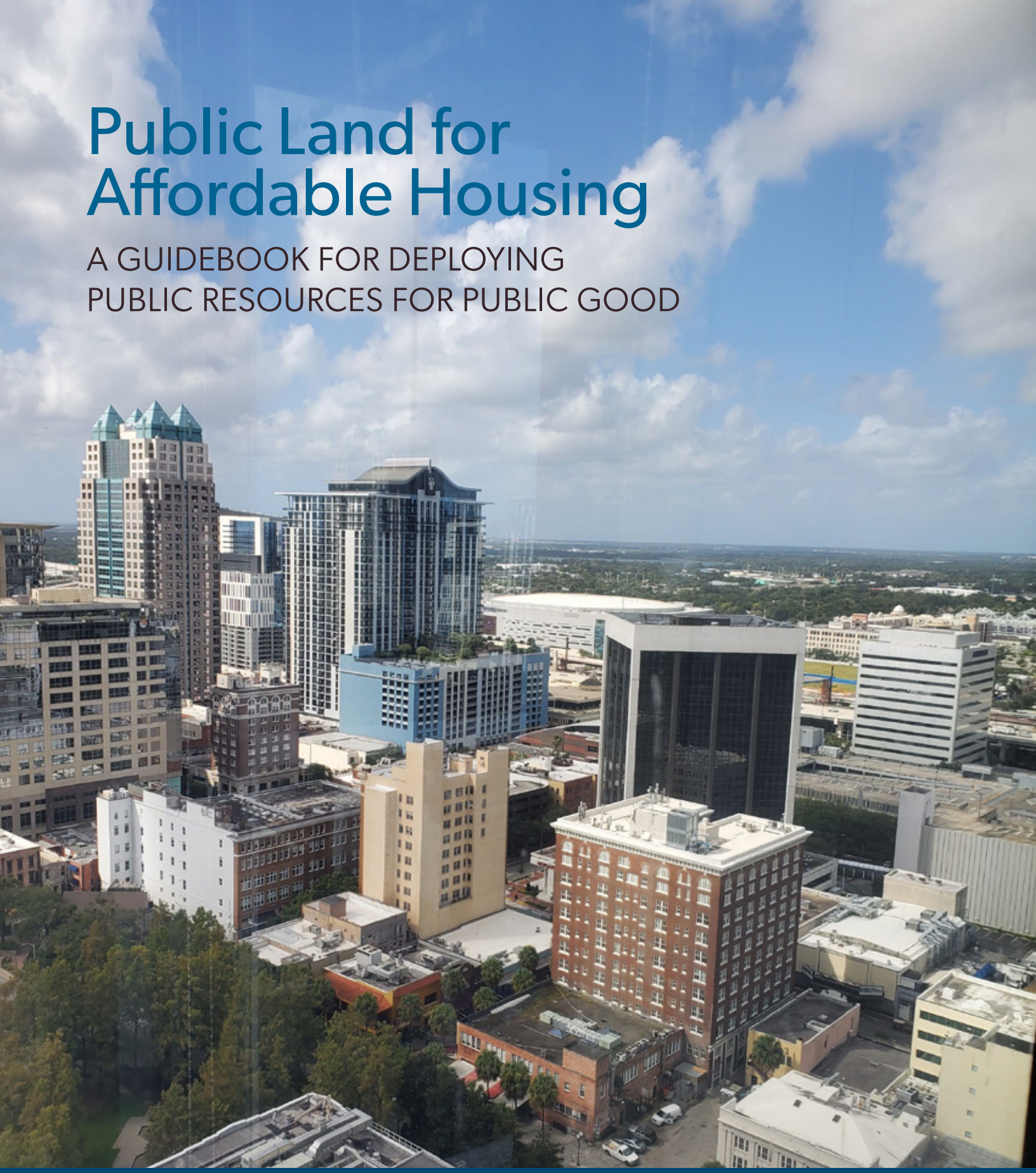
Public Land for Affordable Housing

A GUIDEBOOK FOR DEPLOYING PUBLIC RESOURCES FOR PUBLIC GOOD



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FLORIDA HOUSING COALITION

PREPARED BY:
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I. Introduction

Intended Audience

This guidebook is primarily intended for local government staff who work with affordable housing programs and have a role in the development and maintenance of publicly owned land programs. It also serves as a point of reference for locally elected officials and administrators who are involved in making land use decisions for their communities. Many of the references and recommendations contained within are tailored to the context of communities within Florida but may also be applicable to local housing and land use policy in other geographic areas.

Purpose of the Guide

The goal of this guidebook is to provide actionable considerations for how the public sector and other affordable housing professionals can identify and utilize publicly owned land for affordable housing purposes . This guidebook will provide strategies for what to look for to determine whether public land is appropriate for affordable housing purposes, how to assess the suitability of public land for housing purposes with process considerations, and how the public sector can put "appropriate" parcels into use as safe and sanitary affordable places to live.

II. Legal Framework

Since the focus of this guidebook is how best to identify and use **publicly owned** property for affordable housing efforts, this section breaks down the types of public entities that have land that can be used for affordable housing, the legal parameters of affordable housing land strategies, and concludes with a breakdown of the statutory requirements for certain public entities to create a local inventory list of land appropriate for affordable housing purposes.

Public Entities that Can Use Land For Affordable Housing

While much of the focus on publicly owned land strategies is on city and county governments, the breadth of public entities that have land that can be used for affordable housing purposes is much broader. Here are some of the public entities that have land that can be used for affordable housing policy efforts:

- Municipalities
- Counties
- State agencies
- Community redevelopment agencies (CRAs)
- Housing finance authorities (HFAs)
- School boards
- Special districts

Each of these public entities will have their own legal authorities, internal policies and procedures, staffing capacity, and technical expertise to deploy public land for affordable housing. The following sections provide general considerations for how the public and private sectors can identify public parcels appropriate for affordable housing and put them to good use.

Legal Authority to Use Public Property for Affordable Housing

This section provides a brief overview into the general sources of law to be aware of for the use public land for affordable housing purposes. If you are not an attorney, consult with your entity's legal team to best understand the nuances of the sources of law that apply to your affordable housing efforts.

While this section will largely focus on each entity's constitutional or legal authority for public land efforts, here are the entity-specific legal authorities to also be aware of:

Local ordinances. Local sources of law may contain specific provisions for how a public entity can use public land. These local laws can include eligible uses, designate authority to specific departments to put the land to those uses, describe the disposition and procurement process, and contain cross-departmental processes for claiming land for different governmental purposes. If you are a local government housing staff that is tasked with deploying public land for affordable housing, for example, be aware that your city or county may already have local code provision or internal policy or procedure that governs the use of public land.

Internal policies and procedures. Some jurisdictions may have existing internal policies and procedures that govern the use of public land. Be sure to research for any such policies and how they affect affordable housing work.

County charters. In Florida, there are two types of counties: charter counties and non-charter counties, with different legal parameters for each. One core distinction between the two types of counties is that charter counties have all powers of self-government unless that power conflicts with the Constitution or State law whereas non-charter counties only have the powers specifically granted by the State Legislature. For a housing professional working within a charter county, be aware that the county's charter may proscribe certain policies that affect the disposition of public property.

Covenants, easements, and other land use controls. Public entities acquire property through a variety of different avenues such as direct purchase, escheatment, and donation. When considering to use a particular parcel for affordable housing purposes, be sure to check if there are any legal restrictions in the deed or any other recorded or otherwise legal limitations on the use of the parcel. For example, a county may own a parcel but the deed may contain a restriction to only use the parcel as a public park or the parcel reverts back to the prior grantor, for example.

Entity-Specific Sources of Law

Municipalities

Article VIII, section 2 of the Florida Constitution governs the basis for municipal power. Section (2)(b) of Article VII provides that:

> "Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law."

This language forms the basis of "home rule" authority in the state of Florida. In the public land context, municipalities have the power to acquire and dispose of real property so long as 1) the acquisition and disposal is for a **valid municipal purpose;** and 2) the action is **not expressly prohibited by law.** For the first prong, the Florida Supreme Court broadly interprets the term "municipal purpose" although it is nowhere clearly defined.[1] In State v. City of Jacksonville[2], the Florida Supreme Court noted:

> "Though there was a time when a municipal purpose was restricted to police protection or such enterprises as were strictly governmental that concept has been very much expanded and a municipal purpose may now comprehend all activities essential to the health, morals, protection and welfare of the municipality."

While there is no recorded court case specifically finding that the use of public land is a valid "municipal purpose," the case law applying that term to similar situations has made it a common practice for municipal attorneys to find that such government action is a valid "municipal purpose" within the meaning of Article VIII, section 2(b) with the proper legislative findings.[3] Further, the Legislature has acknowledged in multiple statutes the validity of using public land for affordable housing (more on this later) and the Florida Supreme Court has held that "if the legislature has determined that an activity is for a

municipal purpose, there will be no interference from the courts absent a clear abuse of discretion."[4] Therefore, unless a specific law expressly prohibits the action of municipality in a certain context to use public land for housing, the Florida Constitution allows it under municipal "home rule" authority.

Counties

As introduced above, there are two types of counties: charter and non-charter counties. One core distinction between the two types of counties is that charter counties have all powers of self-government unless that power conflicts with the Constitution or State law whereas non-charter counties only have the powers specifically granted by the State Legislature.

Section 125.35 of the Florida Statutes governs the authority of county governments to sell and lease real property. S. 125.35(1)(a) states that:

> "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."

This section of Florida law provides criteria for how county governments can effectuate the sale or lease of real property and provides standards that county governments can implement on their own regarding land conveyances. One common question that has come up regarding this statute is the term "highest and best" use and whether selling or leasing land for affordable housing purposes can constitute the "highest and best" use to the "highest and best bidder" for a piece of public property.

Courts have found that the 'highest and best" bid means the one that is "financially most advantageous to the community."[5] However, other statutes governing the use of public land provide exceptions to the general rule that competitive bidding must be done to generate the "highest and best" use within the meaning of that term. The Third DCA in **Matheson v. Miami-Dade County**[6] explores the other statutes that govern competitive bidding for public land and rejected the notion that all public land must be sold at the highest and best use. The Florida Attorney General has also confirmed that section 125.35's "highest and best use" requirement is a general rule that gives way to more specific statutes that provide exceptions to that rule.[7] This is where sections 125.38 and 125.379 of the Florida Statutes come in.

