



FLORIDA'S
SURPLUS LAND
STATUTES FOR AFFORDABLE HOUSING:
A GUIDEBOOK FOR IMPLEMENTATION USING BEST PRACTICES



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ACKNOWLEDGMENTS

We could not have researched and written this guidebook without the generous support of our Partners in Housing, **Bank of America** and **BBVA Compass**. We also thank the local governments and nonprofit organizations that responded to our surplus land survey and who those who spoke with us to describe their efforts to ensure that surplus lands are utilized to the greatest extent to serve the public benefit of a permanent supply of affordable housing.



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ABOUT THE FLORIDA HOUSING COALITION



The Florida Housing Coalition, Inc., is a nonprofit, statewide membership organization whose mission is to bring together housing advocates and resources so that all Floridians have a quality affordable home and suitable living environment. The Coalition provides professional consultation services through training and technical assistance on affordable housing and

related issues; supports community-based partnerships in leveraging resources; and advocates for policies, programs and use of funding resources that maximize the availability and improve the quality of affordable housing in Florida. The Coalition carries out this mission recognizing that affordable housing is an integral part of community revitalization and economic development.

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PREAMBLE

This guidebook will be accessible to local government staff to help them implement Florida's surplus land statutes that apply to affordable housing.



We hope that housing staff as well as other departments involved in the management of surplus government-owned lands gain the tools necessary to ensure that the disposition of public lands meets and exceeds public benefit expectations by creating a permanent supply of affordable housing for Florida's low- and moderate-income residents.



Through this guidebook, we support and reinforce the community land trust model, which helps ensure that the disposition of public resources results in a permanent supply of affordable housing.

Introduction

The purpose of this guidebook is to support local governments in the implementation of surplus land disposition to benefit the development of affordable housing as required by Florida Statutes 125.379 and 166.0451 (2017), referred to in this guidebook as the “surplus land statutes.” These laws require all cities and counties in Florida to inventory and evaluate local government-owned land within their jurisdictions for its suitability for affordable housing, and may recommend disposal of the land by either sale or donation. This guidebook provides best practices to enable local governments to comply with the requirements in a manner that results in the most positive public benefit by creating a permanent supply of affordable housing that is available to low- and moderate-income households. This guidebook is designed to be accessible electronically which will enable us to update it as needed.

While these laws were adopted in 2006 as part of a broader housing bill designed to stimulate the construction of affordable housing, they were preceded by earlier legislation contained within the State Housing Initiatives Partnership Act (SHIP Act) (s. 32, ch. 92-317, Laws of Fla.). Codified in sections 420.907-420.9079, Florida Statutes, the SHIP Act established a funding source to support affordable housing incentives, and mandated that all counties and cities receiving an allocation of SHIP funds appoint an Affordable Housing Advisory Committee (AHAC), and establish local initiatives that foster affordable housing development (§420.9072, Fla. Stat.). The SHIP Act lists eleven affordable housing incentives to be considered by the AHAC, one of which addresses surplus land by recommending the “preparation of a printed inventory of locally owned public lands suitable for affordable housing (§420.9076(4)(j), Fla. Stat.)”

This guidebook is also recommended for housing advocates and nonprofit housing organizations to use in supporting local government compliance with the surplus land statutes, and ensuring that related programs are operated with clear policies and procedures that meet the legislative goal of using surplus lands for the production and preservation of permanent affordable housing (§§420.9072, 125.379(2), 166.0451(2), Fla. Stat.).

A recent Florida Housing Coalition survey of local governments and nonprofit housing providers, discussed in subsequent sections of this guidebook, suggests that most Florida cities and counties have met the basic requirements of the surplus land statutes by preparing an inventory of real properties to which they hold title that are deemed appropriate for affordable housing. However, policies and procedures for publishing the inventory and disposing of surplus lands are not uniform across the state. We found that some local government surplus land inventory lists are easily accessible online and some jurisdictions have robust surplus land programs that have resulted in the disposition of many parcels to benefit affordable housing, either through sale or donation. However, we also found that many local government surplus

land inventory lists are not accessible online and there are no apparent guiding policies or procedures to make a program effective. Some local governments that have programs for disposing of surplus lands for affordable housing do not require the housing produced as a result of the program to remain permanently affordable. This guidebook provides direction for creating a program that results in permanent affordability through the use of a Community Land Trust ground lease or deed restrictions.

This guidebook provides best practices to enable local governments to comply with the surplus land statutes in a manner that results in the most positive public benefit, by creating a permanent supply of affordable housing that is available to low- and moderate-income households



Intended Audience

This guidebook is primarily for local governments and their affordable housing staff. This guidebook can also be shared with other departments and citizen advisory committees that have a role and an interest in the disposition of publicly owned land for affordable housing.

This guidebook defines terms; examines the procedures and participants involved in land title transfer through tax deed, municipal tax foreclosure, and code enforcement lien foreclosure; and discusses how such lands may be converted to productivity as affordable housing. Along with a clear description of how real property becomes surplus land, this guidebook includes a discussion of other essential components of affordable housing, including community land trusts. This guidebook presents the results of a survey of SHIP program administrators and nonprofits in a discussion of the status of surplus land programs in Florida.

The goal of this guidebook is to provide the tools and information needed to unlock the value of government-owned surplus lands. It is the further goal of this guidebook to urge local government housing administrators to consider the use of the community land trust model in tandem with an effective surplus land disposition program. Applied together, these two policy approaches can result in a robust program that transforms formerly unproductive real property into a permanent supply of housing that is affordable to low- and moderate-income households either as rental units or as owner-occupied homes.

*Readers of this guidebook are invited to contact the Florida Housing Coalition for additional assistance as they navigate the pathways of recovering abandoned or surplus lands to create permanently affordable housing for Floridians. **Please email us at info@flhousing.org or call 850-878-4219 to request assistance.***

Statutory Background

In 2006, the Florida Legislature passed House Bill 1363, addressing the issue of affordable housing in Florida (Act effective July 1, 2006, ch. 06-69, Laws of Fla.). In part, the law mandates that by July 1, 2007 and every three years thereafter, **each Florida county and municipality shall prepare an inventory list of real properties owned by the local government in fee simple title within its respective jurisdiction that are appropriate for use as affordable housing** (ch. 06-69, §§ 1, 4, Laws of Fla. at 2, 6 (codified at §125.379 and §166.0451, Fla. Stat.)).

More particularly, the inventory list must include the address and legal description of each property, and indicate whether the property is vacant or improved (§125.379(1) and §166.0451(1), Fla. Stat.). The law further mandates that the county or municipal governing body shall hold a public hearing at which it must review and may revise the inventory list, following which it must adopt a resolution including the final inventory list (§125.379(1) and §166.0451(1), Fla. Stat.).

The law specifies that for purposes of listing and disposing of the properties, the term “affordable” has the same meaning as in section 420.0004(3), Florida Statutes (§125.379(2) and §166.0451(2), Fla. Stat.). That section defines “affordable” as where “monthly rents or monthly mortgage payments including taxes, insurance, and utilities do not exceed 30 percent of that amount which represents the percentage of the median adjusted gross annual income” for households considered to be extremely low-, very low-, low-, or moderate-income (§420.0004(3), (9), (11), (12), (17), Fla. Stat.).

After a local government has prepared the final inventory list and adopted it by resolution, the local government may take any of the following actions with respect to the listed properties:

1. Offer the properties for sale and use the sale proceeds to purchase land for affordable housing development;
2. Offer the properties for sale and use the sale proceeds to increase the local government fund earmarked for affordable housing;
3. Sell the properties with a restriction that requires the properties be developed for use as permanent affordable housing;
4. Donate the properties to a nonprofit housing organization for the construction of affordable housing; or,
5. Otherwise make the properties available for use in the production and preservation of permanent affordable housing (§125.379(2) and §166.0451(2), Fla. Stat.).

Therefore, the surplus land statutes clearly mandate that each Florida county and municipality must prepare and adopt through public process an inventory of owned properties suitable for use as affordable housing, and they enumerate viable options that local governments may use for disposing of the inventoried properties.

The law does not provide a definition of what is “appropriate” for affordable housing.

Determining what is appropriate for affordable housing is a different task from determining how to dispose of the properties that have been determined to be appropriate for affordable housing. The statute provides good guidance on disposition and gives us insight into how to decide whether a property is appropriate for affordable housing. A good filter to use in deciding whether county or city owned land is “appropriate” for affordable housing is to ask whether the property is “appropriate” for market rate housing. This is the same test we apply when adhering to the Florida Fair Housing Act provision in 760.26, Florida Statutes.

In other words, if the property could be developed for residential purposes, including high-end housing, it can also be developed for affordable housing. All land that is developable for residential purposes is appropriate for affordable housing. Types of properties that would not be appropriate for affordable housing would be slivers of land remaining from right of way work, or properties that would be unsafe for human habitation due to the proximity of toxic uses.

Finding that a county or city owned property is appropriate for affordable housing, does not determine the final disposition of that property. The property is to be included in the inventory list adopted by the jurisdiction. The disposition can follow any one of these paths:

1. The property may be offered for sale and the proceeds used to purchase land for the development of

- affordable housing or to increase the local government fund earmarked for affordable housing or
2. The property may be sold with a restriction that requires the development of the property as permanent affordable housing, or
 3. The property may be donated to a nonprofit housing organization for the construction of permanent affordable housing, or
 4. The jurisdiction may otherwise make the property available or use for the production and preservation of permanent affordable housing.



How Does Real Property Become Publicly Owned?

