enhancement program that lowers the overall cost of borrowing capital for the construction and rehab of multifamily rental housing by guaranteeing the payment of mortgages that secure Multifamily Mortgage Revenue Bonds; partners with the HUD Section 542 Risk Sharing program in some cases, allowing each program to assume 50 percent of the risk of the mortgage.
- **Predevelopment Loan Program –** Assists nonprofits and others with planning and financing predevelopment costs for homeownership or rental housing through loans and technical assistance; generally serves households up to 80 percent of AMI.

LOCALLY ADMINISTERED PROGRAMS

- **State Housing Initiatives Partnership (SHIP) –** Provides funds on a per capita basis from the Local Government Housing Trust Fund for implementation of local affordable housing programs to all 67 counties and 50 cities; generally used for homeownership but can be used for rental housing; serves up to 120 percent AMI households.
- **Local Multifamily Mortgage Revenue Bonds –** Bonds are issued by local governments to finance low interest rate mortgage loans to first-time homebuyers and to developers of affordable rental housing; serves up to 115 percent AMI households.
- **Local HOME Investment Partnerships Program –** Provides formula grants to entitlement communities to fund a wide range of activities that build, buy and/or rehabilitate affordable housing for rent or homeownership; serves up to 80 percent AMI households.
- **Local Community Development Block Grant (CDBG) Program –** Provides eligible cities and counties with annual formula grants for use in revitalizing neighborhoods, expanding affordable housing and economic opportunities and/or improving community facilities and services; housing funds are primarily used to benefit home buyers and current home owners, but may be used for rental housing; serves up to 120 percent AMI households.

Appendix V

Preservation Glossary

Affordable Housing. Defined in terms of the income of the people living in a unit. Generally, the household should not pay more than 30 percent of its gross monthly income, including utilities, for the unit. The housing must be safe and decent to be considered as affordable housing.

Affordability Period. The time period for which rent or income eligibility restrictions apply to housing that has received financing or rental assistance subsidies.

Area Median Income (AMI). The income level at which half of an area's households are below and half are above. Income eligibility requirements for affordable housing are generally expressed as certain percentages of the AMI. The U.S. Department of Housing and Urban Development sets this figure for areas throughout the country.

Below Market Interest Rate (BMIR). An interest rate provided at a lower level than the going rate for the same type of conventional financing. The original Section 221(d) program provided BMIR financing, and many current affordable housing programs also provide below market interest rates.

Bridge Loan. A short-term loan, usually three to six months, enabling a buyer to purchase a property, rehabilitate and upgrade the units and increase net operating income from the property. This type of loan "bridges" the need to act immediately with the later award of permanent financing. Also called "gap" financing.

Capital Account. The owner's original cash investment in the property, plus cumulative profits and tax losses over the life of the investment. Subsidized properties that have provided generous depreciation and interest deductions with limited or negligible cash flow will have a negative capital account after twenty years. Taxes will be owed on the negative capital account even if no cash proceeds are realized from the sale.

Capital Gain. Cash proceeds realized upon sale of the property, if any, minus the owner's capital account (see Capital Account). Capital gain is subject to federal and state tax when the property is sold.

Depreciation. The decrease in the value of equipment or property from wear and tear and the passage of time.

Enhanced Vouchers. Special tenant-based Section 8 rental assistance provided to eligible residents when owners prepay their subsidized mortgages or opt out of project-based Section 8 contracts. Rents are set at market comparable levels, instead of the regular voucher payment standard, as long as the tenant chooses to use the voucher.

Equity. Equity is an exchange of money for a share of business ownership. This form of financing allows funds to be obtained without incurring debt. Equity may also be obtained from a developer's own capital.

Exit Tax. Tax paid on the owner's capital gain, including any phantom income generated over the life of the property, when a property is sold.

Expiring Use Restrictions (EUR). Low- and moderate income affordability requirements associated with subsidized mortgages under Section 221(d)(3) BMIR and Section 236, which terminate when the mortgage is prepaid.

Extremely low income (ELI). Income at 0-30 percent of area median income.

Florida Housing Finance Corporation (FHFC). Also referred to as "Florida Housing," serves as the state housing finance agency which administers affordable housing funding programs for the State of Florida.

HUD. U.S. Department of Housing and Urban Development.

Interest Reduction Payment (IRP). In a Section 236 project, the Interest Reduction Payment or interest subsidy provided by HUD on a monthly basis, which makes up the difference between the mortgage debt service actually paid and the debt service that would have been paid at an interest rate of 1 percent.

Loan Management Set-Aside (LMSA). A form of project-based Section 8 rental assistance used primarily for Section 221(d)(3)/ BMIR and Section 236 housing. These short term, renewable contracts were added some time after the housing was first constructed. Only used now for existing units.

Phantom Income. When the allowable depreciation on a property reaches zero and the owner can no longer deduct the depreciation from taxable income, expenses which can be deducted from the owner's taxable income after the buildings' depreciation is zeroed out create a negative value in the property, called "phantom income."

Project-Based Section 8. A program providing rental assistance on behalf of some or all of the units in a development occupied by eligible tenants for a specified contract term. Tenants pay 30 percent of adjusted income for gross rent including utilities. The subsidy is attached to the unit and stays with the housing after the tenant leaves.

Project Rental Assistance Contract (PRAC). The five year renewable rental assistance contract provided to owners of Section 202 housing since 1990.

Public Housing Authority (PHA). These local and regional government entities generally operate public housing and administer tenant-based rental assistance. There are 119 PHAs in Florida.

Rent Supplement. An older HUD project-based rental subsidy program used for some 221(d)(3) and 236 properties. The subsidy contract is coterminous with the mortgage. Most rent supplement contracts in HUD-insured developments were converted to Section 8 in the 1970s.

RHS. Rural Housing Service is an agency of the U.S. Department of Agriculture Rural Development.

Tenant-Based Section 8. Rental assistance provided on behalf of eligible tenants, currently known as Housing Choice Vouchers. The subsidy is attached to the tenant and moves with the tenant.

Wellstone Notice. Notice required to be given by owners of prepayment-eligible developments, prior to prepaying the subsidized mortgage or terminating mortgage insurance. Must be given to tenants, HUD, and state/local government, at least 150 days, but no more than 270 days, prior to prepayment.