Section 125.38 of the Florida Statutes authorizes county governments to sell county land to nonprofit organizations at a nominal or less-than-actual-value price at a private sale. Florida courts have noted that section 125.38 is an exception to the general rule of "highest and best use" and have noted that the "nominal price offered to the nonprofit will never be the highest and best bid, and section 125.38 specifically allows a county to disregard the 'actual value' of the property being sold."[8] Here is the text of the statute:

> "If the United States, or any department or agency thereof, the state or any political subdivision or agency thereof, or any municipality of this state, or corporation or other organization not for profit which may be organized for the purposes of promoting community interest and welfare, should desire any real or personal property that may be owned by any county of this state or by its board of county commissioners, for public or community interest and welfare then the . . . organization may apply to the board of county commissioners for a conveyance or lease of such property. Such board, if satisfied that such property is required for such use and is not needed for county purposes, may thereupon convey or lease the same at private sale to the applicant for such price, whether nominal or otherwise, as such board may fix, regardless of the actual value of such property. The fact of such application being made, the purpose for which such property is to be used, and the price or rent therefor shall be set out in a resolution duly adopted by such board. In case of a lease, the term of such lease shall be recited in such resolution. No advertisement shall be required."

In summary, section 125.38 expressly allows a county to sell or lease public land to a nonprofit organization for affordable housing purposes at a nominal or below-market rate without a competitive bidding process.

Section 125.379 of the Florida Statutes also is an exception to the general "highest and best use" rule. This guidebook will explore this statute more in depth later,

but if a county government places a parcel of land on the affordable housing inventory list required by s. 125.379(1), then s. 125.379(2) authorizes counties to use that land for affordable housing purposes regardless of if affordable housing development would be the financially most advantageous use to the community.

Community redevelopment agencies (CRAs)

Part III of Chapter 163 of the Florida Statutes governs Community Redevelopment Agencies (CRAs). The provision of affordable housing to low- or moderate-income residents is defined as a core "community redevelopment" activity that CRAs can undertake.[9] Each CRA in its community redevelopment plan is required to "provide for the development of affordable housing in the [CRA] area, or state the reasons for not addressing in the plan the development of affordable housing."[10] Section 163.370 of the Florida Statutes grants CRAs the broad authority to effectuate the goals of what is included in each CRA's community redevelopment plan. This includes the authority to acquire and dispose of land within the CRA boundaries for community redevelopment purposes as well as use of CRA funds for those goals.

State agencies

Each state agency has its own governing statutes and rules that affect the disposition and use of land that it owns. Florida state entities that have land resources that could be used for affordable housing purposes include the Department of Transportation (FDOT), Department of Environmental Protection (FDEP), Department of Management Services (DMS), Department of Education, and Florida's public colleges and universities.

Section 253.034 of the Florida Statutes is an example of a statute that specifically addresses the use of state-owned land for affordable housing purposes. All lands held by the Board of Trustees of the Internal Improvement Trust Fund, which is made up of the Governor, state Chief Financial Officer, Florida Attorney General, and the Commissioner of Agriculture, are required to be held in trust for the people of the state of Florida.[11] Each manager of nonconservation lands is required to submit a land use plan at least every 10 years with an analysis of single-use or multi-use properties to determine the potential use of private land managers to facilitate the restoration or management of said lands to provide the greatest benefit to the state.[12]

As a result of Section 23 of the 2023 Live Local Act, each of these land use plans must now analyze "whether nonconservation lands would be more appropriately transferred to the county or municipality in which the land is located for the purpose of providing affordable multifamily rental housing that meets the criteria of s. 420.0004(3)." This statutory addition to section 253.034(5) opens up the possibility for more state-owned lands to be used for affordable housing purposes.

Similarly, **section 337.25** of the Florida Statutes, which governs the acquisition, lease, and disposal of real and personal property owned by the Florida Department of Transportation, contains an affordable housing component. Per section 337.25(4) of the Florida Statutes, real property that FDOT determines is not needed for the construction, operation, and maintenance of a transportation facility, that property can be conveyed to a governmental entity for affordable housing purposes.

Housing finance authorities

Part IV of Chapter 159 of the Florida Statutes governs the authority of Florida's housing finance authorities (HFAs). Section 159.608(2) expressly allows HFAs to own and utilize real property for affordable housing purposes under certain income limitations. This statute is another example of a direct statutory directive to use public land for affordable housing goals. HFAs have the authority:

> "(2) To own real and personal property acquired through the use of surplus funds or through public and private partnerships provided that the obligations of the authority are limited to project revenues and that no less than 50 percent of the units owned by a housing finance authority shall benefit very-low income families or low-income families. For the purposes of this subsection, a "very-low-income family" means a family whose income does not exceed 50 percent of the median family income for the area, and the term "low-income family" means a family whose income does not exceed 80 percent of the median family income for the area. Family income levels shall be adjusted for family size. Notwithstanding the other provisions of this subsection, a housing finance authority may acquire real and personal property to house and equip its facilities and staff."

School boards

Section 1001.43 of the Florida Statutes governs the supplemental powers and duties of each district school board. This section of Florida law is a good example of a statute that provides specific authority to a public entity to use its land for affordable housing purposes. In short, this statute directly authorizes a district school board to use its surplus land for affordable housing for teachers and other district personnel.

Here is the text of section 1001.43(12) as of 2023:

> (12) AFFORDABLE HOUSING.—A district school board may use portions of school sites purchased within the guidelines of the State Requirements for Educational Facilities, land deemed not usable for educational purposes because of location or other factors, or land declared as surplus by the board to provide sites for affordable housing for teachers and other district personnel and, in areas of critical state concern, for other essential services personnel as defined by local affordable housing eligibility requirements, independently or in conjunction with other agencies as described in subsection (5).

The consideration of the use of school board land for housing for teachers and school employees is becoming more prevalent in Florida at the time of this writing. Pasco County, Miami-Dade County, and Collier County are just three examples of jurisdictions that have either pledged the use of school district land for affordable housing or have actively considered the policy.

Other Sources Of Law to be Mindful Of

In addition to the statutory or constitutional authority public entities possess to use public land for affordable housing, be mindful of other sources of law that will affect disposition of land. Here are some of those sources of law to be aware of:

Fair Housing & Anti-Discrimination Laws

The federal and state Fair Housing Act both make it illegal to discriminate in a variety of housing activities on the basis of statutorily defined protected classes. The Equal Protection Clause in the 14th Amendment to the U.S. Constitution and the Basic Rights section at Article I, section 2 of the Florida Constitution similarly limit public entities from discriminating against certain classes of individuals without meeting court-defined tests such as strict scrutiny or rational basis review.

Fair housing and anti-discrimination laws extend to a public entity's use of public land. There are two ways an entity can be found to violate fair housing protections: 1) a showing of discriminatory intent against or for a protected class, also called "discriminatory treatment"; or 2) a showing that a policy or practice creates unjustified disproportionate effects against or for a protected class, also called "disparate impact".[13] If a jurisdiction concentrates its public land resources for affordable housing in a way that facilitates racial segregation, it could be found to violate fair housing laws via "disparate impact" even if the jurisdiction does not have an intent to discriminate on the basis of race. This could be the case if a jurisdiction only uses its land in majority-African American communities for affordable housing purposes. Public entities should strive to spread out the land it deploys for its housing goals – both in high-income and low-income areas.

Environmental Laws

Environmental laws that require mitigation measures or environmental reviews of certain properties, impose liability for owners of contaminated properties, or outright prohibit development in certain areas must also be considered as part of a public land strategy. Laws that could affect local policy include, but are not limited to:

- Federal and State Wetlands protection laws
- Coastal zone management laws and regulations
- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
- National Environmental Policy Act (NEPA)
- Endangered Species Act (ESA)
- Clean Water Acts (CWA)
- Lead paint and other Clean Air-related laws

Procurement Laws

Depending on the public entity, how the property was acquired, and the characteristics of the property itself, a variety of procurement laws may be at play for the sale or lease of public property. Lands or property purchased by a local government using a federal affordable housing funding source such as the Community Development Block Grant (CDBG) program or HOME Investment Partnership Program (HOME) will need to be mindful of federal procurement regulations and guidelines. Disposition of land owned by a school board, state agency, or local government may each have entity-specific laws and regulations that govern the procurement process.

State Inventory of Public Lands Appropriate for Affordable Housing

Since 2007, local governments in Florida have had a legal obligation regarding the identification and use of public land for affordable housing purposes. **Sections 125.379** and **166.0451** of the Florida Statutes, governing counties and municipalities, respectively, provide 1) a process by which local governments must create an inventory of public land appropriate for affordable housing purposes; 2) eligible uses for land placed on the affordable housing inventory list; and 3) encouragement for implementing best practices. Commonly referred to as Florida's "surplus land laws", these statutes have encouraged the use of more public land for affordable housing goals. This section discusses each of the three subsections of Sections 125.379 and 166.04151.

1) Affordable Housing Land Inventory

Sections 125.379(1) and 166.0451(1) require every county and municipality in Florida to create an inventory list of publicly owned parcels that are "appropriate for use as affordable housing." Here is the statutory text for county governments which is functionally the same for municipalities:

> "By October 1, 2023, and every 3 years thereafter, each county shall prepare an inventory list of all real property within its jurisdiction to which the county or any dependent special district within its boundaries holds fee simple title which is appropriate for use as affordable housing. The inventory list must include the address and legal description of each such real property and specify whether the property is vacant or improved. The governing body of the county must review the inventory list at a public hearing and may revise it at the conclusion of the public hearing. The governing body of the county shall adopt a resolution that includes an inventory list of such property following the public hearing. Each county shall make the inventory list publicly available on its website to encourage potential development."

There are six key components to this land inventory requirement:

1. **The inventory must be done at least once every 3 years.** While the Florida Housing Coalition recommends each local government analyze properties appropriate for affordable housing at least once a year, the legal requirement is that a local government only conducts this analysis once every three years.
2. **Each city and county must analyze all real property that it owns in fee simple, or its dependent special districts own, within its jurisdiction's boundary.** Note that the word "surplus" is not in this subsection of Florida law. Local governments must analyze all real property within its respective boundaries that its own in fee simple – not just real property that is "surplus."
3. **Each city and county must identify publicly owned parcels that are "appropriate for use as affordable housing."** The discussion of what constitutes whether a parcel is "appropriate" for affordable housing will be the subject of Section III of this guidebook.

NOTE: STATE INVENTORY OF PUBLIC LANDS

Since 2007, local governments in Florida have had a legal obligation regarding the identification and use of public land for affordable housing purposes. Sections 125.379 and 166.0451 of the Florida Statutes, governing counties and municipalities, respectively, provide:

1) a process by which local governments must create an inventory of public land appropriate for affordable housing purposes;

2) eligible uses for land placed on the affordable housing inventory list; and

3) encouragement for implementing best practices. Commonly referred to as Florida's "surplus land laws", these statutes have encouraged the use of more public land for affordable housing goals.