As discussed above, the surplus land statutes require Florida counties and municipalities to prepare an inventory list of lands owned within their respective jurisdiction, and suggest methods of disposing of those lands for affordable housing. In considering the nature of properties that might be included in a surplus lands list, it is helpful to understand how such properties came to be publicly owned in the first place. There are several typical pathways briefly described below, including tax deed escheatment, municipal lien foreclosure, code enforcement lien foreclosure, and direct acquisition. The Appendix to this guidebook includes more detailed discussion of each of these pathways. It is important for local government housing staff and potential buyers to understand a property's chain of title in order to anticipate potential title defects, and to consider what investment of time and resources might be needed to cure such defects.

Tax Lien Escheatment

Counties come into title of real property through tax lien escheatment after an owner fails to pay property taxes and the tax lien certificate and tax deed sale processes fail to procure a third-party purchaser (§197.502(8), Fla. Stat.). Tax lien escheatment is a lengthy process that begins when taxes on real property become delinquent on April 1 of the year following the year in which the taxes were levied and a tax lien certificate is sold. If there are no bidders to purchase a tax lien certificate for a parcel, that certificate is struck to the county (§197.432(6), Fla. Stat.) Two years after April 1 of the year in which a tax certificate was issued to a county, the county must apply for a tax deed if the property is valued at \$5,000 or more (§197.502(3), Fla. Stat.). The clerk of court then schedules and administers a public tax deed sale (§197.502(5)(c), Fla. Stat.). For certificates on which there are no bidders for a tax deed, or on which the certificate holder fails to timely pay amounts due for resale or issuance of a tax deed, the clerk of court enters the parcels on a list of "lands available for taxes (§197.502(7), Fla. Stat.)." Three years after the public tax deed sale date, properties that remain on the "lands available for taxes" list escheat to the county and the clerk of court issues an escheatment tax deed vesting title in the board of county commissioners (§197.502(8), Fla. Stat.). Hence, the county acquires title by escheatment tax deed five years after a tax lien certificate is struck to the county. If the property acquired by a county for delinquent taxes is located within the boundaries of a municipality, the county must either use the property for certain purposes or convey it to the municipality (§197.592(3), Fla. Stat.).

Municipal Lien Foreclosure

Chapter 173, Florida Statutes, provides an optional in rem process that municipalities may use to foreclose on the lien of any tax, tax certificate, or special assessment imposed by the municipality, other than ad valorem taxes collected by

the county tax collector (§173.01, Fla. Stat.). A municipality may file a foreclosure action in circuit court to foreclose its tax lien after two years from the date the tax became delinquent or the city issued a tax certificate, or after one year from the date any special assessment became due and payable (§173.03(1), Fla. Stat.). If judgment is entered for the municipality, the court appoints a special magistrate to sell the lands to the highest bidder (§173.09(1), Fla. Stat.). If the sale fails to procure a sufficient bid, the municipality is entitled to bid the whole amount due, and the special magistrate will convey the property (§173.09(2), Fla. Stat.).

Code Enforcement Liens

The Local Government Code Enforcement Boards Act, sections 162.01-162.13, Florida Statutes, provides an optional process for counties and municipalities to impose administrative fines and other noncriminal penalties for local ordinance violations. If a violation continues after notice and opportunity to cure, a code inspector refers the matter to the code enforcement board or magistrate for hearing (§§162.03-162.06, Fla. Stat.). Administrative fines may be imposed only after notice and opportunity to cure, and subsequent notice and opportunity to present evidence and be heard before the code enforcement board or magistrate (§§162.06-162.09, Fla. Stat.). A local government may record in the county official records a certified copy of the order imposing a fine, and the order constitutes a lien against the land on which the violation exists, and any other real or personal property the violator owns within the county (§162.09(3), Fla. Stat.). Three months after the date of filing its lien, the local government may initiate a court proceeding to foreclose against the violator's property (§162.09(3), Fla. Stat.). If judgment is entered in favor of the local government, the property will be subject to foreclosure sale (§162.09(3), Fla. Stat.).

Direct Purchase

Local governments routinely acquire land for specific uses, such as parks and public buildings. On occasion, local governments find they no longer need previously acquired land for the original intended use or any other use. Such land may then be deemed “surplus,” and available for use as affordable housing, or sold for another purpose, with the proceeds used for affordable housing.

Public Access to View the Inventory of Surplus Land

In developing this guidebook, the Florida Housing Coalition conducted online searches of Florida county websites to determine whether surplus land inventory lists were being made readily accessible to the public. We found that in most cases we were unable to locate the inventory lists on county websites. Only 15 of 67 counties were identified online through links at the clerk of court websites, where adopted resolutions were filed. In response to our recent survey,

some local governments with active surplus land programs indicated they had available properties, either vacant lots or completed homes, readily available from the housing department. In addition, some local government housing administrators commented that the inventory list changes frequently and is available by request so that the most up to date version can be provided.

The results of this research compel us to recommend that as a best practice, local governments make their surplus land inventory list readily and easily available to the public — particularly to nonprofit housing organizations. This could be accomplished by simply maintaining the current inventory list on the local government website with instructions for requesting properties for donation or purchase, or more optimally, by including an interactive map that permits searches for properties by area, type, and availability.



Local Surplus Land Inventory



Surplus Land Experience: Survey Results

As discussed above in this guidebook, the surplus land statutes require all Florida counties and municipalities to prepare an inventory list of real property owned in fee simple within their respective jurisdictions that are appropriate for affordable housing (§§125.379 and 166.0451, Fla. Stat.). The SHIP program provides funding to all 67 Florida counties and to 52 eligible municipalities as an incentive to form local housing partnerships and produce affordable housing (§420.9072, Fla. Stat.). In preparing this guidebook, the Florida Housing Coalition conducted an informal survey of local government SHIP administrators and nonprofit housing organizations, seeking information on surplus land programs, policies, and practices. We received 68 completed survey responses from local governments, and 64 completed survey responses from nonprofit housing organizations. While this survey was informal and not intended to yield statistically significant data, the responses shed light on how effectively the local government surplus land statutes are being implemented, and provided some guidance on how to improve awareness and activities related to the disposition of surplus land for affordable housing.

Local Government Responses to Surplus Land Survey

There were 68 local governments that responded to the survey.

How many surplus land parcels had been donated to nonprofit organizations since 2013?

Thirty-eight percent of the respondents to this question answered “zero.” Twelve percent had donated over 20 parcels. Fifteen percent had donated between 10 and 20 parcels, and twenty-eight percent had donated between 1 and 9 parcels. One community had donated 50 parcels and another had donated 35.

If your local government donated surplus land to a nonprofit organization, did it require a reversion process in the event the housing is not constructed or rehabilitated?

Fifty percent of survey participants responded no, that there was no reversion process, and fifty percent responded yes, that there was a reversion process.

For properties donated to a nonprofit organization, what was the long-term affordability period required?

Thirty-two percent of the respondents to this question said there was no long-term affordability provision. From those that indicated they do have a long-term affordability provision, the average affordability requirement for homeownership units was 16 years, and the average affordability requirement for rental units was 17 years.

For surplus land that is deemed unsuitable for housing, yet has a financial value, does the local government sell this land and use the proceeds to foster affordable housing?

Forty-six percent of the respondents stated that yes, land is sold and the proceeds are used for affordable housing. Fifty-three percent of the respondents reported that they do not sell the land and use the proceeds for affordable housing.

What is the process for nonprofit housing organizations to acquire surplus land?

Thirty-two percent of respondents stated they had “no specific procedure.” Twenty-three percent of respondents stated that there is an open application cycle. Six percent of respondents reported that there is a specific time request to submit requests for land. Several respondents commented that they use a Request for Proposals process. Another respondent noted that if a property is located within a Community Redevelopment Area, they must provide a 30-day notification of the availability of the surplus land. (See chapter 163.380, Fla. Stat.).

Nonprofit Responses to Surplus Land Survey

There were 64 nonprofit organizations that responded to the survey. Four of the respondents stated that they are a community land trust entity.

Are you aware of the process to request surplus land from your county or municipality to be used for affordable housing?

Forty percent responded “Yes,” and sixty percent responded “No.”

Has your organization or another that you know of in your community ever requested and received donated surplus land to be used for affordable housing?

Forty-seven percent responded “Yes,” and fifty-three percent responded “No.”

Local governments may sell surplus land that is deemed unsuitable for affordable housing, and use the proceeds to purchase land for development of affordable housing or to increase public funds earmarked for affordable housing. Has your organization received funding from the sale of local government-owned surplus land?

