

Using Surplus Land for Affordable Housing

April 13, 2021
2PM EST
CATALYST WEBINAR



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The image shows a group of people in a classroom setting, with a woman in the foreground smiling and looking towards the camera. The background is a teal gradient with white text.

The Coalition is Florida's affordable housing training and technical assistance provider.

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FLORIDA HOUSING COALITION PUBLICATIONS

Access these valuable resources and more under the Publications tab at Flhousing.org

Housing News Network Journal

Florida Home Matters Report

Accessory Dwelling Unit (ADU) Guidebook

Adaptive Reuse of Vacant Rentals

Affordable Housing Resource Guide

Affordable Housing Incentive Strategies

CLT (Community Land Trust) Primer

CLT Homebuyer Education – Teacher’s Guide

CLT Homebuyer Education – Buyer’s Guide

Community Allies Guide to Opportunity Zones

Community-Based Planning Guide

Creating a Local Housing Disaster Recovery

Creating Inclusive Communities in Florida

**Credit Underwriting Guide for Multi-Family
Affordable Housing in Florida**

**Developing & Operating Small Scale Rental
Properties**

**Disaster Management Guide for Housing
Landlord Collaboration Guidebook**

PSH Property Management Guidebook

Residential Rehabilitation Guide

SHIP Administrators Guidebook

Surplus Lands Guidebook

**Supporting Households Moving Out of
Homelessness**

Using SHIP For Rental Housing



Logistics for Today's Webinar

- All attendees are muted
- Please type in your questions. We will answer questions throughout the webinar.
- Webinar is being recorded and will be posted to our website
- Handouts



Presenters



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A blue speech bubble graphic with a white border and a dark blue shadow, containing the text "Poll: Who's Here?".

Poll: Who's Here?

Florida's “Surplus Land” Laws



Using Government-Owned Land for Affordable Housing

- What laws govern using local government land for affordable housing?
- How can local governments use their property for affordable housing purposes?
- Does land have to be on the required affordable housing inventory to be used for affordable housing?
- How do local governments obtain land?
- How can local governments regulate long-term affordability?

Local Government Legal Authorization to Sell or Lease Real Property

S. 125.35(1), Fla. Stat. “The board of county commissioners is expressly authorized to sell and convey any real or personal property, and to lease real property, belonging to the county, **whenever the board determines that it is to the best interest of the county to do so, to the highest and best bidder for the particular use the board deems to be the highest and best, for such length of term and such conditions as the governing body may in its discretion determine.**”

The Florida Statutes only expressly governs the sale or lease of real property by a county government with some exceptions. Municipalities are left to the discretion of their governing body under home rule unless otherwise prescribed by state law or county charter.

- Ex) **S. 163.380, Fla. Stat.:** governs disposal of property in a community redevelopment area (CRA).



Local Government Legal Authorization to Sell or Lease Real Property

S. 125.35(1)(c): notice provisions to sell county property

S. 125.35(2): instances which county can conduct a private sale

- If parcel is of insufficient size and shape to be issued a building permit for any type of development
- If parcel determined to be \$15,000 or less

County Statutory Authorization to Dispose of Real Property, continued

- **S. 125.35(3), Fla. Stat.** (county governments only): “[Alternatively] . . . the board of county commissioners may by ordinance prescribe disposition standards and procedures to be used by the county [in disposing of land]. The standards and procedures must provide at a minimum for:
 - (a) Establishment of competition and qualification standards upon which disposition will be determined.
 - (b) Reasonable public notice of the intent to consider disposition of county property and the availability of copies of the standards. Reasonableness of the notice is to be determined by the efficacy and efficiency of the means of communication used.
 - (c) Identification of the form and manner by which an interested person may acquire county property.
 - (d) Types of negotiation procedures applicable to the selection of a person to whom county properties may be disposed.
 - (e) The manner in which interested persons will be notified of the board’s intent to consider final action at a regular meeting of the board on the disposition of a property and the time and manner for making objections.
 - (f) Adherence in the disposition of real property to the governing comprehensive plan and zoning ordinances.”



Affordable Housing can be the “Highest and Best” Use of a Parcel at the Local Government’s Discretion

- Per F.S. 125.35, the Board of County Commissioners has the discretion to deem what is the “highest and best” use for a particular parcel.
- Affordable housing can be the “highest and best” use as determined by the Board of County Commissioners.
- Municipalities can also do so under their county charter or local procedures.