This section discusses each of the three subsections of Sections 125.379 and 166.04151.

4. **Each city and county must place identified parcels on an inventory list with the address, legal description, and whether the property is vacant or improved.** A local government can include more descriptors on its inventory list, but these are the only elements that are required. Ideas for additional information to include on an inventory list include acreage, whether the property is eligible for a place-based affordable housing program, whether the parcel is in an environmentally sensitive area that requires additional mitigation as defined by the local government, and current zoning designation.
5. **Each city and county must adopt a resolution at a public hearing that includes the inventory list. Each local government can enact additional requirements to the process by which this resolution is adopted.** This could include the local government implementing a policy or ordinance with clear directives on what makes a parcel "appropriate" for affordable housing and requiring the local government to explicitly state why excluded parcels were left off the inventory list.
6. **Each city and county must post the inventory list on the city or county's website.** A local government should strive to include as much additional information on its website about identified parcels as feasible to encourage potential development. This could include a map of identified parcels, links or descriptions of the disposition process, and contact information.

Note that due to the passage of the Live Local Act in 2023, this land inventory requirement does not apply only to land owned in fee simple by city and county governments. It also applies to land owned by dependent special districts (DSDs). Examples of DSDs include housing finance authorities, community development agencies, neighborhood improvement districts, special taxing districts, and more. While each DSD does not need to create its own affordable housing inventory list, land owned by DSDs that are deemed "appropriate" for affordable housing purposes must be placed on the governing city or county's inventory list. City and county governments should work closely with their respective DSDs to ensure that the spirit of the law is being met.

2) Land Disposition

After a local government meets its obligation to inventory its parcels that are appropriate for affordable housing, Sections 125.379(2) and 166.0451(2) govern how those parcels can be utilized. For counties specifically, as mentioned in the previous section on county authority to use land for affordable housing purposes, s. 125.379 offers an exception to the general rule that county-owned land must be sold to its "highest and best use" which has been interpreted to mean the use that is the "financially most advantageous to the community." In short, land placed on the affordable housing inventory can be used for affordable housing purposes even if doing so would not be deemed the "highest and best use."

Here is the text for municipalities at s. 166.0451(2) which is functionally the same for counties:

> "The properties identified as appropriate for use as affordable housing on the inventory list adopted by the municipality may be used for affordable housing through a long-term land lease requiring the development and maintenance of affordable housing, 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, sold with a restriction that requires the development of the property as permanent affordable housing, or donated to a nonprofit housing organization for the construction of permanent affordable housing. Alternatively, the municipality or special district may otherwise make the property available for use for the production and preservation of permanent affordable housing. For purposes of this section, the term "affordable" has the same meaning as in s. 420.0004(3)."

This language provides the following five possibilities for the use of land on the local affordable housing inventory list including the fifth "catch-all" option all of which will be discussed in greater detail in the fourth section of the guidebook:

1. Long-term land lease requiring the development and maintenance of affordable housing.
2. Offer for sale and use the proceeds to purchase land for the development of affordable housing or to increase the local government fund earmarked for affordable 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 the property available for use for the production and preservation of permanent affordable housing.

One common question that has been raised is whether public land must be placed on the affordable housing inventory for a jurisdiction to use said land for affordable housing purposes. In short, the answer is likely no unless it is a county government that is looking to circumvent the "highest and best use" standard in s. 125.35 of the Florida Statutes. As discussed in a previous section, various public entities have distinct powers that already allow them to use their land for affordable housing purposes.

Since land does not necessarily need to be placed on the affordable housing inventory list to be used for affordable housing, there are three key purposes of the statutory inventory requirement: 1) **accountability** – to ensure that public entities are considering the use of public land for affordable housing; 2) **transparency** – for the public to be able to assess which parcels are available for affordable housing and why they are deemed "appropriate" for affordable housing; 3) **encouraging best practices** – to encourage the use of as much publicly owned land as possible for affordable housing goals.

3) Recognition of Best Practices

Sections 125.379(3) and 166.0451(3), which were created by the Live Local Act in 2023, provide certain best practices that local governments are encouraged to adopt regarding the use of public land for affordable housing.

Here is the text for counties at s. 166.0451(3) which is functionally the same for municipalities:

> (3) Counties are encouraged to adopt best practices for surplus land programs, including, but not limited to: (a) Establishing eligibility criteria for the receipt or purchase of surplus land by developers; (b) Making the process for requesting surplus lands publicly available; and (c) Ensuring long-term affordability through ground leases by retaining the right of first refusal to purchase property that would be sold or offered at market rate and by requiring reversion of property not used for affordable housing within a certain timeframe.

Section IV of this guidebook will provide considerations for how best to implement the best practices encouraged by state law.

NOTE: FIVE POSSIBILITIES FOR USE OF LAND

This language provides the following five possibilities for the use of land on the local affordable housing inventory list including the fifth "catch-all" option all of which will be discussed in greater detail in the fourth section of the guidebook:

1. Long-term land lease requiring the development and maintenance of affordable housing.
2. Offer for sale and use the proceeds to purchase land for the development of affordable housing or to increase the local government fund earmarked for affordable 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 the property available for use for the production and preservation of permanent affordable housing.

III. Land Identification:

What makes land appropriate for housing? Best practices for maintaining an affordable housing inventory.

F.S. 125.379/166.0451 – Legal Analysis on the Word "Appropriate"

As explored above, s. 125.379(1) and s. 166.0451(1) of the Florida Statues require each local government in the state to create an inventory list with parcels owned in fee simple that are "appropriate for use as affordable housing." The meaning of this quoted phrase has been rife with local debate since the statute went into effect in 2007. This is because what is meant by "appropriate" in the context of the affordable housing inventory list is not defined in Florida law nor is there any case law with a binding interpretation. Therefore, the decision as to which parcels are "appropriate for use as affordable housing" is largely left up to the discretion of the local government unless the local discretion violates another source of law such as the Fair Housing Act.

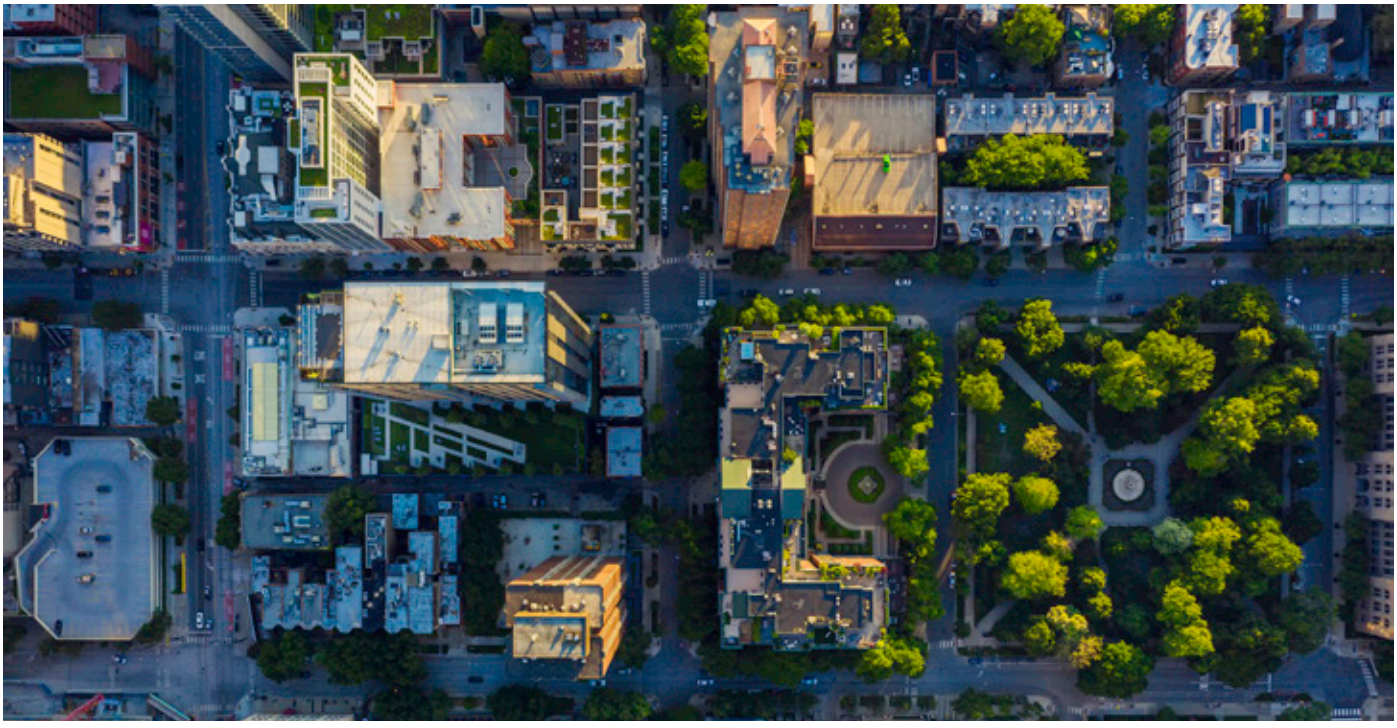
A common question about the phrase "appropriate for use as affordable housing" is why it is that local governments have discretion when it comes to identifying "appropriate" parcels. The answer lies in Florida jurisprudence regarding statutory interpretation on the plain meaning of certain terms and how courts approach state preemptions or mandates on local decisions. The remainder of this section explores how a court would likely rule on a case interpretating that phrase.

The Florida Supreme Court has held that when "the language of a statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning."[14] If the statutory language is ambiguous then a court can "resort to traditional rules of statutory construction to determine legislative intent."[15] Courts employ a series of what are called "statutory canons" to try to glean legislative intent where statutory language is ambiguous.

Applying that standard to the affordable housing inventory statute, the phrase "appropriate for use as affordable housing" is not defined by the statute and would most likely be considered to be ambiguous language by a court. What makes a parcel "appropriate" for affordable housing may have fifty different interpretations from fifty different people. The term is not defined nor is there any guidance in the statute as a whole or the staff report from 2006 (when the statute was passed) providing parameters on what makes a parcel "appropriate."