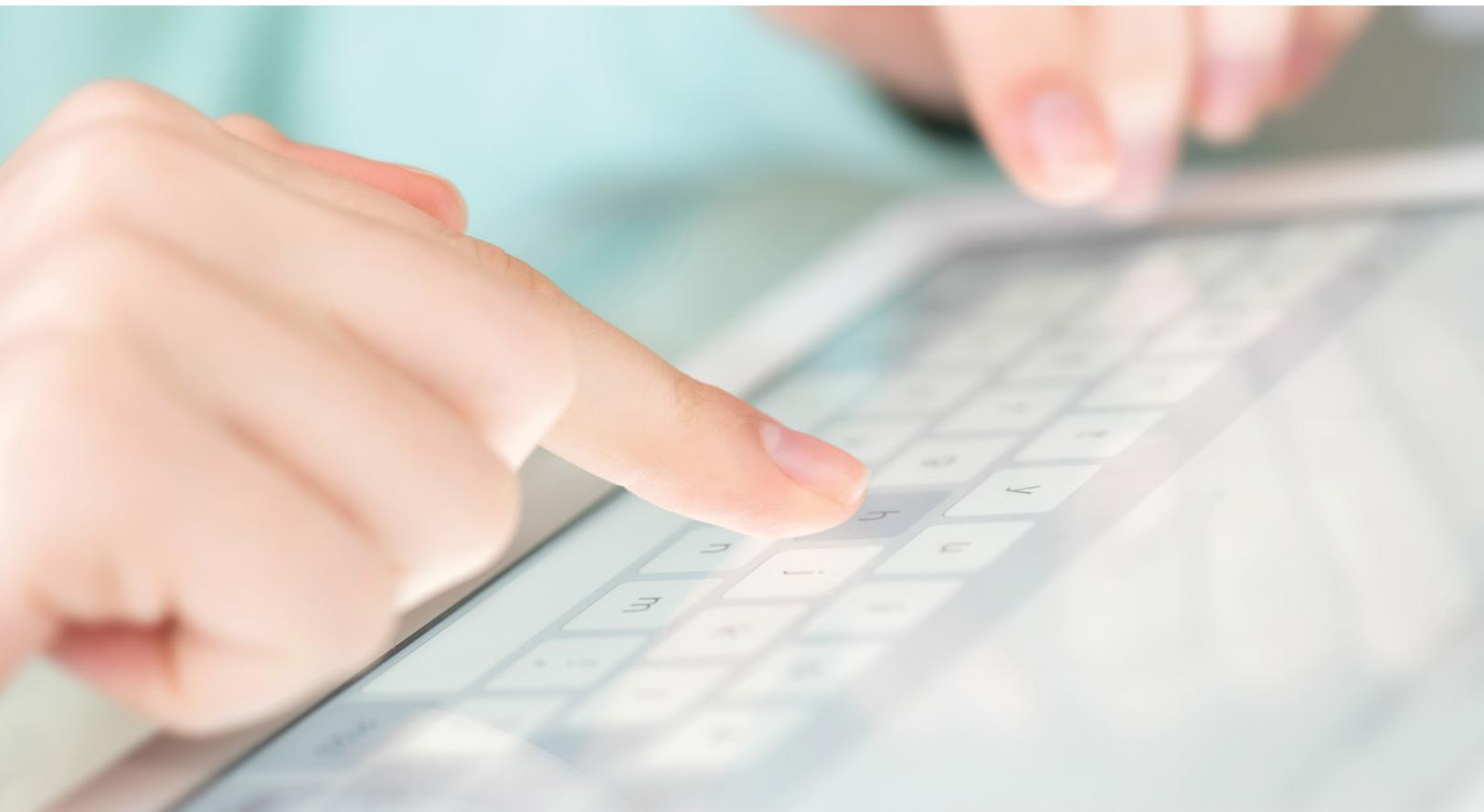
None responded “Yes.” Sixty-two percent responded “No,” and thirty-eight percent responded they did not know.

Do you think your local government could use assistance in implementing a surplus lands program?

Ninety-two percent responded “Yes,” and eight percent responded “No.”

Conclusion:

The response rate indicates local governments and nonprofit organizations have an interest and perhaps some questions about surplus land policies and procedures. The survey results suggest that nonprofit housing organizations could greatly benefit from increased knowledge and awareness of the potential resources available to them in the form of local government-owned surplus lands. The survey results also suggest that local governments could benefit the public interest by making their affordable housing partners more aware of the availability of, and the process to, obtain surplus land. Finally, the survey results indicate that in some cases local governments are donating surplus properties for affordable housing without including requirements for long-term affordability or reversion to the local government if the property is not used for affordable housing within a specified time. This suggests local governments could benefit from technical assistance aimed at enhancing and improving their policies and for disposing of surplus lands and formalizing their procedures.



Best Practices in the Design of a **Surplus Land Program**



Regulatory Framework

Surplus Land Statutes

(§125.379 and §166.0451, Florida Statutes)

The formalization of a surplus land program should begin with these 6 steps:

1. Determine which departments prepare the inventory every three years.
2. Review how decisions are made on the suitability of parcels for affordable housing.
3. Determine how parcels are sorted for suitability for affordable housing or for other uses.
4. Review the procedures for preparing the inventory list and presenting it to the governing body for public hearing and adoption by resolution.
5. Identify how the inventory list is published and made available to the public and to nonprofit housing organizations.
6. Review the procedures for the sale of properties not suitable for affordable housing and if the proceeds can be used to purchase land for affordable housing development or to increase the local government fund earmarked for affordable housing.

Local Housing Assistance Plan

(§420.9071(14), Fla. Stat.; §67-37.005, Fla. Admin. Code)

The Local Housing Assistance Plan (LHAP) provides the descriptions and requirements for the local housing assistance strategies and incentive strategies adopted by the local government that will receive SHIP funds. If surplus lands will be provided to a nonprofit housing organization along with SHIP assistance to develop housing, the long-term compliance and other requirements should be consistent with the LHAP. Local governments that receive SHIP funding are required to designate a Local Housing Assistance Trust Fund, which can also be used to deposit proceeds from the sale of surplus lands (§§125.379(2), 166.0451(2), Fla. Stat.).

Affordable Housing Incentive Strategies

(§420.9076 (4), Fla. Stat.)

Local governments that receive SHIP funds are required to include affordable housing incentive strategies in their adopted LHAP. An advisory committee is required to review the local government comprehensive plan and make recommendations on affordable housing incentive strategies in several areas, including the “preparation of a printed inventory of locally owned public lands suitable for

affordable housing (§420.9076(4)(j), Fla. Stat.).” The Florida Housing Coalition recommends that local governments include this strategy in their LHAP at the time of adoption, include policies and procedures on public access to the inventory, and policies on how properties are added to the list. Information on available surplus land should be included, when applicable, on any notices of funding availability or requests for proposals, along with an explanation of the process for requesting and qualifying to obtain surplus land.

Local Government Comprehensive Plan Housing Element

(§163.3177(6)(f), Fla. Stat.)

Every Florida county and municipality is required to adopt and implement a comprehensive plan to guide future development and growth (§163.3167(1), Fla. Stat.). Each local government comprehensive plan must include a housing element that plans for adequate housing for all current and anticipated future residents of the jurisdiction, and provides for adequate sites for future housing, including housing that is affordable to very low-income, low-income, and moderate-income households (§163.3177(6)(f), Fla. Stat.). Each county and municipality must also adopt land development regulations to implement its comprehensive plan (§163.3202(1), Fla. Stat.).

The housing element of a local government comprehensive plan must include the formulation of housing implementation programs. Having access to suitable land is essential for the development of affordable housing. A program for the donation of government-owned surplus land for affordable housing is an effective means of implementing the goals and objectives of the housing element of the comprehensive plan. The housing element should contain objectives and policies that specifically support a program for donating surplus land to nonprofit housing organizations. The policies should define the specific priorities for the disposition of properties, perpetual or long-term affordability requirements, and partnering with nonprofit housing organizations.

Surplus Land Program Policies

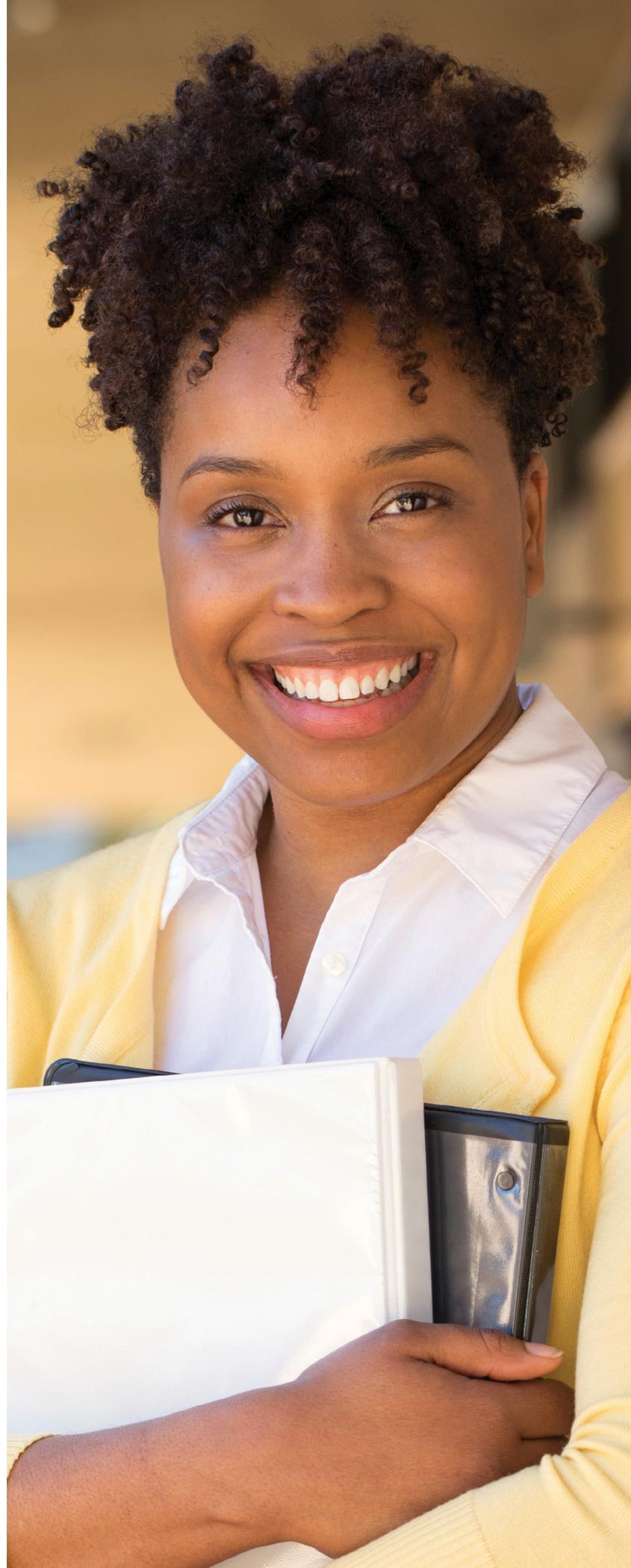
The identification and disposition of surplus lands should follow a specific set of policies and procedures to ensure the program is managed efficiently, fairly, and transparently. Policies and procedures should be consistent with the intent of the state statutes that local governments use their surplus property to increase the stock of affordable housing, and in particular, affordable housing that is permanently affordable. The program should effectively operate to increase the permanent supply of affordable housing, reduce blight, and increase the local government's housing trust fund.

