

American Residential Development, LLC

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FLORIDA HOUSING
FINANCE CORPORATION

Florida Housing Finance Corporation
✓c/o Steve Auger
c/o Ken Reecy
227 N Bronough Street, Tallahassee, FL 32301
Tallahassee, FL 32301

Re: Proposed Geographic Request for Applications (RFA) No. 2016-113- Housing Credit Financing for Affordable Housing Developments Located in Large Counties – RECAP and Local Government Preference

Gentlemen:

At the GEO RFA Workshop meeting on July 21, 2016, the following matters relevant to this letter were discussed: proposed RFA #2016-113 (Large Counties); matters relating to proposed establishment of RECAP QCTs; and, a proposed Local Government Preference. The following day, we were informed by the City of Orlando that it intended to give a Local Government Preference to a proposed project located in a RECAP. That communication was not entirely consistent with what we thought we heard at the meeting but subsequent information seems to support what we learned from Orlando.

The purpose of this letter is to consolidate what we think is Florida Housing's current intention with regard to proposed RFA #2016-113 with regard to RECAPs and to offer some thoughts on the effect of the Local Government Preference on the competitive tax credit allocation process with respect to disparate discrimination and a fair and competitive process for applications situated in Orlando and in all of Orange County. The comments apply as well to the other counties with more than one local government in the county.

RECAP. As explained by Ken Reecy, Florida Housing is defining a RECAP as a

“racially and ethnically concentrated area of poverty....in which 40 percent of the population in that tract is living below the poverty line....And in which a concentration of individuals who identify as other [than] non Hispanic white, exceeds half or 50 percent of the population of the census tract.” In other words, more than 50% of the people in a RECAP are very poor non-white people or as Ken Reecy put it “Those are some poor folks.”

Florida Housing has and continues to state that it will discourage the development of new affordable housing in RECAPs by prohibiting the submission of new construction applications unless they include a Local Government Preference.

Florida Housing, if I understand correctly, is taking this position because it believes doing otherwise would cause a continuation of disparate discrimination proscribed by the Supreme Court in *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.* Florida Housing is also proposing to expand the areas which will be entitled to incentives similar to those granted by the Federal Government for QCTs and SDDAs. Apparently this also is intended to comply with the Supreme Court's opinion and avoid disparate discrimination.

I disagree with Florida Housing's analysis that eliminating the development of new affordable housing developments in RECAPs is supported by the Supreme Court's decision. Justice Kennedy, in writing the Opinion of the Court, stated early on that:

“Congress through 26 U. S. C. §42 specifically requires “that low-income housing units ... be built in census tracts populated predominantly by low-income residents..., Federal law thus favors the distribution of these tax credits for the development of housing units in low-income areas.” (emphasis added) (Page 2 of Ruling)

Nowhere does the Court suggest that developments seeking to provide affordable housing to poor people living in a RECAP QCT should be competitively disadvantaged when competing against a non-RECAP QCT development for tax credits. However, the Court ruling could reasonably be deemed to support the notion that locating projects in areas outside QCTs could be justified to counter disparate discrimination. Florida Housing's creation of Areas of Opportunity may be a proper and prudent approach to the problem of disparate

discrimination, but eliminating the construction of new affordable housing developments in a RECAP/QCT is not.

Let us assume for purposes of the rest of this letter that Florida Housing's position is consistent with the Supreme Court's ruling in that it is appropriate to discourage new construction in QCT with very poor people with non-white majorities. (This is arguendo as I don't agree that is what the ruling intends and is contrary to what I believe should be the legally justifiable consequences for very poor people with non-white majorities living anywhere in US.)"

LOCAL GOVERNMENT PREFERENCE. Florida Housing has indicated that it intends to extend the local government preference (LGP) that it began in Duval County into all six large counties via proposed RFA #2016-113 (Large County). Without arguing the wisdom of the existence of the LGP to begin with, even in a county like Duval with a common area encompassing one other local government (Jacksonville), there are significant complications with respect to due process and a fair and competitive process when the LGP is being used in multi-jurisdictional counties it further magnifies and confuses its special application to RECAPs.

Multi-Jurisdictional County Complications. Florida Housing has stated the way LGP will work in a large county as of last week. Aside from Duval, all other large counties have multiple local governments.

I will specifically use Orange County for purposes of this discussion (and because it also has a RECAP complication). There are several local governments in Orange County (Orange County, City of Orlando, City of Winter Park, City of Maitland, City of Winter Garden, possibly others).

As I understand it, if the City of Orlando awards an LGP to an applicant in the City of Orlando and no other applicant outside of Orlando is awarded an LGP by another local government in Orange County, the applicant chosen by the City of Orlando will be awarded the tax credits for Orange County in RFA #2016-113, regardless of any other applications in the County desiring to compete for the Orange County allocation. Under no circumstances could that be viewed as a fair and competitive process.

The amount of local contribution awarded for this extraordinary right to receive tax credits is insignificant and would only equate to what it takes to develop 3-4 units. For this miniscule benefit, all other projects will not be considered at all for the allocation. Aside from Florida Housing delegating to the City of Orlando (or any other local government) its role as the ultimate decision making authority for allocating credits through a fair and competitive process, Florida Housing is significantly burdening local governments to be the qualifying authority. By so doing, it is requiring them to make local contributions they cannot afford or do not wish to use for this purpose. Those local government have their own agendas to serve their citizens that are not necessarily consistent with the goals and obligations of this federal program. Florida Housing's process will force local governments to suffer a burden of contributing limited funds unnecessarily to support this affordable housing. It is an artificial, arbitrary and unnecessary barrier to participating in the award of credits.

Florida Housing is providing an opportunity for local governments to carry out disparate discrimination with impunity. For those cities that actually wish to see no affordable housing (where a great deal of the Areas of Opportunity exist), by doing nothing they have the easiest way to maintain discrimination in housing since the passage of the civil rights laws forty years ago; they simply don't create an LGP. So long as some other local government does, they effectively create disparate discrimination outside RECAPs. Further small cities that would like to participate are priced out of the competition because they can't afford the LGP or have other priorities than spending money equivalent to adding 3-4 units more than they would get if this LGP didn't exist. In addition, cities that don't want to participate don't have to explain themselves to anyone. Florida Housing provided them the opportunity not to build any affordable housing.

Local Government Preference: The City of Orlando has taken it to a higher level; it intends to use its LGP to fund a deal in a RECAP! The only way that development can get done is with an LGP where, according to the City, it also will get around three other allocations having been awarded within 1.3 miles of this RECAP site in the past three years.

So the entire 1,004 square miles of Orange County having applications in areas of opportunity, SDDAs and QCTs that are not RECAP will be effectively disqualified by Florida Housing's design of this Local

Government Preference. Florida Housing will have, without offering anyone due process in the selection, designated an uncontestable allocation to this application located precisely where it has predetermined it should not be permitted. It does so because of its interpretation of a disparate discrimination ruling. It is using an unnecessary local contribution designed to limit competition and reduce applications. Simultaneously it has not afforded any opportunity for any other housing developer to provide affordable housing anywhere else in Orange County. The elimination of opportunity includes the very areas that Florida Housing determined were areas where affordable housing was needed and would ameliorate disparate discrimination.

In conclusion, please reconsider RECAP and the Local Government Preference so disparate discrimination can be eliminated and a fair competitive RFA process can proceed.

Sincerely,

American Residential Development, LLC

A handwritten signature in black ink, appearing to read 'P. Law', with a long horizontal flourish extending to the right.

Patrick E. Law, Manager

Cc by Email: Steve.Auger@floridahousing.org
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