Further, there are generally two types of preemption when dealing with the Florida Legislature curtailing or mandating certain actions of local governments: 1) express preemption; and 2) implied preemption. To find that an express preemption exists, courts will look for clear language or specific statement, that is not left to inference, of the Legislature's intent to override a local government's authority on a specific matter.[16] Implied preemption occurs when the legislative scheme is so pervasive that local legislation would prevent a conflict with that pervasive scheme.[17] Preemption can be implied "so long as it is clear from the language utilized that the Legislature has clearly preempted local regulation on the subject."[18] Courts may disfavor implied preemption when dealing with a preemption against a local government's home rule authority.[19] The affordable housing inventory statute can be viewed as a type of preemption by the Florida Legislature – it overrides local government home rule authority to use its land resources by requiring an inventory of parcels that are specifically appropriate for affordable housing; the requirement to do an inventory at all is a form of express preemption as the statute clearly requires it. But since the statute does not clearly define the term "appropriate for use as affordable housing" in a way that is "not left to inference," which parcels actually end up on the inventory list cannot be deemed an express preemption. Nor would there likely be implied preemption found – the statute at a whole cannot be said to be a declaration of the Legislature to clearly preempt regulation on the subject. However, If the word "appropriate" did have a clearer definition, the statute would arguably be more preemptive and definitively require local governments to put certain parcels in use for affordable housing goals.

The phrase "appropriate for use as affordable housing" in s. 125.379 and s. 166.0451 have never been interpreted by a court to glean its legally binding meaning. But if a court were to issue an opinion regarding what the phase means, it would most likely find that since the phrase is ambiguous and because there is no overriding intent found in the statutory language to dictate what the term is defined as, local governments have the broad discretion to define the term themselves within rational means. It is up to local policymakers and housing professionals to ensure that local governments are acting within the spirit of the law.



NOTE: PROCESS TO IDENTIFY APPROPRIATE PARCELS

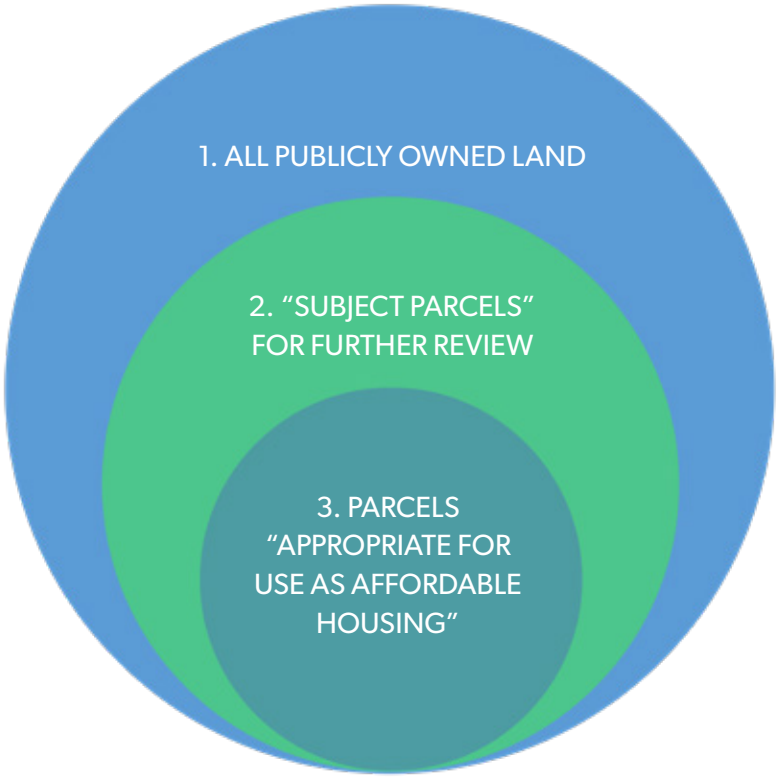
Local governments should strive to create a cross-departmental process that best identifies public parcels that are "appropriate" for affordable housing uses.

Cross-departmental coordination on the use of public land is key to a successful identification and disposition policy. Department heads and subject matter experts within the local government from multiple departments can work together to identify parcels owned in fee simple, to create a scoring system utilizing feasibility factors that identifies parcels most "appropriate" for affordable housing, and to claim certain parcels for other valid governmental uses. Local departments that can be involved include Housing & Community Development, Planning & Zoning, Growth Management, Public Works, Real Estate, Legal, Procurement, Environmental, Floodplain Management, Building Safety, Resiliency, or others that may be involved in the use of public land.

Process to Identify "Appropriate" Parcels

Local governments should strive to create a cross-departmental process that best identifies public parcels that are "appropriate" for affordable housing uses. Cross-departmental coordination on the use of public land is key to a successful identification and disposition policy. Department heads and subject matter experts within the local government from multiple departments can work together to identify parcels owned in fee simple, to create a scoring system utilizing feasibility factors that identifies parcels most "appropriate" for affordable housing, and to claim certain parcels for other valid governmental uses. Local departments that can be involved include Housing & Community Development, Planning & Zoning, Growth Management, Public Works, Real Estate, Legal, Procurement, Environmental, Floodplain Management, Building Safety, Resiliency, or others that may be involved in the use of public land.

The Florida Housing Coalition offers the following three-step process for local governments to consider when creating their affordable housing land identification policies. It is important for local government to designate a staff member or department responsible for different elements of the land identification policy. The graphic below may be helpful to visualize each step of the process.



1. Start with all land owned by the jurisdiction or its dependent special districts.

S. 125.379 and s. 166.0451 of the Florida Statutes requires counties and cities to identify all parcels owned in fee simple by them, or their dependent special districts (DSDs), that are "appropriate for use as affordable housing." To meet this statutory obligation, it is important to start with all land owned by a local government and its DSDs.

In this first step, the local government could begin to identify "subject parcels" that will be analyzed for appropriateness for affordable housing purposes. This is where the jurisdiction can weed out parcels that are undevelopable for any housing purpose due to their size and shape, need for other governmental purposes, legal use restrictions, or other factors. Per the sample policy in Appendix A, the local policy could state that "A 'subject parcel' does not include parcels that are undevelopable due to their size, shape, or other factors or are needed for other governmental purposes." The jurisdiction could clearly define what makes a parcel "undevelopable" including at what size a parcel is not able to be developed. It is important to have a designated department(s) or staff member(s) responsible for identifying subject parcels.

This step can include a local process for identifying whether certain public parcels are needed for other governmental uses and whether certain parcels wish to be claimed by the Housing Department for affordable housing. The process can include a notification system and the number of days governmental departments must respond by before parcels are deemed "subject parcels" for the purposes of identifying land for affordable housing.

In sum, the goal of step 1 is to have a list of "subject parcels" that the local government will further explore to determine which public parcels are "appropriate for use as affordable housing."

2. Analyze "subject parcels."

For step 2, the local government would apply its factors that make a public parcel "appropriate for use as affordable housing" to the "subject parcels" identified in step 1. Here, a designated department(s) and/or staff member(s) would be responsible for applying the factors to subject parcels, selecting parcels that the factors deem "appropriate for use as affordable housing," and specifically stating why certain parcels are not deemed "appropriate." This step could include detailed directives for what the factors are, timeframes for conducting the analysis, additional opportunities for governmental departments to claim certain parcels, and other administrative functions.

3. Place "appropriate" parcels on the affordable housing land inventory.

At step 3, the department or staff member deemed responsible for analyzing subject parcels using the jurisdiction's appropriateness factors, or another entity is designated by the local government, would take the necessary steps to formally place the parcels "appropriate for use as affordable housing" on the required affordable housing inventory list.

NOTE: Do Not Solely Rely on Escheated or Foreclosed Properties

Too often, the only parcels that are placed on a local government's affordable housing inventory list are parcels that were acquired via tax escheatment or some kind of foreclosure action – parcels that have a high likelihood of being difficult to develop due to a site-specific or title-related issue or are in locations not suitable for affordable housing development. A local government should not only commit the "dregs" of the parcels it owns in fee simple on the required affordable housing inventory list. Local government should analyze all properties in owns in fee simple and determine which are the best to be put in use as affordable housing.

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A common misconception about the required affordable housing land inventory and subsequent use of public land for affordable housing is that local governments are to only focus on "surplus" properties. This is understandable given that s. 125.379 and 166.0451 of the Florida Statutes have been colloquially referred to as Florida's "surplus land laws.' However, nothing in subsection (1) or (2) of the statutes, as explored above, mentions the word "surplus"; there is no requirement that a local government only look at its "surplus" properties for affordable housing. In fact, subsection (1) of these two laws for counties and cities requires local governments to look at all land owned in fee simple by the local government or its dependent special districts. Avoid only putting parcels on the affordable housing inventory list if they were acquired through a particular method such as tax escheatment or foreclosure.

Value of a Targeted Public Land Acquisition Strategy

Public entities can come into land ownership through a variety of methods: direct purchase, donation, exchange of property, eminent domain, tax escheatment, tax foreclosure, and code enforcement foreclosure, to name a few. These various acquisition methods yield different tiers of property; properties acquired through tax escheatment or code enforcement are likely to be less desirable for new housing development than properties acquired via direct purchase. This is because these properties, as alluded to in the previous section, can often be difficult to develop or come with economic disadvantages such as lower surrounding property values and lack of community or social cohesion.[20] These factors can ultimately make such properties less beneficial to future residents.

A targeted public land acquisition strategy can be fundamental to successful local affordable housing policy. If a local government solely relies on land that is escheated to it or acquired through the foreclosure process, the land dedicated for affordable housing may leave much to be desired. However, if a public entity commits funding towards purchasing parcels that are more "appropriate" for community building and quality of life than the "dregs" of parcels that may be acquired through other means, then the universe of properties available for affordable housing development will be much improved.

A targeted land acquisition strategy can guide the purchase of parcels that fit into the community's vision for affordable housing and community development. This strategy can contain similar considerations to how the public entity assesses whether currently owned public parcels are "appropriate for use as affordable

housing" (more on this in the following section). A proactive strategy could include considerations for the following:

Proximity scoring. The jurisdiction can create a matrix with different proximity scoring considerations to guide land purchases for affordable housing. For example, the jurisdiction could assess and map jurisdiction-wide proximity to major job centers, schools, transit, public parks, and grocery stores, for example, to identify areas that are most ideal for affordable housing development. Available parcels with higher scores can be targeted for public land acquisition.

Availability of existing infrastructure. The public entity should consider the availability of existing infrastructure for parcels of interest and whether targeted infrastructure investments can be made to increase the number of available parcels for affordable housing purposes. Planned investments in infrastructure could be aligned with planned development of affordable housing on publicly owned properties.

Whether the parcel is within expected high growth areas. Affordable housing development should be prioritized in areas close to community amenities and market-rate housing to create flourishing and diverse communities. An acquisition strategy could give special consideration to parcels within designated improvement districts, in close proximity to areas with high growth or an uptick in investment, or within a designated area that qualifies the parcel for place-based affordable housing programs.

Environmental and resilience factors. Recognizing the potential for major damage due to storms and flooding, more local governments are integrating resilience factors into their land acquisition and disposition plans, and prioritizing areas that have lower risks for affordable housing development.