Recipients of Surplus Land

The local government surplus land disposition policy should establish criteria for determining the eligibility of affordable housing developers who might purchase or receive land as a donation. Such a policy might include a prioritized listing of nonprofit housing organizations, such as community land trusts, that are committed to creating permanently affordable housing. The priority list should also include nonprofit affordable developers such as certified Community Housing Development Organizations, Community Development Corporations, and Community Based Organizations. Other potential recipients of surplus land that could be included on a priority list are private builders or adjacent property owners. The surplus land disposition policy should also describe the proposal process for requesting surplus land, and enumerate the documentation required to submit a request. The surplus land disposition policy should include a scoring rubric to ensure the selected recipient and proposed project meet the stated program objectives including the goal of permanent affordability.

Use of Surplus Land

A surplus land disposition program may be useful to revitalize neighborhoods that have experienced blight or destabilization. Infill housing programs can be implemented to prioritize uses that are consistent with redevelopment or neighborhood improvement plans. Surplus land can be a focal point of a revitalization effort. As such, it is important to formulate policy establishing a preference framework for evaluating the potential of surplus lands for use as affordable housing, multifamily



housing, pocket parks, side lots for adjacent owners, or neighborhood-supported commercial uses.

Long Term Affordability

The overarching public benefit of surplus land policies is the opportunity to create a supply of permanently affordable housing. The Community Land Trust model, in which a nonprofit housing organization owns the land and conveys the housing improvements subject to a ground lease, is an optimal approach for ensuring long term affordability. The community land trust ground lease includes resale provisions that require subsequent home buyers to meet income eligibility criteria. In addition, the community land trust retains a right of first refusal to purchase the homes when the original buyer wishes to sell. Housing subsidy programs also provide long-term affordability by requiring subsidy funds to be repaid to the Housing Trust Fund. Restrictive covenants may also be used to impose requirements that ensure long term affordability.

Reversion Clause

Surplus land donation must require that the land revert to the donor should the terms of the donation agreement not be met. Construction and occupancy must occur within a specified time, often 18 months or two years. This requirement allows sufficient time for permitting, construction, and marketing of homes. The requirement can be accomplished using a reversion clause included on the face of the deed, and enforced through provisions of the donation agreement.

Governance and Oversight of Surplus Land Activities

The implementation of the surplus land statutes requires the coordination of several local government departments. In many jurisdictions, the stewardship of publicly owned land is delegated to a real estate or lands department. The county tax collector plays a role in the sale of tax lien certificates and striking tax liens to the county, and the clerk of court issues tax deeds. The local government attorney is involved in the transaction of property transfers. In the case of earmarking surplus land for affordable housing, it is essential that the housing department staff be aware of these processes to ensure that any properties that have development potential are prioritized for affordable housing and if not, that the proceeds from the disposition shall be dedicated to affordable housing development.

The conveyance of publicly owned land requires public approval, including a final resolution by the local governing body. To make these conveyances as transparent as possible and to ensure public support, proposals should be taken up by appointed citizen committees before being submitted to the governing body for approval. A proposed disposition of surplus land should be reviewed by the Affordable Housing Advisory Committee or a surplus land sub-committee.

What Makes a Surplus or Publicly Owned Parcel “Appropriate” for Housing?

In general, land that is not suitable for development because of environmental issues or that is located near toxic or heavy industrial uses is also not appropriate for affordable housing. However, land designated as a brownfield may be appropriate for affordable housing development, particularly considering incentives and resources that are specifically available to assist in the redevelopment of brownfields for affordable housing (see i.e. §376.30781(3)(d) and §212.08(5)(o), Fla. Stat.).

The phrase “appropriate for affordable housing” should not be interpreted to mean parcels that would not be desirable for market rate developers. Affordable housing should be developed in areas of opportunities to the maximum extent feasible. Areas of opportunity have indicators such as good schools, shopping, employment, and transit access. Moreover, facilitating the development of affordable housing in Areas of Opportunity is in the public interest and consistent with local governments’ obligation to affirmatively further fair housing (see Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§ 3601-3619 and 24 C.F.R. Part 5). Areas of Opportunity are further described in the section below.

Surplus Land Program Procedures

This section of the guidebook provides the framework with action steps to build and operate a local government surplus land program that will meet program goals. The steps start with the identification of surplus or publicly owned property, evaluation and disposition paths. Effective strategies and clear procedures can contribute to a program that operates efficiently and meets its goals of increasing the supply of permanently affordable housing.

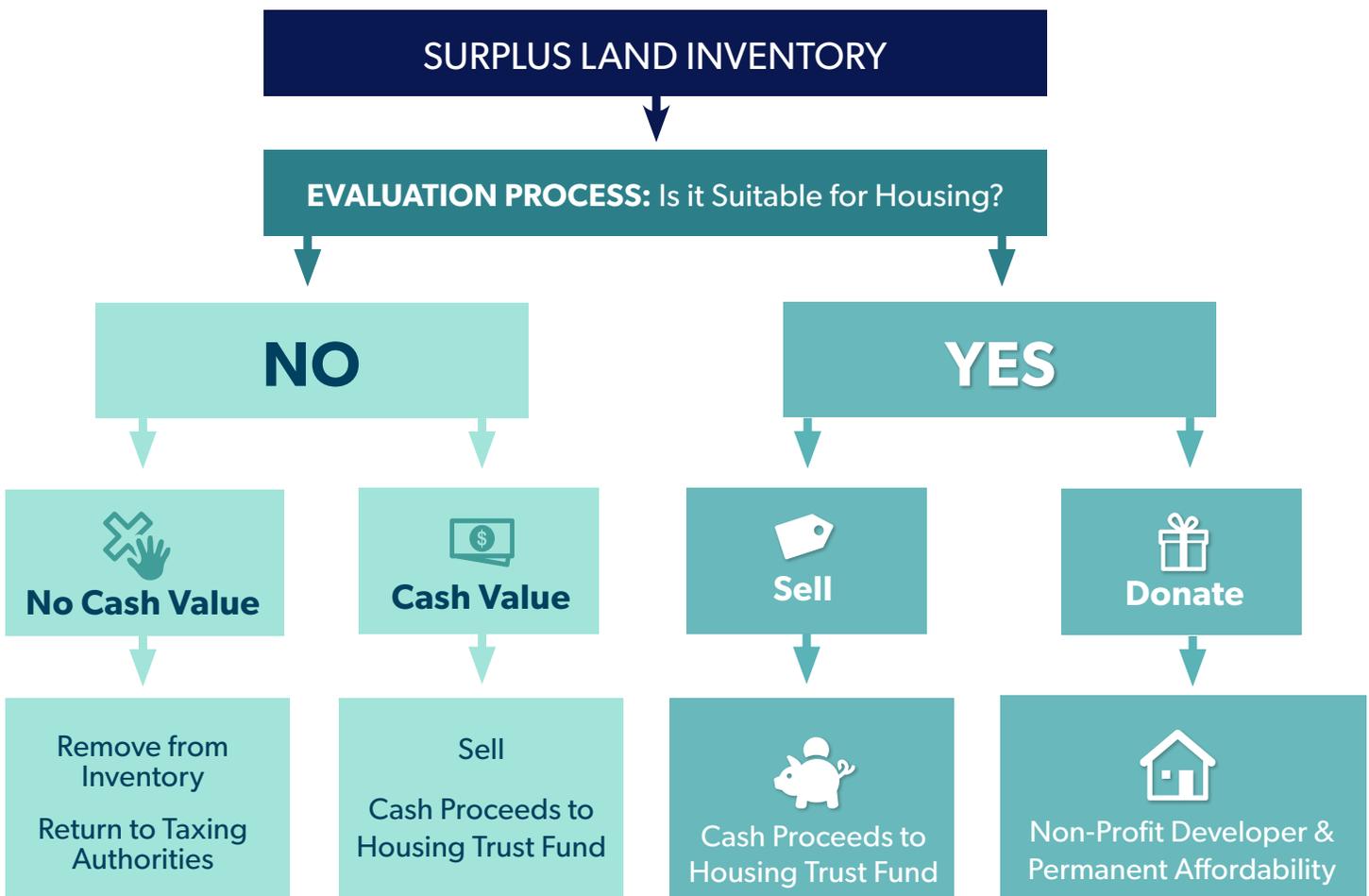
The graphic below presents the basic decision-making process in the disposition of a site once it is determined to be suitable or not suitable for housing development.