Required Inventory of Land Appropriate for Use as Affordable Housing

- F.S. 125.379 (counties) & 166.0451 (municipalities) are commonly referred to as Florida's "Surplus Lands statutes"
- Every 3 years since July 2007, each Florida county and city **must prepare an inventory list** of all real property owned within its jurisdiction to which the city or county holds fee simple title that is **"affordable for use as affordable housing."**
- Properties placed on the inventory list may be used for a variety of affordable housing activities.



Placing land on the inventory: What does “appropriate for use as affordable housing” mean?

Florida law does not define what “appropriate for use as affordable housing” means.

This term is left to the discretion of the local government.

BEST PRACTICE

- All parcels the local government owns in fee simple that can be developed for residential purposes should be placed on the inventory.
- If it is appropriate for market-rate housing, it is appropriate for affordable housing.



Placing land on the inventory: Statutory process

1. Inventory list must include the address and legal description of each property and specify whether the property is vacant or improved.
2. The governing body must review the inventory list at a public hearing and may revise it at the conclusion of the public hearing.
3. Following the public hearing, governing body shall adopt a resolution that includes an inventory list of such property.

Once land is placed on the inventory, what's next?

Land on the inventory can be used for a variety of affordable housing purposes.

“Affordable housing” in the surplus land statute is defined as the same meaning in 420.0004(3).

Housing is “affordable” if “monthly rents or monthly mortgage payments including taxes, insurance, and utilities do not exceed 30 percent of the 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 households.



Options for Property Placed on the Affordable Housing Inventory

1. Offer for sale and use the proceeds to purchase land for affordable housing.
2. Offer for sale and use the proceeds to increase the local government fund earmarked for housing.
3. Sell with a restriction that requires the development of the property as permanent affordable housing.
4. Donate to a nonprofit housing organization for the construction of permanent affordable housing.
5. Otherwise make available for production and preservation of permanent affordable housing.



Does land have to be on the legally required affordable housing inventory for a local government to sell or lease the land for affordable housing?

No. Counties under F.S. 125.35 have the discretion to sell or lease land for the “highest and best” use regardless of if the land is on the affordable housing inventory. Municipalities, using their home rule authority, can also do so unless a state statute or county charter is in conflict.



If land does not have to be on the statutory affordable housing inventory to be used for affordable housing, what is the purpose of the “surplus lands” statute?

1. Accountability. The act of producing the inventory of lands at least every 3 years requires an analysis of local resources and benefits local affordable housing policy.

2. Guidance. The listed uses in statute provides guidance as to how to use government land for affordable housing purposes.

3. Land Donation Clarity. F.S. 125.35 does not explicitly reference the donation of land for affordable housing. Under the surplus land statutes, land on the inventory can be donated to a nonprofit organization to use as permanent affordable housing.



Takeaways

- Local government can and should use its land resources for affordable housing purposes.
- Affordable housing purposes can include selling or donating land to be built as affordable housing and by selling land at market rate and then using the proceeds for an affordable housing trust fund.
- While land does not need to be on the statutorily required affordable housing inventory to be used for affordable housing, the inventory process can be beneficial to affordable housing goals.

How Do Local Governments Obtain Land?



Local Government Methods of Acquiring Land

- Direct Purchase (using federal, state, and local resources)
- Donation
- Inclusionary Housing Ordinance
- Tax Lien Escheatment
- Tax Lien Foreclosure
- Code Enforcement Foreclosure
- Obsolete Uses

Entities to Work with to Boost Land Resources

- Community Redevelopment Agency (CRA)
- School Board (F.S. 1001.43 – authorizes school board to use surplus land for affordable housing for teachers and other district personnel)
- Private Institutions
 - F.S. 420.615 – Affordable housing land donation density bonus incentives
- Religious Organizations



Methods of Conveyance



Transfer by Deed

Transfer with a land use restriction agreement and/or deed restriction provisions including:

- Affordability period
- Households served
- Compliance monitoring procedures
- Party responsible for qualifying households (developer or housing staff?)
- Reversion clause if housing is not developed within ____ number of years
- Enforcement & penalties for noncompliance



Community Land Trust



Local governments can form or partner with a Community Land Trust (CLT) to:

1. Build permanently affordable housing using donated or discounted government-owned land.
2. Monitor compliance for permanent or long-term affordability of housing units built on government-owned land.