Funding sources for public entities to acquire land

To implement a targeted land acquisition strategy for affordable housing development, the public entity will need funding. This section provides various revenue streams that could help public entities purchase land for affordable housing.

General Revenue. Public entities can use their general revenue (GR) funds to seed a land acquisition for affordable housing strategy; a local affordable housing trust fund can be utilized for land acquisition. A city or county could use GR to purchase a desirable parcel of land and sell, sell at a discount, or donate the property to an affordable housing developer through a competitive Request for Proposals (RFP). If the land is sold, the local government can recycle the proceeds to purchase additional parcels for affordable housing goals.

Proceeds from sale of public property. Public entities can use the proceeds from the sale of public property towards land acquisition for affordable housing. The City of **Miramar's** local code of ordinances, for example, provides that 100% of net sales proceeds from all city-owned residential properties and 15% of net sales proceeds from city-owned non-residential properties will go to its local affordable housing trust fund. The City of **Fort Myers** has a local code that provides that 3% of revenue generated from the sale of city-owned property shall go into the city's affordable housing trust fund account.

Local Government Infrastructure Surtax. Florida law allows county governments to levy a discretionary sales surtax of 0.5 percent or 1 percent to raise revenue that must be expended to finance, plan, and construct eligible infrastructure projects, among other uses, if approved at a countywide wide voter referendum. This surtax, called the Local Government Infrastructure Surtax (IS), can fund the eligible uses listed at section 212.055(2)(d) of the Florida Statutes. Land acquisition for affordable housing is an eligible use under the IS statute. At the time of this writing, four counties (Pinellas, Collier, Alachua, and Palm Beach) have committed or used IS revenue collections for affordable housing-related activities.

Here is the text of section 212.055(2)(d)1.e. of the Florida Statutes authorizing land acquisition for affordable housing as an eligible use of IS dollars:

> "Any land acquisition expenditure for a residential housing project in which at least 30 percent of the units are affordable to individuals or families whose total annual household income does not exceed 120 percent of the area median income adjusted

for household size, if the land is owned by a local government or by a special district that enters into a written agreement with the local government to provide such housing. The local government or special district may enter into a ground lease with a public or private person or entity for nominal or other consideration for the construction of the residential housing project on land acquired pursuant to this sub-subparagraph."

Note that this provision has three important elements: 1) land purchased using IS dollars must be for housing that sets aside at least 30% of its units as affordable for households up to 120% of AMI; 2) a local government or special district must retain ownership of the land; and 3) the local government or special district that owns the land may enter into a ground lease with a developer to construct the affordable housing. To the first point, 120% AMI is the maximum income levels – a local government can choose to serve exclusively lower-income households if it wanted to. **Pinellas County,** when deploying its Penny for Pinellas program for affordable housing, employs a Chapter 689 land trust model where the Pinellas County Housing Finance Authority acts as the trustee with title to the land and the County is the beneficiary. Local governments may deploy a 99-year ground lease model or other legal structure as long as the local government or special district retains ownership of the land.

Federal funds. Certain federal affordable housing programs, such as the CDBG program or HOME, can be used for public entities to acquire land for affordable housing purposes. USDA Rural Rental Housing Loans (Section 515) may also be obtained by public agencies to acquire land for affordable housing purposes. Note that if using a federal source of funding for land acquisition, be sure to follow the funding source's rules and regulations regarding land disposition.

What Makes a Parcel "Appropriate" for Affordable Housing

As explored above, the statutory requirement for local governments to identify all public parcels owned in fee simple that are "appropriate for use as affordable housing" does not contain a definition for what that quoted term means. Therefore, it is up to each local government to define for itself what makes a parcel "appropriate" for affordable housing. The Florida Housing Coalition recommends that each local government have a written policy that provides clear direction on how it determines which parcels are in fact, "appropriate for use as affordable housing." This section provides considerations for public entities to use when crafting local land identification policies.

Crafting policies and procedures to determine the appropriateness of public lands for use as affordable housing presents a valuable opportunity to increase the local housing supply to meet current and future needs. This exercise also provides the opportunity to guide growth in a way that is compatible with local growth strategies. The lack of guidance in Florida law pertaining to what land is, or is not, appropriate for affordable housing grants local governments the ability to prioritize their public lands for affordable housing to best fit their communities.

This leads to the question of what makes a parcel of publicly owned land appropriate for affordable housing development, or more specifically, what factors should be evaluated when making these determinations. To alleviate potential burdens on administrative capacity, a clearly stated and standardized set of development criteria should be put in place that allows local government staff and elected officials to make decisions efficiently and consistently regarding what public lands should be available or prioritized for affordable housing development purposes. Because public lands come with different situations and challenges, it is recommended to establish an administrative process that factors an array of physical and locational criteria to determine the appropriateness of publicly owned lands for affordable housing. Developing these criteria can help to filter unsuitable sites from the public land inventory, optimize land usage, and serve to aid decision-making for future land acquisitions.

Summary of Factors that May Be Used to Determine the Appropriateness of Public Lands for Affordable Housing Development

Although a formalized local process will likely feature greater nuance in practice, the sections to follow focus on highlighting physical and locational criteria that could be used by local governments to determine if a given parcel of public land is appropriate for affordable housing development, and if so, what type for affordable housing

would be best suited for the site. Several broader categories of evaluative criteria will be recommended and explained, with supporting evidence and exemplary local and state government policies and practices being utilized in Florida and throughout the country. It is recommended that local governments use these criteria and policies to serve as a foundation, or at least a point of reference, for any local policies that gauge the appropriateness of public lands for use as affordable housing. It is **not** the intent for local governments to simply copy and paste the following factors in their local public land policies; each criteria must be carefully crafted to reflect the local context.

The table below provides a summary of factors or criteria that may be easily referenced when developing an administrative process to determine the appropriateness of public lands for affordable housing development. This is followed by background information on each factor.

APPROPRIATENESS FACTOR	BRIEF DESCRIPTION	EXAMPLE
Size and shape	This factor refers to the physical dimensions of a plot of land. Size and shape may be used to quickly filter out public land that is not large enough to accommodate the form(s) of affordable housing that the local government seeks to prioritize.	A site must contain at least _____ contiguous acres to be considered appropriate.
Lot design criteria	Ensuring that local land use regulations such as setbacks, concurrency, minimum parking requirements, and minimum lot coverage are compatible with affordable housing that could potentially be developed on the site if it were to become available.	Sites with incompatible land use regulations for residential development, as determined by the local land development code, will be deemed inappropriate for affordable housing development.
Proximity to community-based services	The proximity of a given plot of land to community-based based services such as grocery stores, medical facilities, pharmacy, public schools, employment, and public transit services.	A site must be within ____ miles of a medical facility to be considered appropriate.
Verification of public infrastructure	A plot of land should have confirmed access to forms of public infrastructure such as roadways, electrical service, water service, sewer and/or septic service, and broadband internet.	A site must have confirmed access to roadways, electrical service, water service, sewer and/ or septic service, and broadband infrastructure to support at least ___ Mbps download speed to be appropriate.
Place-based programs	Place-based programs refer to areas determined by HUD to have an elevated need for housing investment, such as QCTs and DDAs. These determinations are typically due to concentrations of lower AMIs in an area, high development costs in an area, or a combination of these factors. A local process to determine the appropriateness of land for affordable housing may reference these place-based programs as a preference to further guide decision-making.	Sites located within a QCT or DDA may be prioritized for housing development when analyzing an inventory or available publicly owned land.

Land needed for other governmental purposes	Certain properties in a public land inventory may be currently used as, or be better suited for, other governmental purposes beyond affordable housing. These purposes can include essential services such as public safety, public health, education, transportation, or emergency management.	Publicly owned sites currently dedicated for other governmental purposes may be deemed inappropriate for affordable housing. Local discretion may repurpose lands being used for other governmental purposes depending on locally observed needs and context.
Flood Risks: Special Flood Hazard Areas	Flood zones, defined by either the state or federal government, may serve as a reference if seeking to filter sites from a public land inventory that have an increased risk of flooding. FEMA has categorized flood zones according to their estimated flood risk. Areas with the greatest risk of flooding are designated as Special Flood Hazard Areas (SFHAs).	Sites within a FEMA-designated SFHA will not be considered appropriate for affordable single-family housing developments but may be considered for multi-family properties.
Coastal High Hazard Areas	A local process will be utilized to review parcels in the state-designated Coastal High Hazard Areas (CHHAs) as these locations are especially vulnerable to flooding, and recommendations will adhere to the local Coastal Management plan to limit public expenditures that subsidize development in coastal high-hazard areas.	Sites within the CHHA will not be considered appropriate for new affordable single-family housing developments but may be considered for multi-family properties. Local funding and incentives may be provided only if higher resilience construction standards are used.
Evacuation zones and clearance times	A local process will consider the impact of development in areas which exceed hurricane evacuation clearance times, .	Sites that are located within, or are adjacent to, FDEM evacuation zone A or B or locally defined evacuation routes that exceed clearance times may be deemed inappropriate for large scale housing developments, however, small developments and infill may be deemed appropriate if the location is elevated.
Current and future sea level rise	A local process to determine the appropriateness of public lands for affordable housing development may seek to strategically avoid future developments being constructed in areas that are seen as vulnerable to future sea level rise. . If a local government has conducted vulnerability assessments, it may refer to these assessments to determine which sites should be removed from consideration or may require specific construction requirements.	Sites that are vulnerable to sea level rise by the year 2040, as shown in local vulnerability assessments provided to FDEP, may be deemed inappropriate for affordable housing development.

Wetlands	If seeking to avoid future affordable housing development in environmentally sensitive wetland areas, a local process may refer to the National Weather Service (NWS) National Wetlands mapper tool.	Sites that include or are adjacent to a wetland are deemed inappropriate for affordable housing development.
Brownfields	Brownfields left unrepaired potentially pose a major risk to human health, depending on the contaminant present on the site. However, funding from the Comprehensive Environmental Response, Compensation and Liability Act (known informally as the Superfund) provides funding for brownfield cleanup. A local process to determine the appropriateness of public lands for affordable housing may consider the status of brownfield sites in the area.	Defined brownfield sites may be considered appropriate for affordable housing development if the developer has demonstrated capacity to remediate the site.
Sinkholes	Florida's geological terrain makes it particularly vulnerable to sinkhole collapses. A local process to determine the appropriateness of public land for affordable housing development may seek to filter out sites that are near known sinkholes.	Sites that have documented occurrences of a subsidence incident, are deemed inappropriate for affordable housing development.
Stormwater management infrastructure	Inadequate stormwater management systems can create risks to housing. A local process to determine the appropriateness of public lands for affordable housing development may seek to identify sites that have inadequate stormwater infrastructure and will need additional investment.	Sites with inadequate stormwater infrastructure for residential development, as determined by the local government, will be deemed inappropriate for affordable housing development.