Identification

Local governments have been required to comply with the surplus land statutes since 2007. Therefore, the starting place for establishing a surplus land program is to review the existing surplus land inventory list and note the types of properties included. Next, review the list of all lands owned by the local government. The use of computer software, such as ArcGIS and modified GIS platforms, would be helpful to allow these lists to be viewed with filters and sorting criteria that would indicate the parcel is environmentally sensitive or

not suitable for safe residential uses, for example, adjacent to industrial uses. Finally, review the original intended uses of government-owned properties of interest to ensure that the local government still intends to pursue that use.

It should be kept in mind that other taxing entities, such as school districts, hospital districts, and water management districts, also own land. At times, these entities declare parcels to be surplus and subject to disposal. It is possible that sites appropriate for affordable housing might be among those lands subject to disposal by other taxing authorities; therefore, it is good practice to maintain contact and be watchful of opportunities to obtain these lands.



Surplus Land

Take time to carefully review the inventory and description of each listing. If it appears that a property has been on the surplus land inventory list for over three years, this might be an indication that the property should be offered to other taxing entities or other action should be taken to dispose of it.

Publicly Owned Land

Parcels on the surplus land inventory list have been designated as surplus, or not needed for public uses by the local government. The local government might own other parcels that are not in active use but not yet designated as surplus, which nonetheless would be suitable for affordable housing. Sometimes land is purchased for a specific public use and not all of it is used. The housing department staff should routinely review any vacant land owned by the local government, whether or not it is designated as surplus, for its potential use for affordable housing.

Geographical Considerations for Multifamily Development

If it is likely that a housing developer might submit a proposal under the competitive cycles of the Florida Housing Finance Corporation (FHFC), review the site for its scoring potential. Each FHFC Request for Application (RFA) identifies specific areas of opportunity and other locational qualifications. These may include the following:

- Areas of Opportunity- FHFC places a priority on the development of multifamily housing in non-

poverty areas. This is measured by a set of socio-economic descriptors for each geographical area. See <http://www.floridahousing.org/programs/developers-multifamily-programs/competitive/areas-of-opportunity>

- Is the property located in a Racially and Ethnically Concentrated Area of Poverty (R/ECAP)? See <http://www.floridahousing.org/programs/developers-multifamily-programs/competitive/racially-and-ethnically-concentrated-areas-of-poverty>
- Is the property located in a Qualified Census Tract (QCT)? See <http://www.floridahousing.org/programs/developers-multifamily-programs/competitive/lda-information>
- Limited Development Area-is the property near a similar use that would detract from the marketability of the property sharing its market and tenancy? See <http://www.floridahousing.org/programs/developers-multifamily-programs/competitive/lda-information>
- Proximity to services. See the proximity list above to measure the distance of the site to those services if this is a competitive point in a specific RFA.

Value in Private Sale

If a site has financial value for a non-residential use, it should be earmarked for sale with the proceeds to be deposited in the local government fund earmarked for affordable housing.



Parcels Deemed Suitable for Housing

Once a local government has determined that publicly-owned land is appropriate for affordable housing, it must decide whether to sell the land and use the proceeds to purchase other land for affordable housing, increase the local government fund earmarked for affordable housing, or donate the land to a nonprofit housing partner for development of affordable housing (§125.379 and §166.0451, Fla. Stat.). If the land has more financial value than similar parcels, and if there is a possibility that the cost to develop it may be higher, then selling the land might be the best option. This option would also be appropriate for land that is located in an area of very high taxable values, such as coastal or inland waterfront properties, or within a community with high homeowners' association fees.

If the land appears to be buildable and marketable for affordable housing, it should be donated to a nonprofit organization with specific requirements for perpetual or long term affordability and performance within a set timeframe.

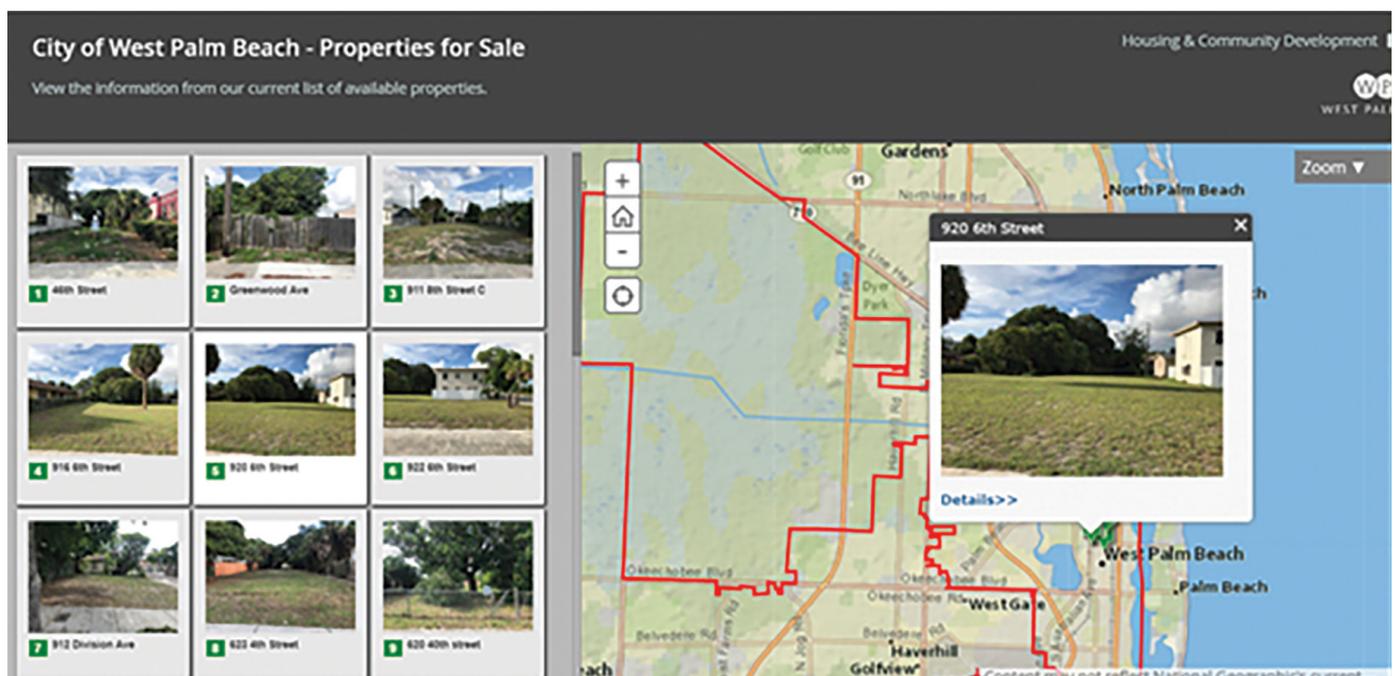
If there is a mitigation program, such as a workforce housing inclusionary zoning ordinance, land may be offered for donation by a developer in lieu of providing required housing on site. This land should also be subject to the evaluation procedure, just as surplus land would be.

Marketing

It is important that a local government's program partners be given access to the availability of surplus government-owned land. For partners that also participate in the SHIP program, Home Investment Partnership Program (HOME), or Community Development Block Grant (CDBG) program, the local government maintains contact databases for serving notices of funding. Using the same contact databases, the local government could serve notices of surplus land availability. The existing local government website used for publishing notices for funding programs is a good place to also publish information related to surplus land. The inventory should be posted with descriptions or interactive links that provide location, site, zoning, and infrastructure information. Notices should also be published when the triennial inventory list is made in conformance with the surplus land statutes. A good example is provided by the City of West Palm Beach.

Land that is proposed for sale can be listed with a selected real estate broker who to manage the marketing and sale of the properties. Some local governments procure the managing broker along with other vendors such as title companies.

Below, the Community Land Trust of Palm Beach County makes notice of homes for sale on its website. These homes were built on surplus land provided to the organization by



Palm Beach County. See <http://www.floridahousing.org/programs/developers-multifamily-programs/competitive/areas-of-opportunity>.

Disposition

It is essential to have a clear and efficient disposition process in place. This will maintain the good reputation of the program for moving expeditiously and transparently. The disposition process should be clearly delineated. Conflict of interest policies should be clearly stated in program application materials. The following points provide more detail on specific parts of the disposition process.

The Application Process

The application or proposal to obtain one or more parcels of surplus land should disclose the proposed use for the site and

the capacity of the applicant to carry out the project within the prescribed timeframe. It is important to indicate whether a proposed housing development is speculative, or there are qualified buyers waiting to purchase. The application should confirm the long-term affordability requirements. The targeted income level of buyers or tenants should be indicated.

A scoring rubric should be used to evaluate each proposal and should include any priorities such as targeted income level or community land trust applicant.

The agreement for conveyance of the land and development of housing must address the form of the legal documents including ground lease, deed restrictions, and deferred second mortgages if these are applicable.



New Construction at Davis Landings West
 3573 Davis Landings Circle, 33461
 3bd 2 bath
 \$155,000-\$235,000k
 (Price is \$235,000, seller has up to \$79k in purchase assistance for qualified buyers)
 For more info contact Tanya Ward Benjamin at 561-249-6053 or twardbenjamin@cltofabc.org or visit our website at <http://cltofabc.org>



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Surplus Land Expense

It is important to recognize that the stewardship of surplus land incurs expenses that must be borne by the program. These costs can form a basis for the sales price for land to be sold but should not be included in the donation process as they can make the home unaffordable.