Community Land Trust



Community land trusts are ideal partners for using government-owned land for affordable housing.

1. Through ground lease restrictions, CLT homes are required to be affordable in perpetuity.
2. CLTs are adept at long-term stewardship of land resources.
3. If using down-payment assistance or other government subsidy, CLT homes retain subsidy in the unit. Because the subsidy is retained in the unit instead of recaptured when a CLT home is sold, little to no additional subsidy is needed to house the next homebuyer.



Long Term Lease

- Partner with an organization that can steward long-term affordability.
- Use provisions
- Households served
- Compliance provisions
- Transferability provisions

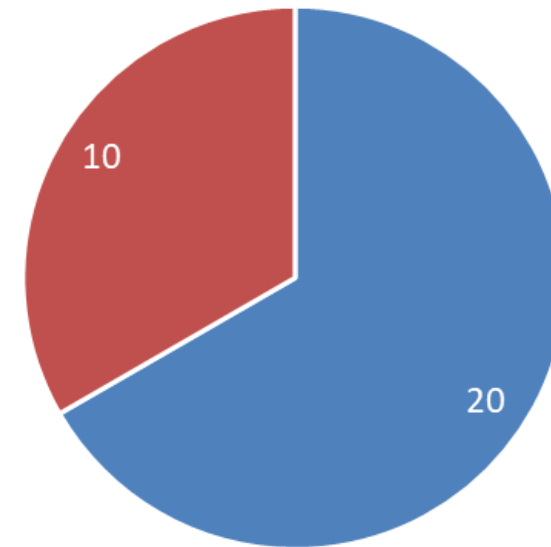
Program Design: Local Government Models



Informal Survey Results

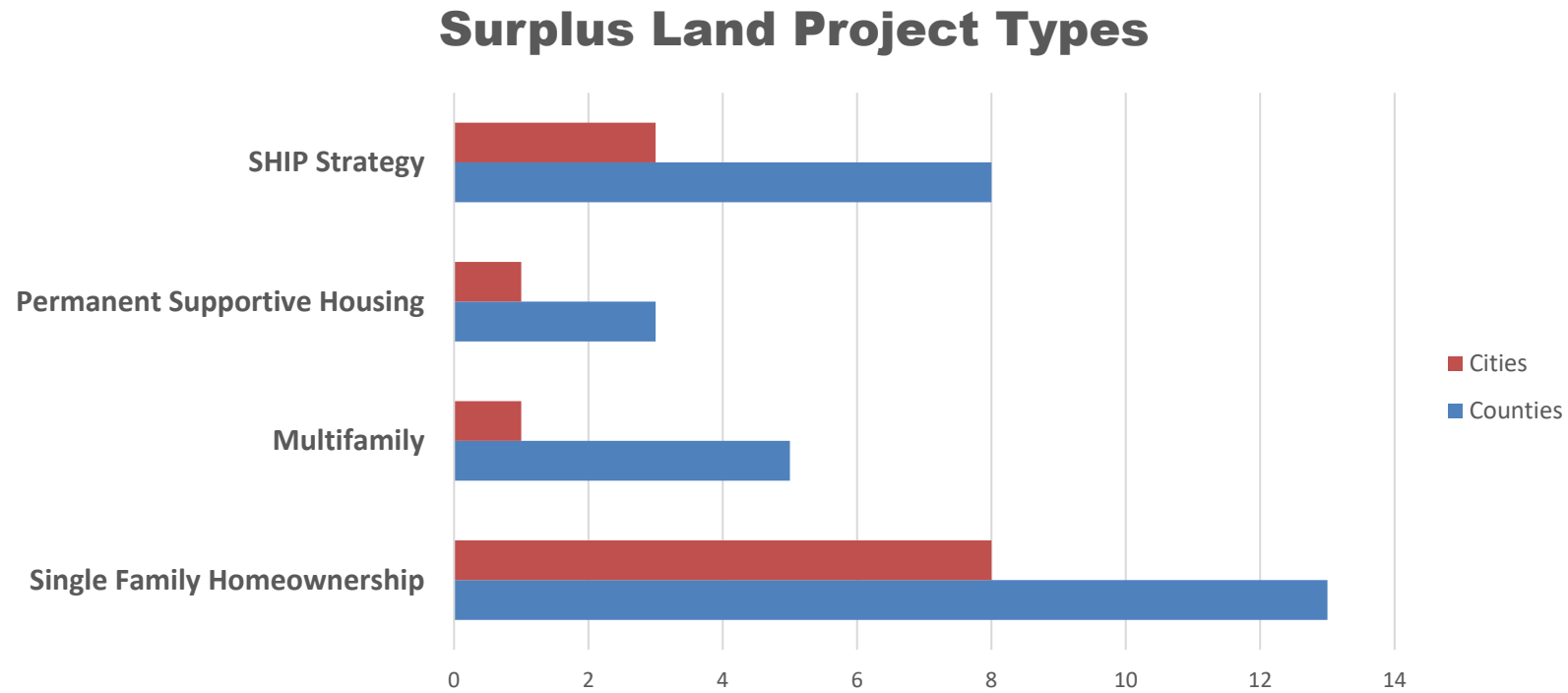
- Do you have surplus land projects completed or under construction
- What type of projects are completed or underway?
- Do you have a SHIP Strategy for Surplus Lands for housing?
- What method of conveyance do you use?
- What types of redevelopment are you doing with municipal properties or commercial properties?