Physical Criteria (Size & Shape)

The physical dimensions of a plot of land, namely the size and shape, will heavily influence its potential uses and should be a primary factor for any local process to determine if public land is appropriate for affordable housing development. It should come as no surprise that an inventory of available public land will feature plots of varying shapes and sizes. However, affordable housing development can also come in different forms that may be better suited for lots of certain dimensions. While larger-scale multifamily rental housing may have the biggest case-by-case impact on housing supply and economic development, affordable housing options in the form of single-family or "missing middle" housing can also serve as useful models to supplement the local housing supply and should not be overlooked when developing public land disposition policies at the local level. Existing local government policies on public land disposition require varying levels of detail to determine if a parcel is appropriate for affordable housing when solely considering the size and shape of the plot. What many of these policies have in common, however, is that the physical dimensions of publicly owned lands are used as a determining factor to prioritize sites that have the highest potential to accomplish locally defined goals for growth and housing supply.

For example, Arlington County, Virginia[21], in its process to evaluate public land for potential affordable housing development, considers the size and shape of parcels strictly for the purpose of disqualifying or filtering out sites that are not feasible for the types of developments that have been identified as being the highest priority for the community: multifamily apartments and townhomes. As part of this process, during the "initial filtering" phase, the following conditions are physical criteria used to disqualify prospective publicly owned sites from consideration:

- The site is smaller than ¼ acre;
- The site is oddly shaped with one or more dimensions that are too narrow to accommodate housing development;
- The buildable portion of the site is too small or oddly shaped after accounting for environmental features that limit development potential.

As evidenced by this local policy, the physical criteria to be used for evaluating publicly owned lots do not need to be specific to the point that it is overly burdensome or counterproductive from an administrative perspective. More general physical criteria can serve to effectively filter or sort sites from a public land inventory based on clear and easy to confirm benchmarks that align with specific local housing priorities.

There are also relevant examples of existing public land disposition policies that seek ways to utilize smaller parcels of land for single-family or missing middle affordable housing development types. There are several noteworthy examples from local governments in Florida that strategically target smaller plots of land to provide these affordable housing types.

One example is the Infill Affordable Housing Program, administered by Escambia Housing Finance Authority in partnership with the City of Pensacola[22]. The Infill Affordable Housing Program utilizes publicly owned lots from both the City and County to develop single-family affordable housing, providing homeownership opportunities for income-eligible families (at or below 80% AMI). Although the Infill Affordable Housing Program features a number of aspects that are worth noting, such as serving low to moderate-income first-time homebuyers and partnering with local homebuilders for construction, it provides an example of a prescriptive public land disposition program that is responsive to observed conditions and seeks to maximize the redevelopment potential of smaller parcels of land for affordable housing purposes.

When detailing the Infill Affordable Housing Program as part of their 2022 Affordable Housing Incentive Review[23], the Escambia/Pensacola Affordable Housing Advisory Committee (AHAC) explained some motivating factors for the approach being taken to implement the program. It was recognized that the preexisting supply of publicly owned parcels that had been considered suitable for affordable housing had already been developed. In response, the City and County collaborated to create a program to have escheated properties be conveyed to the City, adding smaller properties to the public land inventory that may not be feasible for multifamily rental development, but would make sense for affordable single-family development opportunities.

An additional Florida-based public land disposition program that has successfully produced affordable single-family housing on smaller lots is the City of Tampa's Infill Housing Program[24]. Initially launched in 2017, the Infill Housing Program has so far seen the implementation of three separate phases that each include different approaches and programmatic features related to public land disposition for affordable housing purposes. The Infill Housing Program operates as a competitive solicitation for developers to apply for awards. Developers who meet program requirements are then awarded city-owned lots via a lottery selection process, with the winners selecting qualified buyers through the DARE to Own the Dream Homeownership Program that provides closing cost and down payment assistance. According to the City, Phases I and II have resulted in 112 affordable single-family homes being built on city-owned lots and the forthcoming Phase III is expanding to potentially include plans for affordable multifamily rental housing options.

While multifamily and mixed-use development make the greatest impact to boost housing supply and require larger pieces of land, local governments should not disregard the potential benefits of encouraging single-family or missing middle affordable housing construction types on smaller or irregularly shaped parcels of public land. Instead, when it comes to evaluating the appropriateness of public land for affordable housing based on the physical dimensions of the parcel, it is recommended that local governments maximize the housing potential for their public lands by evaluating all publicly owned parcels for use as affordable housing with a flexible approach and openness to encouraging a mix of affordable housing types.

Lot Design Criteria

Existing state and local laws regarding setbacks, parking, concurrency, and minimum lot coverage may also be considered for a filtering process to determine the appropriateness of public lands for affordable housing. Relevant local regulations can be referenced through the land development code to guide determinations of necessary requirements for multifamily, missing middle-, or single-family housing types.

While existing local land use regulations can help to guide a filtering process for a land inventory, these regulations can also be a barrier to affordable housing construction.[25] Allowing flexibility on local land use regulations when feasible can unlock a wider selection of available public land that can accommodate affordable housing development. For example, in recent years, local governments nationwide have seen a growing list of successful efforts to promote more affordable housing construction by reducing or eliminating minimum parking requirements.[26] Similarly, setback requirements can negatively affect housing affordability. When developing a local process to evaluate public lands based on lot design criteria, efforts to provide affordable housing could be enhanced by baking in flexibility on these mentioned land use regulations.

Locational Criteria (Proximity)

Many of the locational criteria that make land appropriate for affordable housing are the same locational criteria that should be valued when considering a site's suitability for any type of residential construction. Quality of life aspects such as having access to public infrastructure and being located near public transit, schools, medical facilities, pharmacy services, employment centers, grocery stores, and retail options should be considered by local governments when evaluating publicly owned land inventories for potential affordable housing development opportunities. This holds true regardless of the type of housing that could be provided on the site, or the populations that could potentially be served.

Beyond the collective benefits for public good that are gained by ensuring affordable housing is developed close to these resources and amenities, it also unlocks greater potential for a community to experience positive economic impacts from outside investment. Specifically, establishing evidence-based proximity criteria to target affordable housing growth will increase the likelihood for future financial investment in affordable housing development on the site and opens the door for a greater influx of capital into the community via affordable housing finance programs. This correlation will be detailed further in subsequent sections.

Pursuant to these guiding concepts – quality of life and maximizing economic development potential through affordable housing finance programs – this section recommends proximity factors for local governments to consider for inclusion in a local process to determine the appropriateness of public lands for affordable housing development. References will also be provided for relevant, exemplary definitions for each criterion that may be used in a local policy. Direction will also be provided on how the criteria may be evaluated and operationalized administratively.

What is proximity and why does it matter?

In affordable housing and land use planning, locational criteria or considerations for development are often labeled under the term proximity. Proximity is a longstanding concept as it relates to development site selection and is a highly valued economic indicator for both the public and private sectors. Higher degrees of proximity to resources and amenities within a community are shown to reduce the amount of infrastructure needed per capita and therefore reduce costs for municipalities[27] The importance of proximity to housing development financing and community planning is acknowledged by industry experts, as evidenced by the American Planning Association's position that an adequate supply of housing in proximity to employment, public transportation, and community facilities, such as public schools, is not only desirable, but is necessary for a community to function[28]

The Shimberg Center for Housing Studies at the University of Florida, in its development of the Florida Affordable Housing Suitability Model, a Geographic Information Systems (GIS)-based decision tool to assess optimum locations for the development and preservation of low-income housing, operationally defined proximity as being, "the distance to the nearest facility that can be traveled by bike or walking."

To evaluate proximity in practice, it is an affordable housing industry standard to evaluate the distance of a proposed housing development to certain community-based resources according to the latitude and longitude coordinates of the site. For reference, both the U.S. Department of Housing and Urban Development (HUD) and the Florida Housing Finance Corporation (FHFC) refer to these proposed development site coordinates as the Development Location Point. This standard approach of utilizing a defined development location point to evaluate proximity is recommended for inclusion in a local process for the purposes of clarity and consistency.

Rule Chapter 67-48.002(33) of the Florida Administrative Code (F.A.C.), under the rulemaking authority of FHFC, defines the Development Location Point as follows:

> "Development Location Point" means a single point selected by the Applicant on the proposed Development site that is located within 100 feet of a residential building existing or to be constructed as part of the proposed Development. For a Development which consists of Scattered Sites, this means a single point on the site with the most units that is located within 100 feet of a residential building existing or to be constructed as part of the proposed Development.

While understanding that any proposed residential development should be mindful of proximity to community-based resources and public infrastructure for the reasons of public good that were mentioned prior, assuring that affordable housing is developed in close proximity to these resources also brings observed economic benefits to local governments in the form of cost savings and increased likelihood of outside investment.

Evidence has shown that higher degrees of proximity within a community can lower costs to a municipality.[29] This is particularly relevant to public infrastructure as existing infrastructure may be utilized, as opposed to building out to accommodate expanding residential development, whether or not the residential development is affordable or market rate.

As it relates to encouraging investment, proximity has a definite impact on the likelihood that future affordable housing development on the site could benefit from financing through affordable housing finance programs and other forms of public subsidy. Certain proximity requirements and standards are commonly baked into any Request for Applications (RFA) or Request for Proposals (RFP) that are administered by federal, state, or local entities to award resources from housing finance programs that exist to incentivize affordable housing development.

These solicitations for housing development applications may be either competitive or non-competitive and will typically feature proximity requirements that proposed affordable housing developments must meet in order to qualify for public subsidies that greatly improve a project's financial feasibility. Other proximity factors may also serve to prioritize or rank applications when making funding selections or serve as tiebreakers. The following section will identify standard, widely used proximity criteria that should be considered for a local administrative process to determine the appropriateness of public lands for affordable housing development. Directions will then be provided on how the criteria may realistically be verified in practice and incorporated into a local administrative process.

Community-Based Services

Community-based services is a blanket term that encompasses many of the services that residents of any community would require for day-to-day life. Establishing policies to assure that affordable housing is developed within close proximity to these services helps to assure that low- and moderate-income residents are not being placed in resource 'deserts' that entail a lower quality of life.