Some of these costs include:

- **Acquisition Costs.** Costs incurred for original acquisition of the publicly owned land depends on the process through which title was acquired.
- **Title Costs.** Surplus land often has a long history of liens and title actions. Quiet title suit may be required to clear title defects. This is usually performed by the local government attorney or a selected private law firm. If the nonprofit organization must conduct quiet title action there may be assistance from the Affordable Housing Grantee program funded by the Florida Bar Foundation. Contact the Florida Housing Coalition for information.
- **Maintenance Costs.** Costs will be incurred to maintain surplus land, including mowing, tree trimming, and debris clearing.
- **Marketing.** Advertisements will be required to market properties and provide public notice of sale or Request for Proposals.
- **Environmental.** Some publicly-owned land will require an environmental review or assessment, and may potentially require remediation.
- **Survey.** All properties should be surveyed to determine the parcel boundaries and dimensions, and to identify any encumbrances. The survey should also denote the elevation of the site and flood zone.
- **Appraisal.** An appraisal is not necessary at the time of conveyance. An appraisal will be needed when the end product is completed.

Sale Proceeds

It is important to keep track of the sale of surplus land to ensure that proceeds are deposited into the local government fund earmarked for affordable housing, and used to further affordable housing goals. Some examples of how proceeds from the sale of surplus land can be used include the development of affordable housing, purchase assistance, payment of infrastructure costs, site maintenance, and legal expenses.

Monitor Outcomes

Construction Completion. Housing staff will need to set schedules and monitor for the completion of construction in surplus land agreements. This will help ensure that projects are completed timely and the reversion clause is not triggered. Since local government housing department staff are typically familiar with monitoring required for other assisted housing development projects, this should not be a major concern.

Income Verification and Certification. The requirements for determining income eligibility apply to surplus lands affordable housing processes just as they do for other assisted housing development. The developer should be prepared to commit to ensuring the process will occur according to program requirements.

Ground Lease. Projects developed by community land trusts involve the use of a 99-year ground lease. It is important that the standard ground lease format be used and that the template not be altered. Any special conditions should be achieved through a lease addendum. Contact the Florida Housing Coalition for the appropriate ground lease template.

Deed Restriction. If deed restrictions are used to ensure the property will be affordable for a determined period of time, the text should be approved by the local government. Deed restrictions might not have the same permanent affordability provisions as a 99-year ground lease.

Lien. If financial assistance is provided, a mortgage lien should be placed on the property that coincides with the term of the deed restriction or ground lease. The lien should be assumable by the community land trust in the event the property is sold, and would then be transferred to a subsequent buyer to retain the subsidies invested in the property by the local government.

General Recommendations for the Design & Operation of a Surplus Land Program

1. Surplus land programs should be narrowly focused on the goal of returning surplus land to productive use and public benefit for affordable housing. While it is appropriate to oversee transactions for purposes other than affordable housing, such as environmental conservation or commercial revitalization, it is best to maintain a clear focus on the primary program goal, which is the production of permanently affordable housing.
2. Property disposition should recognize and be responsive to the layers of public interest including environmental conservation, historic preservation, and neighborhood stabilization. Housing developers will evaluate proximity features such as access to employment, transit, shopping, medical facilities, and schools.
3. City and county departments need to closely coordinate and cooperate with each other in operating their surplus land programs. This applies in particular to public safety and code compliance departments, fiscal operations, legal counsel, and executive leadership. Senior administrators need to understand the complexity of the processes involved, and support the critical timeframes required for acquisition, evaluation, and disposition of real property.
4. While the surplus land program should operate with a clear and focused goal, it must be able to navigate among various government departments including those involved with housing, planning and zoning, code enforcement, tax collection, tax lien certificates, lien foreclosure, and property appraisal.
5. An integrated, web-based property profile management system is optimal for operation of a surplus land program. Property disposition tracking systems software is available that can integrate fiscal, maintenance, and disposition information on a platform that provides mapping and reports of surplus land transaction activity.
6. Along with a robust tracking program, integration with an effective and enhanced GIS and parcel data system is crucial to support efficient collection of information such as owner, lien, judgment, and other title data.
7. The surplus land program strategy must be both short term and long term. The program is operated with a strategic vision for the entire jurisdiction but that is primarily focused on the production of housing for low- and moderate-income households and the workforce.
8. The surplus land program operating budget may require funding for the payment of court costs, judicial proceedings, title work, legal expenses, maintenance, marketing, sales transaction, and title transfer costs.



Sample Surplus Land Programs

Miami-Dade Infill Housing Program

The Miami-Dade County Urban Infill Program is designed with the primary purpose of increasing the supply of affordable housing by the conveyance of municipally-owned vacant land, and strategically acquired privately-owned properties within targeted neighborhoods. The program aims to eliminate blight and increase the tax rolls, like typical land banks seen in other states. Yet, the program has a clear focus on homeownership for very low-, low- and moderate-income households. The program calls for an affordability period of twenty years.

Properties within the program include:

- Government-owned property no longer in use or needed
- Surface parking lots of government-owned facilities
- Land donated in lieu of satisfying inclusionary zoning requirements
- Private donations of land other than in lieu donations
- Land held by nonprofits for future development
- Land acquired specifically for affordable housing using revenue from in lieu fees and commercial linkage fees. Land acquisition could focus on transit-oriented development opportunities.

(Miami-Dade Urban Infill Program Policies and Procedures, at <http://www.miamidadegov/housing/library/guidelines/infill/infill-housing.pdf>)

City of Miami Infill Program

The City of Miami land inventory is made up of properties that it purchased from private owners using Neighborhood Stabilization Program (NSP) assistance and other funding sources. These properties had dilapidated or abandoned buildings that were cleared. The City also owns properties that it acquired through code enforcement lien foreclosures. It does not have properties obtained through tax deeds, although at times these are offered by the County. The City would be responsible for paying court and other holding costs on such properties.

Builder Program

The city hires builders to construct single family homes on its surplus properties. Qualified low- and moderate-income

homebuyers can purchase the homes at a discount from the actual cost of construction through assistance from the city. The city holds a deferred, zero-percent second mortgage with a 30-year term for the amount discounted from the actual construction cost.

Developer Program

The city also works with partners, including a nonprofit housing organization that is a community land trust. Parcels are transferred to the community land trust by a purchase agreement that is finalized when the community land trust completes the construction of a home. The community land trust retains title to the land, and conveys the improvements to a homebuyer subject to a 99-year ground lease. The community land trust has 24 months to complete the home.

Intermediary

The city works with a quasi-public intermediary, the Liberty City Community Revitalization Trust (Liberty City Trust), to manage the sale of the homes it has built. The Liberty City Trust completes the buyer eligibility package and handles the sales transaction.

(Per telephone conversation with George Mensa, Director, Department of Community and Economic Development, City of Miami, August 31, 2017.)

City of West Palm Beach

The City of West Palm Beach has a robust surplus land program that has resulted in dozens of new homes built for low- and moderate-income families. Due to the city's historical development pattern and its geographical network of older neighborhoods, many properties were abandoned and acquired through code enforcement lien foreclosure or tax deed escheatment. Additionally, the city has purchased many properties outright with Neighborhood Stabilization Program (NSP) funds. The supply of parcels constantly changes as the city receives tax deeds from the county, clears title, and prepares the properties to be marketed both for sale to the private sector and for donation to nonprofit housing developers. A real estate firm is selected to market the for-sale parcels on Multiple Listing Service (MLS) and the city's website. When properties are sold, the city deposits the sale proceeds into its affordable housing trust fund. Nonprofit

housing organizations can also review the city-owned property list and apply to receive properties by donation. A committee reviews the applications, and donation recipients have 18 months to complete the proposed developments. While the city does not prioritize community land trusts for receiving donated parcels, community land trusts are active participants in the program. The city is in the process of ramping up its code enforcement lien foreclosure process to acquire properties with chronic problems so they can be recovered and redeveloped.

(Per telephone conversation with Armando Afano, Director, Housing and Community Development, September 1, 2017. See <http://gis.wpb.org/hcdstorymap/>)

Following is an excerpt from the City of West Palm Beach housing assistance incentives program:

City Owned Properties As required by Florida Statute 166.0451, the Department of Housing and Community Development maintains a listing of City owned properties that are appropriate for use as affordable housing. The property list shall be updated and provided to the City Commission for surplus approval

when surplus is required and for information purposes no less than annually.

The Department of Housing and Community Development is, upon approval of this Housing Assistance Incentives, authorized to dispose of the properties for affordable, attainable or workforce housing purposes with the advice and consent of the Mayor. The Mayor is authorized to execute all documents necessary achieve the disposition.

The Methods of disposition may include sale of the properties with the proceeds going to the Housing Trust Fund; transfer of properties, at no cost, to a nonprofit for the development of affordable housing; sold to nonprofits or private parties with a provision that the property be used for an affordable, attainable or workforce housing projects; or the City may retain the properties to build or preserve affordable, attainable or workforce housing. The City Commission shall be advised of all such dispositions on a quarterly basis.

(West Palm Beach Housing Assistance Incentives Program at 9, Res. 84-16, City of West Palm Beach, 3/28/2016. See <http://wpb.org/Departments/Housing-Community-Development/Development-Incentives>)



Community Land Trust Partnerships

The Community Land Trust of Palm Beach County (CLTPB) works closely with local governments, including West Palm Beach and Palm Beach County, to obtain donations of publicly-owned land. The donated land allows the CLTPB to sell homes at an affordable price to lower income households because the price of the land is not included in the transaction. The ground lease ensures homes are available in perpetuity for affordable housing. The CLTPB provides ownership as well as rental housing using the community land trust model.