Ratio of Responders County and City



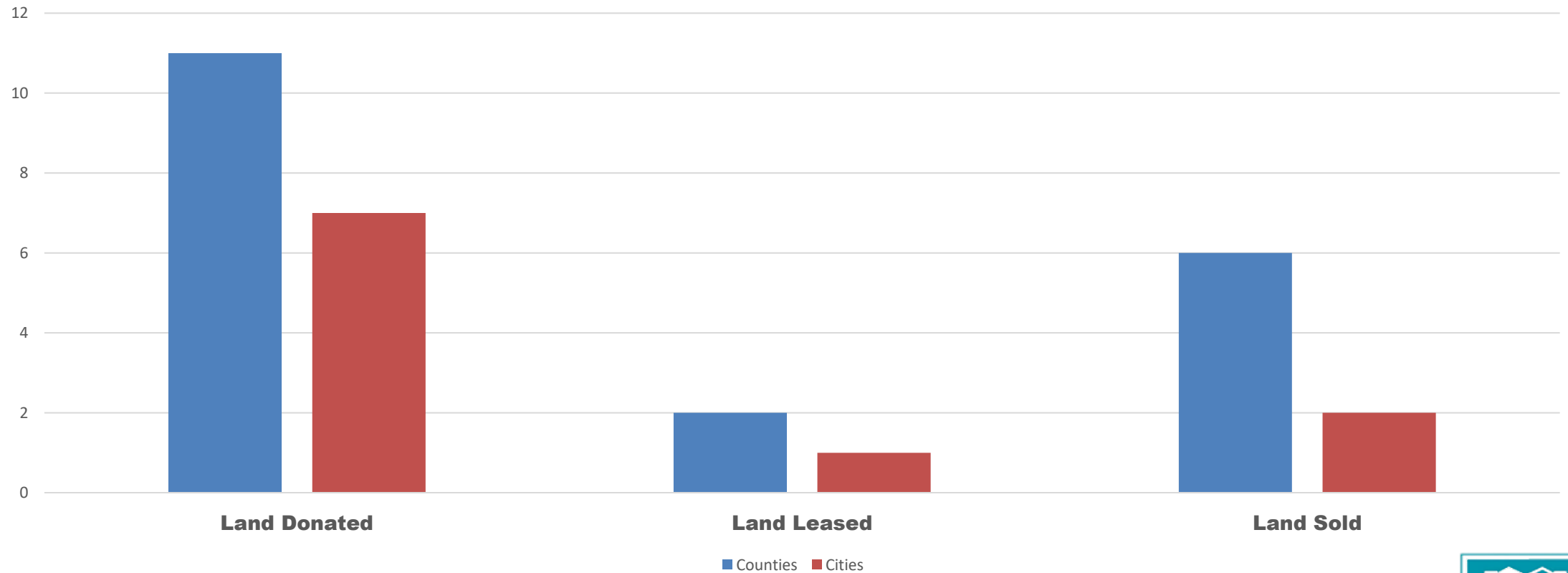
■ Counties ■ Cities

Surplus Land Project Types

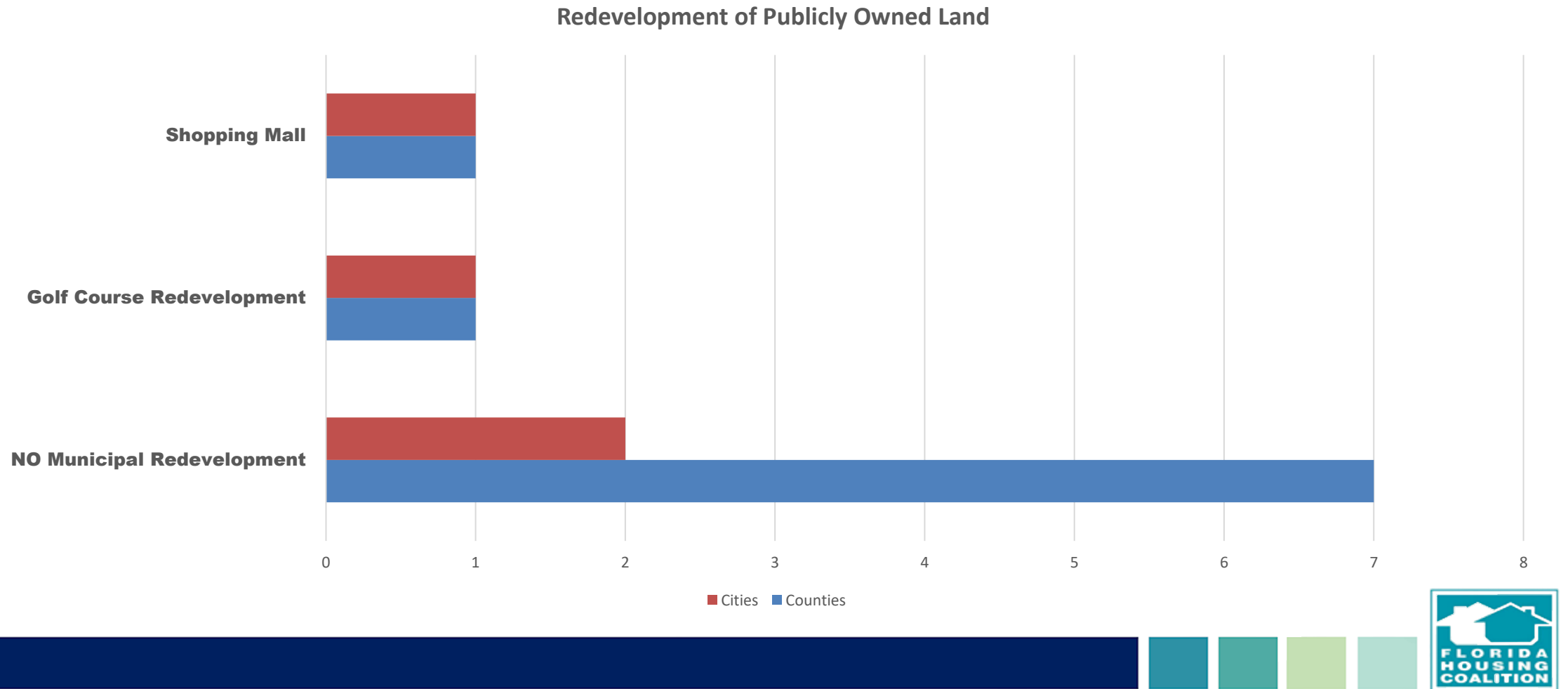


Surplus Land Conveyance Methods

Surplus Land Conveyance Methods



Redevelopment of Public Land



Foreclosure Lot Programs

- Preference for Community Land Trusts
 - Selection Criteria-
 - Solvency
 - Legally established
 - Financial Capacity
 - Development experience
 - Selection Committee
 - Allows qualified homebuyers
 - Allows ground lease vs. Fee simple interest transfer to purchaser
- Request for Proposal
- Scattered Lots
- Redevelopment