In practice, to streamline an approval process, local governments may create a matrix of community-based services proximity factors to consider. It is recommended that the following community-based services be considered for inclusion as proximity criteria for determining the appropriateness of public lands for affordable housing development:

- Grocery store
- Medical facility
- Pharmacy
- Public schools
- Employment opportunities
- Transit services (Public Bus Stop, Public Bus Transfer Stop, Public Bus Rapid Transit Stop, or Public Rail Station)

The processes for evaluating each of these identified proximity criteria should be similar, repeatable, and clearly defined. For all proximity criteria, a formalized process should define the criteria terminology, establish minimum distance requirements, and include standard mapping practices to confirm a site's proximity to all chosen criteria.

In developing these policies and procedures, local governments could start by defining each of the above-referenced terms in the context of land disposition for affordable housing. There may be existing definitions of these terms already in use by the local government for other purposes and those definitions may be used for consistency. However, there are existing definitions of

these proximity criteria from affordable housing entities and organizations that would be helpful to reference when developing a local policy.

Excerpts of current definitions for proximity criteria from FHFC are provided below. If seeking to utilize parcels with the greatest potential for economic investment when determining the appropriateness of public lands for affordable housing, a local process may benefit from referencing these criteria and definitions to increase the likelihood that future proposed affordable housing development on a site may be scored favorably when applying for state and federal housing finance program resources. However, local governments should reasonably account for their own jurisdictional contexts related to geographical boundaries and population size when developing their own definitions for proximity criteria.

Grocery store. A retail food store consisting of 4,500 square feet or more of contiguous air conditioned space available to the public, that has been issued a food permit, current and in force as of the dates outlined below, issued by the Florida Department of Agriculture and Consumer Service (FDACS) which designates the store as a Grocery Store or Supermarket within the meaning of those terms for purposes of FDACS-issued food permits. Additionally, it must have (i) been in existence and available for use by the general public continuously since a date that is 6 months prior to the Application Deadline; or (ii) been in existence and available for use by the general public as of the Application Deadline AND be one of the following: Albertson's, Aldi, Bravo Supermarkets, BJ's Wholesale Club, Costco Wholesale, Food Lion, Fresh Market, Harvey's, Milam's Markets, Piggly Wiggly, Presidente, Publix, Sam's Club, Sav – A – Lot, Sedano's, SuperTarget, Trader Joe's, Walmart Neighborhood Market, Walmart Supercenter, Whole Foods, Winn-Dixie.

Medical facility. A medically licensed facility that employs or has under contractual obligation at least one physician licensed under Chapter 458 or 459, F.S. available to provide general medical treatment to patients by walk-in or by appointment. Facilities that only treat specific classes of medical conditions, including, but not limited to clinics/emergency rooms affiliated with specialty or Class II hospitals, or facilities that only treat specific classes of patients (e.g., age, gender) will not be accepted. Additionally, it must have either been in existence and available for use by the general public as of the Application Deadline.

Pharmacy. A community pharmacy operating under a valid permit issued pursuant to s. 465.018, F.S., current and in force as of the dates outlined below and open to the general public at least five days per week without the requirement of a membership fee. Additionally, it must have (i) been in existence and available for use by the general public continuously since a date that is 6 months prior to the Application Deadline; or (ii) been in existence and available for use by the general public as of the Application Deadline AND be one of the following: Albertson's, Costco Wholesale, CVS, Harvey's, Kmart, Navarro's, Piggly Wiggly, Publix, Sav – A – Lot, Target, Walgreens, Wal-Mart, Winn-Dixie.

Public school. Either (i) a public elementary, middle, junior and/or high school, where the principal admission criterion is the geographic proximity to the school; or (ii) a charter school or a magnet school, if the charter school or magnet school is open to appropriately aged children who apply, without additional requirements for admissions such as passing an entrance exam or audition, payment of fees or tuition, or demographic diversity considerations. Additionally, it must have either been in existence and available for use by the general public as of the Application Deadline.

Public Bus Stop. A fixed location at which passengers may access one or two routes of public transportation via buses. The Public Bus Stop must service at least one bus route that either (i) has scheduled stops at least hourly during the times of 7am to 9am and also during the times of 4pm to 6pm Monday through Friday, excluding holidays, on a year-round basis; or (ii) has the following number of scheduled stops within a 24 hour period, Monday through Friday, excluding holidays, on a year round basis, for the applicable county size;

Small and Medium Counties: 12 scheduled stops

Large Counties: 18 scheduled stops

Bus routes must be established or approved by a Local Government department that manages public transportation. Buses that travel between states will not be considered. Additionally, it must have either been in existence and available for use by the general public as of the Application Deadline.

Public Bus Transfer Stop. For purposes of proximity points, a Public Bus Transfer Stop means a fixed location at which passengers may access at least three routes of public transportation via buses. Each qualifying route must either (i) have a scheduled stop at the Public Bus Transfer Stop at least hourly during the times of 7am to 9am and also during the times of 4pm to 6pm Monday through Friday, excluding holidays, on a year-round basis; or (ii) have the following number of scheduled stops at the Public Bus Transfer Stop within a 24 hour period, Monday through Friday, excluding holidays, on a year-round basis, for the applicable county size:

Small and Medium Counties: 12 scheduled stops

Large Counties: 18 scheduled stops

This would include bus stations (i.e., hubs) and bus stops with multiple routes. Bus routes must be established or approved by a Local Government department that manages public transportation. Buses that travel between states will not be considered. Additionally, it must have either been in existence and available for use by the general public as of the Application Deadline.

Public Bus Rapid Transit Stop. A fixed location at which passengers may access public transportation via bus. The Public Bus Rapid Transit Stop must service at least one bus that travels at some point during the route in either a lane or corridor that is exclusively used by buses, and the Public Bus Rapid Transit Stop must service at least one route that has scheduled stops at the Public Bus Rapid Transit Stop at least every 20 minutes during the times of 7am to 9am and also during the times of 4pm to 6pm Monday through Friday, excluding holidays, on a year-round basis. Additionally, it must have either been in existence or available for use by the general public as of the Application Deadline.

Public Rail Station. For purposes of proximity points, a Public Rail Station means a fixed location at which passengers may access the scheduled public rail transportation on a year round basis at a MetroRail Station located in Miami-Dade County, a TriRail Station located in Broward County, Miami-Dade County or Palm Beach County, or a SunRail Station located in the following counties: Orange, Osceola, Seminole, and Volusia. Additionally, it must have either been in existence and available for use by the general public as of the Application Deadline.

Once a set of proximity criteria has been chosen and formally defined, the next step should be to establish a threshold for how close in proximity a site should be

to each of the criteria to be deemed appropriate for affordable housing development. Because jurisdictions vary in size and population, the optimal mandatory distance requirement depends on local context. The level of detail required to demonstrate sufficient proximity to community-based services may also vary and depends on the discretion of the local government. Distance requirements may be based on singular thresholds for all proximity criteria but may also be evaluated based on a more detailed, point-based scale. There are many existing metrics being used by public land disposition programs to set mandatory distance requirements, and these may be referenced when setting local standards.

Provided below are examples of recent scoring charts used by FHFC to evaluate proximity in the context of a competitive RFA to award funding for affordable housing developments. A similar chart may be used for all proximity criteria, or for proximity criteria that are of highest priority to the local government.

DISTANCES IF USING ONE PUBLIC BUS STOP		
Small County Distance between the Development Location Point and the Public Bus Stop Coordinates stated in Exhibit A	**Medium and Large County Distance between the Development Location Point and the Public Bus Stop Coordinates states in Exhibit A**	**Number of Proximity Points Awarded**
If less than or equal to 0.30 miles	If less than or equal to 0.30 miles	2.0
If greater than 0.30 and less than or equal to 0.75 miles	If greater than 0.30 and less than or equal to 0.40 miles	1.5
If greater than 0.75 and less than or equal to 1.00 miles	If greater than 0.40 miles and less than or equal to 0.50 miles	1.0
If greater than 1.00 and less than or equal to 1.25 miles	If greater than 0.50 and less than or equal to 0.75 miles	0.50
If greater than 1.25 miles	If greater than 0.75 miles	0.0

PUBLIC SCHOOL		
Small County Distance between the Development Location Point and Eligible Service	**Medium and Large County Distance between the Development Location Point and Eligible Service**	**Number of Proximity Points Awarded for Eligible Service**
If less than or equal to 0.75 miles	If less than or equal to 0.50 miles	4.0
If greater than 0.75 and less than or equal to 1.0 miles	If greater than 0.50 and less than or equal to 0.75 miles	3.5
If greater than 1.0 and less than or equal to 1.25 miles	If greater than 0.75 miles and less than or equal to 1.00 miles	3.0
If greater than 1.25 and less than or equal to 1.5 miles	If greater than 1.00 and less than or equal to 1.25 miles	2.5
If greater than 1.5 miles and less than or equal to 1.75 miles	If greater than 1.25 and less than or equal to 1.5 miles	2.0
If greater than 1.75 and less than or equal to 2.0 miles	If greater than 1.50 and less than 1.75 miles	1.5
If greater than 2.0 and less than or equal to 2.25 miles	If greater than 1.75 and less than or equal to 2.00 miles	1.0
If greater than 2.25 miles	If greater than 2.00 miles	0

Source: Request for Applications 2023-213 SAIL Funding for Live Local Mixed Income, Mixed-Use, and Urban Infill Developments

Verification of Access to Public Infrastructure

Affordable housing and public infrastructure are intertwined and local policies to determine the appropriateness of public lands for affordable housing should reasonably account for the existing and planned infrastructure capacities for any given site. Lack of adequate public infrastructure can be a prominent barrier to affordable housing development, primarily because inadequate public infrastructure can increase development costs and make a proposed affordable housing development financially infeasible for any developer whether for-profit or non-profit. Beyond these market-based considerations, having access to utilities and other forms of public infrastructure will lead to positive results for not only residents, but the economic vitality of entire communities.

To further guide the local decision-making process, the following forms of public infrastructure are identified as being necessary for the development of affordable housing and are recommended for inclusion in a local process to determine the appropriateness of public lands for affordable housing:

- Roads
- Electricity
- Sewer capacity treatment/or septic
- Potable water
- Broadband
- Stormwater management capacity

Verification methods for each type of infrastructure will be provided and explained below. Note that the guidance provided in this section only pertains to the verification of infrastructure availability and does not address the costs associated with utility connection.

Additionally, as part of the RFA process, FHFC requires that applicants for affordable housing funding resources provide local government confirmation that a proposed development site has access to each of these prescribed forms of local infrastructure to be considered for an award. The confirmation must be provided via an FHFC-sourced local government verification form that includes a signature from an applicable appointed official.

Verification of Access to Roads. Local governments should consult internally with its appropriate department to confirm if parcels in a public land inventory have access to current, operational roads. A process may also evaluate public sites for affordable housing development by analyzing available internally sourced data to prioritize sites located on or near roads that have excess capacity. Guiding development to be located near roads with excess capacity can lower upfront development costs and further justify future road maintenance.