(For more information see *Community Land Trust of Palm Beach County website: <http://cltofabc.org/>*)

Town of Jupiter Workforce Housing Program

The Town of Jupiter adopted an inclusionary ordinance as a means to implement its workforce housing program. The ordinance requires affordable workforce units to be included in new developments, or in the alternative, the payment of fees or donation of land in lieu of developing workforce units. The Town partnered with a community land trust, which will administer the program and manage the development of workforce housing with support from funds generated through the fees paid in lieu, or on land donated in lieu. While the donated land may not be technically surplus, it is in the public interest that this land be appropriately developed as permanently affordable housing. If the donated land is sold, the proceeds are used for the development of permanently affordable housing.

The following text is excerpted from the Town of Jupiter enacting ordinance:

Community land trust. The Town Council may authorize the Town Manager to enter into an agreement with a community land trust organization registered in Palm Beach County to administer the Town's workforce housing program.

s. 27-1, Ordinance No. 7-15, Town of Jupiter, May 19, 2015. *Fee, or donation of land, in lieu.* Developers may pay a fee, or donate land, *in lieu* of providing the number of workforce housing dwelling units required by section 27-1675.43.

s. 27-1675.39(10), Ordinance No. 7-15, Town of Jupiter, May 19, 2015.

St. Johns County Land Program

St. Johns County took a different approach to obtaining and managing an inventory of land available for affordable housing. The county experienced a period of high growth that involved the development of many large Development of Regional Impact (DRI) projects. The county negotiated with the developers to mitigate their impact on the demand for workforce housing. The county received both land and close to \$1 million in mitigation fees that was used by nonprofit developers to build new housing, or to acquire older housing for rehabilitation. The county used DRI funds for infrastructure needed by an affordable housing development, and developed several projects including housing for homeless youth and multifamily rental properties. The county also acquired 35 lots that were made available for single family development, known as Hancock Place, developed by the St. Johns Housing Partnership.

The housing trust funds are available for projects that are solicited by requests for proposals from nonprofit housing developers, redevelopment, and for projects aimed at ending homelessness.

(Per telephone conversation with Benjamin Coney, Assistant Director at St. Johns County Housing & Community Services, St. Augustine, FL August 30, 2017.)



Appendix A: How Local Governments Obtain Surplus Properties

Florida counties and municipalities acquire real property in several ways, including by direct purchase for public use, tax lien escheatment, municipal tax lien foreclosure, and code enforcement lien foreclosure. This section will discuss tax lien escheatment, municipal tax lien foreclosure, and code enforcement lien foreclosure. This section is included in this guidebook to provide nonprofit affordable housing organizations an overview of the processes involved, and to be instructive about potential opportunities to obtain properties subject to these processes.

Tax Lien Escheatment

Counties come into title of real property through tax lien escheatment after an owner fails to pay property taxes, and the tax lien certificate and tax deed sale processes fail to procure a third-party purchaser (§197.502(8), Fla. Stat.). Tax lien escheatment is a lengthy process that begins when taxes on a real property become delinquent on April 1 of the year following the year in which the taxes were levied. Real estate taxes imposed under the Florida constitution or state law are a first lien, superior to all other liens, on the property against which the taxes were assessed (§197.122(1), Fla. Stat.). Taxes become a lien on January 1 of the year in which the taxes were levied, and continue as a lien until they are either paid or barred by a limitations statute (§197.122(1), Fla. Stat.). Although taxes become a lien on January 1 of the year in which they were levied, they are not due and payable until November 1 of the same year, and they become delinquent on April 1 of following year. Thus, property taxes are due and payable in arrears. All property owners are held to know that taxes are due and payable annually, and are responsible for determining the amount due and for paying that amount before April 1 of the year following the year in which the taxes were levied (§197.122(1), Fla. Stat.).

Prior to November 1, each county property appraiser must deliver to the county tax collector a certified assessment roll, and the tax collector must publish in a local newspaper a notice that the assessment roll is open for collection (§197.322(1), (2), Fla. Stat.). The tax collector has the duty to send notice of real property tax assessments to each property owner within 20 working days after receiving the certified assessment roll, and to send notice of delinquent taxes on or before April 30 (§197.322(2), §197.343(1), Fla. Stat.). By the later of June 1 or the 60th day after taxes become delinquent, the tax collector must publish once each week for 3 weeks a notice that tax lien certificates will be sold on all real property with delinquent taxes (§197.402(3), Fla. Stat.). The tax collector conducts the sale, and awards each tax lien certificate to the bidder who agrees to pay the taxes, interest, costs, and charges due, and demands the lowest rate of interest in return (§197.432(1), (6), Fla. Stat.). If there are no bidders to purchase a tax lien certificate, that certificate is struck to the county (§197.432(6), Fla. Stat.).

Two years after a tax lien certificate is issued, the certificate holder may file with the tax collector the certificate and an application for

a tax deed (§197.502(1), Fla. Stat.). The certificate holder applying for a tax deed must pay the amounts represented by all other tax certificates issued on the property, and all outstanding taxes due together with interest (§197.502(2), Fla. Stat.). Two years after April 1 of the year in which tax certificates were issued to a county, the county must apply for tax deeds on certificates held in which the property is valued at \$5,000 or more, and may apply for tax deeds on certificates held in which the property is valued at less than \$5,000, and pay applicable costs and fees (§197.502(3), Fla. Stat.). The tax collector then notifies the clerk of court that payments have been made for outstanding certificates, and that certain enumerated parties are entitled to receive notice of tax deed sale (§197.502(4), Fla. Stat.). The clerk of court then advertises and administers a public tax deed sale (§197.502(5)(c), Fla. Stat.). The opening bid on county-held certificates on non-homestead properties is the sum of all outstanding certificates on the property, plus all taxes due, interest, costs, and fees (§197.502(6)(a), Fla. Stat.). The opening bid on individually-held certificates is the amount required to redeem the applicant's tax certificates, plus all subsequently sold tax certificates, plus all costs and fees paid by the applicant (§197.502(6)(b), Fla. Stat.). The opening bid on certificates on homestead properties is an amount equal to half the latest assessed value of the property plus the amount required for opening bid on non-homestead property (§197.502(6)(c), Fla. Stat.). Florida courts have held that a tax deed does not represent a transfer of title from the former owner, but rather constitutes the "commencement of a 'new, original, and paramount' title" (*Cricket Props. LLC v. Nassau Pt.*, 124 So. 3d 302, 306 (Fla. 2d DCA 2013)). Therefore, liens such as homeowners' association and condominium association liens do not survive issuance of a tax deed.

For certificates on which there are no bidders for a tax deed, or on which the certificate holder fails to timely pay amounts due for resale or issuance of a tax deed, the clerk of court enters the properties on a list of "lands available for taxes," and notifies the county commission that the properties are available (§197.502(7), Fla. Stat.). During the first 90 days after the list is made, the county alone may purchase the listed properties for the opening bid amount. Beyond 90 days after the list is made for "lands available for taxes," any person may purchase the property for the opening bid amount (§197.502(7), Fla. Stat.).

Three years after the public tax deed sale date, properties that remain on the list of "lands available for taxes" escheat to

the county, and the clerk of court issues an escheatment tax deed vesting title in the board of county commissioners free and clear of all tax certificates, accrued taxes, and liens of any nature (§197.502(8), Fla. Stat.). Therefore, five years after a tax lien certificate is struck to the county, the county acquires title to property by escheatment tax deed. If the property acquired by the county for delinquent taxes is located within the boundaries of a municipality, the county must either use the property for certain purposes prescribed by law or convey it to the municipality (§197.592(3), Fla. Stat.). Hence, municipalities may also come into title of real property indirectly through the escheatment tax deed process. Counties and municipalities may also acquire real property through the code enforcement lien foreclosure process, which will be discussed in the next section.

Municipal Tax Lien Foreclosure

Chapter 173, Florida Statutes, authorizes Florida municipalities to foreclose on the lien of any tax, tax certificate, or special assessment imposed by the municipality, other than ad valorem taxes collectible by the county tax collector (§173.01, Fla. Stat.). The method is optional, and provides an alternative in rem procedure for municipalities to enforce tax liens and special assessments (§173.13, 173.14, Fla. Stat.). A municipality may foreclose its lien after two years from the date the tax became delinquent or the city issued a tax certificate, or after one year from the date any special assessment became due and payable (§173.03(1), Fla. Stat.). The municipality must file suit to foreclose its lien in circuit court in the county where the municipality is located. Prior to filing suit, the municipality must serve notice by registered mail on the owner and any mortgagees with an interest in the land, but does not have to name the owner, mortgagees, or other persons with an interest in the land as defendants in the foreclosure suit (173.04(1), Fla. Stat.).

The clerk of court must publish a notice once each week for two consecutive weeks, describing the lands and the amounts the municipality is seeking to recover in the foreclosure suit, and requiring persons with an interest in the land to appear in the case and defend their interests (§173.04(3), Fla. Stat.). Every person who holds an interest in or lien on the land subject to the tax foreclosure is deemed a party and may appear in the process (§173.05, Fla. Stat.). If judgment is entered for the municipality, the court appoints a special magistrate to sell the lands to the “highest and best bidder for cash...at public outcry” after advertising the sale once each week for two consecutive weeks in a local newspaper (§173.09(1), Fla. Stat.). If the sale fails to procure a sufficient bid, the municipality is entitled to bid the whole amount due and the special magistrate will convey the

land accordingly (§173.09(2), Fla. Stat.). The municipality then takes title to the lands in fee simple and may dispose of them in any manner provided by law (§173.09(3), Fla. Stat.).