Infill Redevelopment Program



- Tampa- Domain Homes
- Miami-Dade
- City of Miami
- Panama City

Redevelopment of Obsolete Uses

- Collier County- set aside land for 300 units for essential services personnel, veterans and seniors
- Held RFP process for 165 acre Golden Gate Golf Course
- Local Community Foundation chipped in \$10 million
- 12 hole golf course
- Entertainment component



FHFC RFA Preference

- Local Govt Land Donation does not qualify for Local Government Contribution BUT...
- Ex. RFA 2021-102 SAIL Financing for Smaller Permanent Supportive Housing Developments for Persons with Special Needs
- Qualifying Financial Funding **Preference (tie breaker)**
 - Cash Funding minimum 3 Percent OR
 - **Donation of Land by a Local Government**
 - Show no land cost in application or credit underwriting- land must be donated or will be donated to the Applicant
 - Govt is seller Applicant is buyer, cost is \$10
 - Transaction no more than 12 months prior to application deadline
 - OR Lease Local Govt is Lessor and Applicant is Lessee- payments <\$10 per year
- Also RFA 2021-103 Housing Credit and SAIL Financing to Develop Housing for Homeless Persons



Problem Solving

No Suitable Surplus Land

Environmentally Constrained

Reserved for Stormwater Retention

Reserved for Public Works Projects

Land was bought as part of floodplain mitigation

Brownfields *

Adjacent to industrial or toxic activities

Surplus Land can have Title Issues

Tax reversions- escheated lots- may have liens or other encumbrances

Code Liens

IRS or DOR Liens

Mechanic Liens

Judgments

Lack of Commitment

Surplus land auctioned with
no commitments

Surplus Land Inventory
omissions

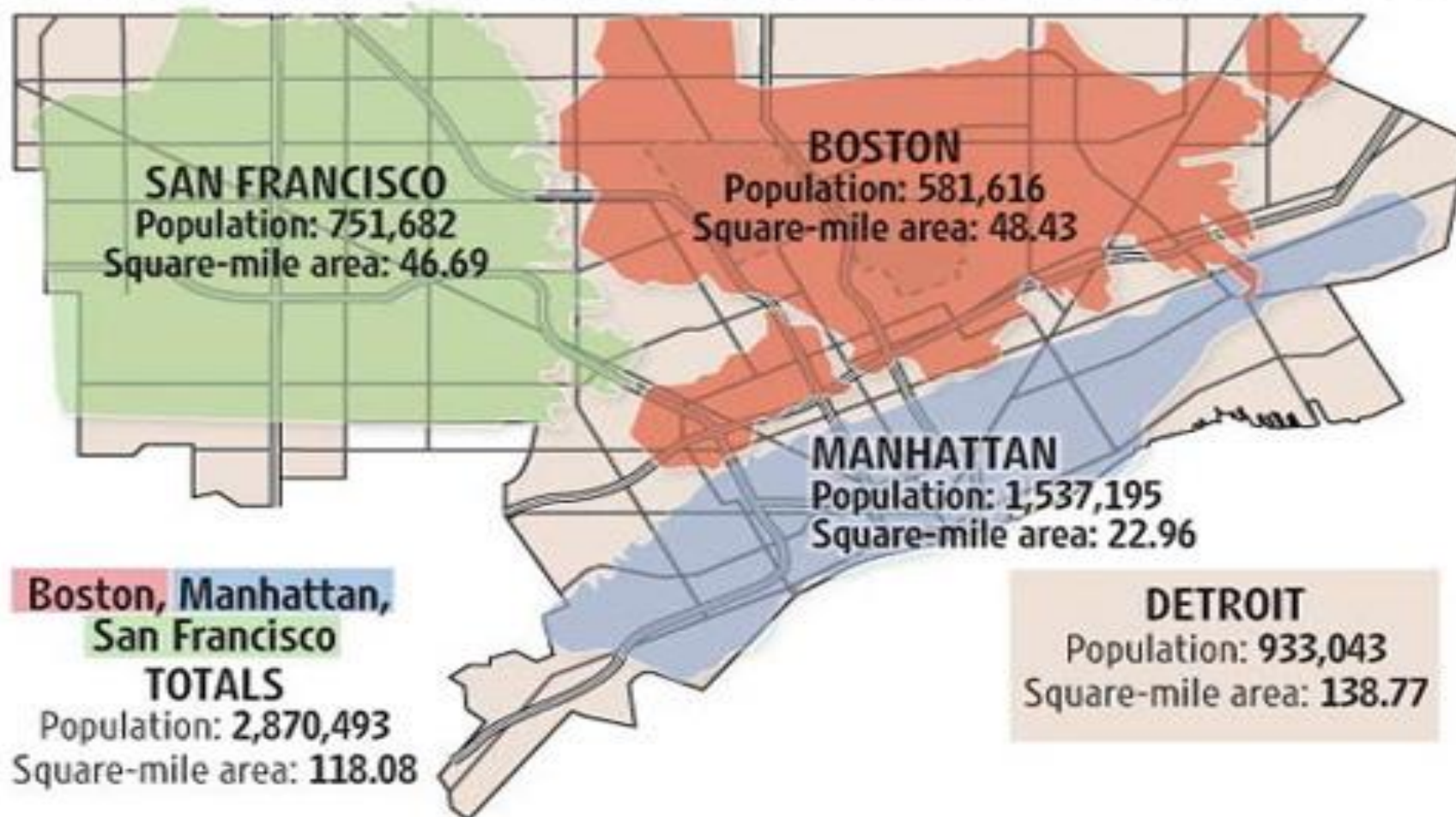
Vague procedures

Inventory list buried

Big City Land Banking- DETROIT



Comparing Detroit to three other major cities



Source: University of Detroit Mercy

Detroit Free Press



Detroit Land Bank Authority circa 2010- 2013

Opportunity in the Challenge

- Unproductive lands
- Largely government owned

Blight Busting

- Community engagement: problem identification and the decision making for solutions

Collective Intentions

- Local, State, Philanthropy, Community partners

Key to success...intentionality

- Michigan Land Bank Enabling Legislation
 - Fast Track Act 258 of 2003
- **Top 5 Major aspects of the legislation**
 - Allowed a quasi-governmental entity to acquire, assemble, manage, sell and rent all property types under its control.
 - Hold title exempt of property taxes
 - Leverage development incentives
 - Provided a 5yr/50% tax recapture benefit
