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**Sent:** Friday, May 29, 2020 3:24 PM

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**Subject:** Comments on 2020/2021 RFA Process

Marisa-

Thank you for the opportunity to comment on the proposed revisions to the RFA process for the coming year. As I indicated in the telephonic workshop today, I have some comments on the Ability to Proceed form relating to Road availability. This form is already proposed for revision. My comment is less in response to proposed changes but instead is a suggestion arising from recent litigation.

My comments are not submitted on behalf of the client I represented in that recent litigation, or on behalf of any Applicant or Developer. My comments are my own, and are offered from the perspective of an attorney who follows the RFA process closely and is often involved in litigation. As in this situation, litigation often points out ambiguities in the RFAs and forms. I think most participants in the process and Florida Housing itself would agree that ambiguity is to be avoided, and certainty is preferred.

I will state my suggested language first and then explain the background. **My specific suggestion is to change on the road availability form the designation of the entity that signs the form to “Name of Local Government that contains the Development Site.”**

The recent question concerned which is the proper entity to sign the Road availability form. All of the infrastructure availability forms as they exist today and as they are proposed going forward - for electricity, water, sewer, and roads - have a signature line for “name of entity providing service.” For “providers” of sewer service, water, and electricity, it is clear who that entity is; it is the public or private utility that will be providing utility services to the Development on an ongoing basis, 24 hours a day, 365 days a year. For roads, there may be a question as to whether the “entity providing service” is the city or county within whose geographic boundaries the Development Site is located, or the entity responsible for constructing (or currently maintaining) the road. They are not necessarily the same entity.

In the recent litigation, although the Development Site was located within the city limits of a municipality, and the form was signed by the city manager, the road was designated a “county road.” It also had a street name that was presumably assigned to it by the city. A challenger argued that since it was a county road, the signature should have come from the county government. The challenge was ultimately dismissed before hearing, so the question was never fully litigated. Had it been litigated, I believe the evidence would have shown that the city and county involved had an agreement that the city would maintain this “county” road inside the city limits. It is not clear that this agreement was ever reduced to writing and formally agreed to through some memorandum of understanding or interlocal agreement. This absence of a formal agreement is probably not unusual, especially in small or rural counties and cities.

The ambiguity over the use of the phrase “entity providing service” on the roads form is created by the fact that a different description was given in the RFA if proof of road availability was provided in the form of a letter instead of an executed form. Using RFA 2019-113 (Medium and Small County 9% HC) as the example, the instructions for a road availability letter read as follows:

“Availability of Roads. The Applicant must demonstrate that as of the Application Deadline paved roads either (i) exist and will provide access to the proposed Development site or (ii) will be constructed as part of the entire proposed Development by providing as Attachment 13 to Exhibit A:

(a) The properly completed and executed Florida Housing Finance Corporation Verification of Availability of Infrastructure – Roads form (Form Rev. 08-18); or

(b) **Documentation from the Local Government that contains the Development location** and is dated within 12 months of the Application Deadline. The documentation may not be signed by the Applicant, by any related parties of the Applicant, by any Principals or Financial Beneficiaries of the Applicant, or by any local elected officials.”

So, if the applicant used a letter instead of the form, the RFA was clear that the signing entity should be “the Local Government that contains the Development Site.”

This is the better approach, regardless of whether the form or a letter is provided. A local government official can certainly be relied upon to know where paved roads exist, even if that local government did not construct the road or doesn’t have ongoing responsibility to maintain, repair, or improve it. The City Manager or Public Works director of Tallahassee, for example, could be relied upon to know if a development located on Tennessee Street has a roadway to it, even though the roadway also bears a County Road designation, as well a U.S. Highway designation, and may have state involvement in its maintenance and improvement.

Thank you for your attention to this suggestion.

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