Code Enforcement Lien Foreclosure

The Florida constitution provides that counties and municipalities have powers of self-government, and may enact local ordinances (Fla. Const. art. VIII, § 1(f), (g), §2(b)). The Local Government Code Enforcement Boards Act provides an optional process for counties and municipalities to impose administrative fines and other noncriminal penalties for local ordinance violations (§§162.01-162.13, Fla. Stat.). Under this process, local governments may appoint code enforcement boards or magistrates, and employ inspectors who are empowered to issue notices of local ordinance violations. If a violation continues after notice, the code inspector refers the matter to the code enforcement board or magistrate for hearing (§§162.03-162.06, Fla. Stat.). Administrative fines may be imposed only after notice with opportunity to cure, and subsequent notice and opportunity to present evidence and be heard before the code enforcement board or magistrate (§§162.06-162.09, Fla. Stat.).

The local government may record a certified copy of an order imposing a fine in the county official records. The order constitutes a lien against the land on which the violation exists, and any other real or personal property the violator owns within the county (§162.09(3), Fla. Stat.). A party to a code enforcement hearing process is entitled to judicial review of the final administrative order by filing an appeal in circuit court within thirty days of the date the order was rendered (§162.11, Fla. Stat.). Three months after the date of filing its lien, the local government may initiate a court proceeding to foreclose against the violator’s property (§162.09(3), Fla. Stat.). If judgment is entered in favor of the local government, the property will be subject to foreclosure sale. However, no lien may be foreclosed on real property that is protected by the homestead provision of section 4, Article X of the Florida Constitution (§162.09(3), Fla. Stat.).

Direct Purchase of Land for Public Use

Local governments purchase land for public uses including road right of way, infrastructure improvements, parks and conservation. Land is also purchased for redevelopment. Land obtained by local governments for public purposes may become surplus if it is not used for the intended purpose or if there is a portion of land that was not used.

Appendix B: Glossary of Terms

Affordable Housing: The rule of thumb used by the federal government is that housing should cost no more than 30 percent of a household's gross income. Housing costs include rent or mortgage payments, property taxes (for homeowners), renter's or homeowner's insurance, and utility costs. Many, though not all, federal, state, and local funding programs require affordable housing providers to use this standard when setting rents or purchase prices for their units. Depending on the program, the rent or purchase price of a unit may be set at 30 percent of a specific income level (e.g. 50 percent of area median income), or at 30 percent of the applicant household's income.

Affordability Period: The time period that the dwelling must be maintained as affordable for households that fall below an income-eligibility threshold. The affordability period is set by federal, state or local requirements depending on the funding source.

Area Median Income: The Area Median Income (AMI) divides the income distribution in a defined geographic area into two equal parts: one-half of the cases falling below the median and one-half above the median. HUD uses the median income for families in metropolitan and non-metropolitan areas to calculate income limits for eligibility in a variety of housing programs. HUD estimates the median family income for an area in the current year and adjusts that amount for different family sizes so that family incomes may be expressed as a percentage of the area median income.

Assemblage: The process of forming a single site from several parcels, usually for eventual development or redevelopment.

Brownfield: As used in this guidebook, the term "brownfield" has the same meaning as "brownfield site," defined in section 376.79(4), Florida Statutes, as "real property, the expansion, redevelopment, or reuse of which may be complicated by actual or perceived environmental contamination."

Community Land Trust: The term "community land trust" refers to the vehicle of separating land from building (house) for the purpose of transferring title to the house without selling the land. The term also denotes the private nonprofit corporation that acquires and holds title to the land and manages the ground leases on that property for the benefit of the community.

Conveyance: Conveyance is the act of transferring an ownership interest in real property from one party to another. Conveyance also refers to the written instrument, such as a deed or lease that transfers legal title of a property from the seller to the buyer.

Deed: Property deeds are used to convey real property from a grantor (seller) to a grantee (buyer). For a deed to be legally operative, several essentials must exist including the identification of the grantor and grantee, and the adequate description of the property. In addition, deeds may be categorized in a number of ways including warranty, quitclaim and special purpose deeds.

Delinquent Tax Value: Delinquent tax refers to a tax that is unpaid after the payment due date. Usually a penalty is attached to a delinquent tax. The power, jurisdiction and authority to collect all delinquent taxes are vested in the state tax commission.

Escheat: As used in this guidebook, the term "escheat" refers to the legal process through which a county acquires title to real property on which the former owner failed to pay real estate taxes. More generally, the term "escheat" refers to the power of a government to acquire title to property when the private owner is unknown or cannot be found.

Escrow: A grantor may effectively deliver a deed in the future by an escrow. An escrow is a deed (or other thing) given to a third party, called an escrow agent, to hold and then deliver to the grantee when specified conditions are met. The parties may close a real estate sale by using an escrow agent.

Fair Market Value: Fair market value (FMV) is the price that a person reasonably interested in buying a given asset would pay to a person reasonably interested in selling it for the purchase of the asset or what the asset would fetch in the marketplace.

Foreclosure: The action of taking possession of a mortgaged property when the mortgagor fails to keep up their mortgage payments.

GIS: A geographic information system (GIS) is a system designed to capture, store, manipulate, analyze, manage, and present spatial or geographic data.

Green Space: An area of grass, trees, or other vegetation set apart for recreational or aesthetic purposes in an otherwise urban environment.

Land Bank: The term “land bank” refers to a program or policy established to assemble, temporarily manage, and dispose of real property for the purpose of stabilizing neighborhoods, encouraging reuse or redevelopment, and creating affordable housing. The term “land bank” also refers to the governmental or nongovernmental nonprofit entity established to operate a land bank program.

Local Housing Assistance Plan (LHAP): The LHAP for each local government describes the methods (housing strategies) by which they will expend the SHIP funds allocated to the jurisdiction. Generally, the LHAP is submitted once every three years and covers three fiscal years funding. The LHAP can be amended at any time.

Permanently Affordable Housing: Refers to all types of housing with lasting affordability. These types include rental or homeownership units created by nonprofits (e.g. community land trusts) or public entities (e.g. inclusionary housing programs) that utilize various legal mechanisms to ensure the unit remains permanently affordable. Differing from the shorter affordability periods required by federal programs to support the production of affordable housing, these organizations opt to maintain the affordability of housing over the long-term in order to preserve the affordable housing stock and the public’s investment in affordable housing production.

Real Property: All land, structures, firmly attached and integrated equipment (such as light fixtures or a well pump), anything growing on the land, and all “interests” in the property which may be the right to future ownership (remainder), right to occupy for a period of time (tenancy or life estate) the right to drill for oil, the right to get the property back (a reversion) if it is no longer used for its current purpose (such as use for a hospital, school or city hall), use of airspace (condominium) or an easement across another’s property.

Redevelopment: Construction of new buildings in an urban area, typically after demolishing the existing buildings.

Resale Requirement: If an affordable home sold to an income-qualified homebuyer has a resale requirement, the homeowner is legally required by a deed restriction or land covenant to sell the home to another income-qualified household at an affordable price (when/if the first homeowner chooses to sell.)

Restrictive Covenant: A covenant imposing a restriction on the use of land so that the value and enjoyment of adjoining land will be preserved.

SHIP (State Housing Initiatives Partnership Program):

The State Housing Initiatives Partnership Program (SHIP) provides funds to local governments as an incentive to create partnerships that produce and preserve affordable homeownership and multifamily housing. The program was designed to provide very low-, low- and moderate-income families with assistance to purchase a home, money to repair or replace a home, and many other types of housing assistance.

Surplus Land or Property: Real property owned by the County or a municipality that has been determined to be no longer necessary to serve a public purpose. Property specifically acquired as road right-of-way may not be deemed surplus property and sold under this ordinance.

Surplus Land Statutes: Existing law prescribes requirements for the disposal of surplus land by a local agency, as defined. Existing law specifies that these and other related provisions are not to be interpreted to empower a local agency to sell or lease surplus land at less than fair market value. The requirements are found in two statutes: 125.379 for counties, and 166.0451 for municipalities. Surplus Lands are defined in Statute 274.05, and the sale of such is defined in 273.01.

Tax Collector: According to Chapter 192 of the Florida Statutes; TAXATION: GENERAL PROVISIONS “County tax collector” means the county officer charged with the collection of ad valorem taxes levied by the county, the school board, any special taxing districts within the county, and all municipalities within the county.

Tax Roll: A breakdown of all property within a given jurisdiction, such as a city or county, that can be taxed. The tax roll will list each property separately in addition to its assessed value. This roll is usually created by the taxing assessor or other authority within the jurisdiction.

Title: In property law, a title is a bundle of rights in a piece of property in which a party may own either a legal interest or equitable interest. The rights in the bundle may be separated and held by different parties. It may also refer to a formal document, such as a deed, that serves as evidence of ownership.

ACCESS AN ELECTRONIC VERSION OF THE

FLORIDA'S SURPLUS LAND

STATUTES FOR AFFORDABLE HOUSING:
A GUIDEBOOK FOR IMPLEMENTATION USING BEST PRACTICES

AND OTHER VALUABLE RESOURCES UNDER THE PUBLICATIONS TAB
ON THE FLORIDA HOUSING COALITION'S WEBSITE AT:

WWW.FLHOUSING.ORG



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