 - Title Cleansing through an Expedited Quiet Title action -90 days or less



Success stories-2010-2013

- From chaos to community access of public-owned abandoned inventory
- Acquisition of foreclosed properties in strong neighborhoods,
- Inventory stabilization of high-quality residential historic architecture,
- Systematic Asset & property management established,
- Redevelopment equity interest from private sector grew and partnerships formed
- Infusion of \$22M NSP dollars throughout 9 neighborhoods-200 properties stabilized, 29 new homeowners in exquisitely restored historic gems renovated to strive for LEED certification. Most innovative construction methods used in the history of Detroit rehab programs.
- Property values at acquisition \$4,000 and after rehab sales value \$100k-\$120,000.
- Outside of Detroit limits the values would easily exceed \$1M





Historic
Virginia
Park...



Historic
Virginia
Park Gem
today...

Planning for Success



Model Surplus Program

Narrowly focused on the goal of returning land to productive use for affordable housing

Establish land acquisition and evaluation criteria

Intergovernmental and interdepartmental coordination and cooperation

Property profile management and tracking system

Strategic vision

Funding and staffing

Surplus Land Program Design

Budget Considerations

Evaluation Process

Disposition Policies

Application Process

Tracking

Ongoing Acquisition Framework

Site Maintenance Program

Marketing

Funding a Surplus Land Program

Value of recovering properties to stabilize neighborhood and become tax paying

Bond Issue

Tax Recapture

Fines

Sales Proceeds

Surplus Land Policies and Procedures

Acquisition policies and criteria

Disposition criteria

Side lot criteria

Planning and coordination

Permanent affordability provisions

Operations plan



Possible staff needs for operating surplus land program

Housing specialist

Housing finance specialist

Planner

Real estate dept.

Legal staff

Operating Budget for Surplus Land Program

Operations

Legal staff

Maintenance- vendor or in house

Demo and clearing

Insurance



Tracking System

Robust cloud-based platform

Example- Property Profile System (PPS)

Property Management system

Information on all properties that are either to be acquired, in inventory, or disposed

End to end, neighborhood and regional analysis

Interactive with vendors

ANY
QUESTIONS
?

Please complete EVALUATION

More questions? Need help with a project? Just ask!

- Technical Assistance Hotline
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