

SUPPLIER DIVERSITY FOR SURPLUS LAND: WHY IT'S IMPORTANT AND HOW TO ACCOMPLISH IT

ASHON NESBITT, CHIEF EXECUTIVE OFFICER

Over the past two years, public and private entities actively devoted and continue to devote unprecedented resources to address disparities. Much focus has been placed on economic opportunity and wealth creation as Black Americans, other people of color, and indigenous people climb the “last steep ascent” to economic equality.

Housing, particularly access to affordable homeownership, continues to play a key role in wealth creation. Recognizing this, significant action has been taken by financial institutions, nonprofits, and other stakeholders to grow the number of Black and Hispanic homeowners, which in 2020 stood at only 49% and 56%, respectively, in Florida compared to 77% white homeownership.¹

The Florida Housing Coalition also took action, launching Closing the Gap in 2021, inviting local governments to take the lead in convening stakeholders and targeting resources toward closing the racial gap in homeownership.

Another area of focus for building wealth is creating opportunities for minority-owned businesses. Local governments have long taken the lead in this area through supplier diversity programs, local goals, and, most recently, community benefits agreements. Housing creates a unique opportunity for local governments to benefit from both goals of

increasing the number of Black homeowners and creating opportunities for minority-owned or led businesses.

One way to do so is through the disposition of public land for homeownership development. Indeed, providing low-cost or no-cost land and additional public financing to minority-owned or -led businesses helps build the capacity of

those businesses while also creating additional opportunities for affordable homeownership.

Though this can be a win-win, local governments must operate within a legal framework that creates challenges for obtaining the desired results, namely federal, state, and local Fair Housing laws, and the federal Equal Protection Clause.



¹ Shimberg Center for Housing Studies tabulations of US Census Bureau American Community Survey data, and reported in the 2022 Home Matters Report: <https://flhousing.org/z-publications/home-matters-florida-report-2022/> Accessed: 12/12/2022

HOW DO FAIR HOUSING LAWS RELATE TO THE DISPOSITION OF LAND FOR AFFORDABLE HOUSING?

Fair Housing laws - federal, state, and local - prohibit discrimination in various housing-related activities, including the sale, rental, or financing of dwellings on the basis of protected classes such as race, disability, sex, religion, and source of financing. **The federal Fair Housing Act applies to the sale or lease of vacant land for the construction of housing.**

Citing the United States Code, it is unlawful to 1) discriminate against any person in the terms, conditions, or privileges of a sale or rental of vacant land because of race and 2) make any notice, statement, or advertisement that indicates any preference, limitation or discrimination for the sale or rental of vacant land based on race.²

This is very important when it comes to the disposition of public land for affordable housing, including both where the land is located and who gets the opportunity to develop on that land. For example, suppose a local government only offers land in certain neighborhoods or clearly indicates a racial preference in advertising the availability of land. In that case, it could be found to violate Fair Housing.

WHAT IS THE ROLE OF THE EQUAL PROTECTION CLAUSE?

The desire of local governments to support supplier diversity is governed by case law on the Equal Protection Clause of the Fourteenth Amendment. In simple terms, the Equal Protection Clause requires government to treat everyone the same. However, affirmative actions can be supported on two conditions: 1) there must be a compelling government interest, and 2) the means for achieving that interest must

be narrowly tailored. Eliminating or remedying racial discrimination is generally a compelling government interest.

The biggest challenge is determining the means to accomplish this interest. Perhaps the logical approach would be implementing race-conscious policies to explicitly target or prioritize racial groups. However, to do so carries risk.

So how do local governments increase supplier diversity in housing programs while addressing racial gaps in homeownership (and other housing issues)?

1. **Complete a disparity study:** Local governments complete disparity studies to determine if a statistical disparity exists in procurement processes and whether this is caused by active or passive discrimination. Completing a disparity study is a key means for local governments to make an argument for a compelling government interest, as it will substantiate (or not) the need for remedial action based on the proportion of qualified minority businesses compared with the availability of land and financial resources for housing development.
2. **Employ race-neutral strategies first:** Often, strategies can be employed that do not explicitly target particular racial groups but can remove barriers to participation often faced by minority-owned or led businesses. These may include simplifying request for proposal (RFP) procedures, lowering experience or bonding requirements, providing training and technical assistance to interested developers in the formation of partnerships, and navigating RFP processes for land disposition.

² 42 U.S.C. 3604

- 3. Use remedial (race-conscious) strategies only after documenting that race-neutral strategies have not worked:** Having a disparity study that proves disparities exist based on actual data and documenting results from implementing race-neutral strategies to reduce barriers to participation will help satisfy both requirements for implementing race-conscious strategies. It will prove that a compelling government interest exists and guide the design of narrowly tailored means to achieve the goal of supplier diversity and racial equity through the disposition of land for affordable housing development.

The Support and Connect Program by Florida Housing Coalition was designed to provide local governments with training and technical assistance to work through these three steps. Research was conducted in 2022 on local governments' public land disposition programs, resulting in model RFP language for local governments statewide. Also, Manatee County and Delray Beach were selected to receive a grant of services for this pilot program to create real opportunities for minority-owned or -led businesses serving these two areas. The systematic improvement in the disposition of land for affordable housing for the benefit of minority developers is key to addressing the racial homeownership gap and increasing the economic prosperity of communities throughout our state.

Best practices in the disposition of public land for affordable housing development will be the topic of a workshop at the Coalition's upcoming Annual Conference. This workshop will feature presentations on model local government programs and discussion on new requirements in 2023's Live Local Act.



ASHON NESBITT A respected community and nonprofit leader, Mr. Nesbitt is an expert in housing finance, development and program administration. As a strong advocate for permanent affordability, Nesbitt has championed the expansion and professionalization of community land trusts throughout the state, overseeing the development of the Coalition's nationally recognized Community Land Trust Certification Program. Mr. Nesbitt has also lead many of Coalition's other initiatives and innovations, including the new Nonprofit Capacity Building Institute and Adaptive Reuse. Mr. Nesbitt holds two master's degrees from the University of Florida: a Masters in Urban and Regional Planning and a Masters in Real Estate. He also holds a Bachelor of Science in Architectural Studies from Florida A&M University.

WANT TO LEARN MORE? JOIN THE CONVERSATION AT THE 2023 AFFORDABLE HOUSING CONFERENCE!

Using publicly-owned land is one of the most impactful tools the public sector has to provide and produce affordable housing. The recently-passed Live Local Act recognizes the importance of publicly-owned land, requiring the coordination of local governments and dependent agencies in maximizing this resource. This workshop will explore best practices for identifying and disposing of publicly-owned land for affordable housing, including layering additional resources for heightened impact, promoting permanent or long-term affordability and incorporating supplier diversity.

We hope you will join our session "Best Practices for Surplus Land and Resilience for Long-Term Affordability" at the 2023 Affordable Housing Conference.