Verification of Access to Electricity. A local process to verify that publicly owned lands have access to proper electric utility capabilities can vary depending on electric utility provider for the area. Electric utility providers may be public or private depending on the location. In practice, it is recommended to use available mapping resources to determine if lands in the public inventory have access to electricity and feature electric utility verification as an eligibility criterion when determining if any newly acquired public lands are appropriate for affordable housing. Electric utility verification can be achieved by coordinating with the electric utility provider or by internal mapping practices that factor coverage areas. All utility providers, whether public or private, provide freely available coverage maps and associated data online.

Verification of Sewer Capacity, Treatment, or Septic Tank. To verify a publicly owned site's access to sewer capacity, treatment, or septic tank, a local government should internally evaluate its existing and planned water and sewer service areas. Different types of affordable housing development may require varying sewer or septic capacities depending on the size and number of units. An interlocal agreement may be beneficial for mapping and planning efforts to evaluate proper sewer capacity, treatment, or septic capacity for affordable housing development that may be developed on a publicly owned site.

Verification of Availability of Potable Water. To verify a publicly owned site's access to public water utilities, a local government should coordinate with the local utility provider to confirm water availability for all publicly owned lands when determining appropriate sites for affordable housing development. Consider developing an agreement with the utility provider to assist with planning and implementation.

Verification of Access to Broadband. Internet access has become an integral part of nearly any person's day-to-day life, in addition to being a primary tool for upward mobility. Residents of all income levels and demographics

may now require internet access to work remotely, seek employment opportunities, further their education, receive medical care, buy groceries, and handle personal finances, in addition to the benefits of home entertainment and recreation. For these reasons, it is recommended that a local process considers broadband access when determining if public land is appropriate for affordable housing development.

The importance of internet access has also been recognized by the State of Florida through the creation of its Office of Broadband within the Department of Commerce. In addition to overseeing opportunity programs and other resources to expand the state's broadband infrastructure, the Office of Broadband works with local governments and provides publicly available statewide broadband coverage maps that may be used in a local process to prioritize public lands with certain internet capabilities for affordable housing development. The available maps can factor geographic boundaries and community anchor institutions. It is recommended that a local process utilizes available resources, such as those provided by the Office of Broadband, to factor broadband availability in a process to determine if public lands are appropriate for affordable housing.

Verification of Stormwater Management Capacity. Effective stormwater management plays a crucial role in community safety and reducing flood risks to housing and businesses. It is important to understand if your stormwater management system capacity can support future development and what plans are in place to support the expansion of system pipes, ditches, and ponds for new areas. When developing your list, consult with your Stormwater Services Department to review and verify that the stormwater management plan can support development for the sites, and that there is funding to address any existing flooding problems. In areas without any stormwater infrastructure, larger scale developments are likely to require both local government and water management district permits for the management of surface waters. This can add to the cost and scale of a development project.

Place-Based Programs

Place-based programs exist to encourage housing and economic development in areas of greatest need and are relevant to increasing the likelihood of investment through affordable housing finance programs. Local governments can use the boundaries of relevant place-based programs to determine whether public parcels are appropriate for use as affordable housing. For example, a local government could give extra consideration to or prioritize public parcels in defined place-based programmatic areas when identifying land appropriate for affordable housing.

In practice, proximity criteria for place-based programs are less nuanced than those for community-based services due to strict federal, state, or local definitions and guidelines. Definitions for place-based programs relevant to affordable housing development are provided below, with added context to explain significance and impact.

Qualified Census Tracts (QCTs). As defined in Section 42(d)(5)(c) of the Internal Revenue Code, a Qualified Census Tract is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50% of households have an income less than 60% of the Area Median Gross Income (AMGI) or have a poverty rate of 25% or more. (Source: HUD).

- QCTs exist as a function of the federal Low-Income Housing Tax Credit (LIHTC) program and provide a 30% basis boost for LIHTC valuation, allowing greater incentive for the development of affordable housing in areas of greatest need. The locations of QCTs within a jurisdiction can be easily confirmed by referencing resources provided by HUD, either via the HUD QCT Table Generator or HUD User GIS mapping services. Both resources are free and available online for use by local governments.
- Mapping: https://www.huduser.gov/portal/sadda/sadda_qct.html
- QCT Table Generator: https://www.huduser.gov/portal/qct/index.html

Difficult Development Areas (DDAs). Difficult Development Areas (DDAs) are areas with high land, construction, and utility costs relative to the area median income. (Source: HUD).

- DDAs, like QCTs, exist as a function of the federal Low-Income Housing Tax Credit (LIHTC) program and provide a 30% basis boost for LIHTC valuation, allowing greater incentive for the development of affordable housing in areas of greatest need. The locations of DDAs can also be easily confirmed for a public land disposition process through publicly available maps provided by HUD.
- Mapping: https://www.huduser.gov/portal/sadda/sadda_qct.html

Geographic Areas of Opportunity. Census tracts identified by the Corporation which meet at least two out of the following three threshold criteria designated by the Corporation based on the average of the three most recent 5-year averages of the American Community Survey: (a) census tract median income greater than the 40th percentile of all census tracts within the county; (b) educational attainment above the median of all tracts in the county, measured as the proportion of adults over 25 years old who have completed at least some college; and (c) tract employment rate greater than the statewide employment rate. The census tract list can be found at https://www.floridahousing.org/programs/developers-multifamily-programs/competitive/areas-of-opportunity (Source: FHFC).

Environmental and Resiliency Factors to Consider.

A local process to evaluate the appropriateness of public land for affordable housing development should also consider locational factors that pertain to resiliency and environmental risks. Knowing how important these factors are, today's public land and housing managers work closely with their floodplain administrators, emergency managers, planning staff, and resilience officers. Working as a team, it is important to evaluate the hazards, risks, community vulnerability and potential impacts from hurricanes, flooding, environmental conditions, and older infrastructure to locations for future affordable housing – before designating land as suitable. Flood risk is a direct function of several, somewhat interdependent factors. An integrated approach is necessary because the impacts from disasters are increasing. Major hurricanes are extending far inland and creating flood and wind damage beyond the coast. Sunny day flooding caused by sea level rise and high tides is becoming more frequent. Massive flooding events have impacted inland communities. These risks are projected to increase over time due to the changing climate and intensified development.

In the short term, these factors may mean that a potential site will require extensive improvements, which increases development costs and negatively impacts the project's affordability. Sites in high flood risk zones can increase the operating costs and homeowner insurance rates.

This section provides an overview of environmental risks that local governments may factor into processes to determine the appropriateness of public lands for affordable housing development from storm surge, rainfall, and sea level rise. This section also focuses on the physical factors related to flood risk and defines what data that may exist to help Public Land Managers understand the risks and potential impacts to individual properties.

Other factors such as wind impacts can exacerbate damage impacts overall. Additionally, extended extreme heat spells and increased development also present a growing challenge for communities and housing affordability. This section also provides an overview of specific infrastructure factors to take into consideration.

Defining the FEMA Flood Zone

The first step in assessing public land is to both examine whether the property is in a FEMA flood zone and to learn about the property's overall flood risk. Flood zones are geographic areas that FEMA has categorized according to their varying levels of estimated flood risk. Areas with the greatest risk of flooding are designated as Special Flood Hazard Areas (SFHAs) on FEMA's Flood Insurance Rate Maps (FIRMs). Properties within a SFHA are assigned flood zone ratings that begin with the letter 'A' or 'V' on FEMA flood maps.

Flood zones B, C, X, and D are considered low-to moderate-risk zones, but additional flood risk determinations should still be made in these areas because many times flood claims originate from properties outside of A or V flood zones.

The Coastal Barrier Resource System (CBRS) or Otherwise Protected Area (OPA) are normally located within or adjacent to Special Flood Hazard Areas. In these areas, the National Flood Insurance Program insurance is not available for new construction and substantially improved structures built after October 1, 1983, or after the date the areas were designated.

Permitting for development is usually more complicated and costly and floodplain development or building permits must be obtained before any land-disturbing activities occur in flood zones. Placement of fill, alteration of stream channels and even some interior building renovations and repair of substantially damaged buildings can require more complex permitting requirements.

Parcels in the Coastal High Hazard Area (CHHA) will be especially vulnerable to the effects of coastal flooding from tropical storm events. The CHHA is defined by

section 163.3178(2)(h)9, Florida Statutes, as the area below the elevation of the category 1 storm surge line as established by a Sea, Lake, and Overland Surges from Hurricanes (SLOSH) computerized storm surge model. The Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRM) identifies the CHHA as the Velocity or "V" zone.

Section 163.3177(6)6., Florida Statutes, requires that local governments limit public expenditures that subsidize development in CHHAs. Additionally, the policy requires that local governments designate CHHAs on their future land use map series. These requirements would apply to any publicly owned land which would be built with state and local funding.

Public entities can consider the following factors when analyzing land suitability vis a vis flood risk.

- **Topography of the Landscape.** The relief and features of the land that may influence the retention, flow and impact of flood water. The U.S. Geological Survey (USGS) has been the primary civilian mapping agency of the United States since 1879. The USGS maintains regularly updated maps of topography.[30]

- **Elevation of the Property.** Generally, the lower the land, the more it floods. The Florida Division of Emergency Management (FDEM) has a property-specific dataset that allows the entry of the property address to determine if an elevation certificate (EC) is available for the property.[31] You can check if a property has an EC for a permit, insurance, or other reason, by searching the property on FDEM's extensive public database.[32] This data source also allows you to apply the most up to date elevation data available publicly (usually Light Detection and Ranging or "LiDAR"). It allows you to apply FIRM flood zone data (including special flood hazard area designations) and the user to apply certain Hurricane storm event scenarios to a property. Finally, it provides a layer for base flood elevation.[33] Other data sources: FEMA also provides property-level searchable datasets that allow the user to investigate flood zone designations and determine the elevation and flood risk of the property.[34]

- **Proximity to Water Bodies.** Proximity to coastal water bodies or tidally influenced water bodies means less drainage capacity, or that those water bodies are the origination of the floodwater. Proximity to inland water bodies can be an indication of low elevation or proximity to rivers that expand when rain events occur. Mapping your parcels to water bodies helps increase prospective buyer's awareness.

Parcel Risk, Property Type and Trade-offs. Due to the increasing cost of homeowner and flood insurance and increased future risks, single family housing will not be "permanently affordable" in these high-risk areas. Managers committed to creating long-term affordable single-family housing are advised to designate parcels well outside of the A/V high-risk flood zones as appropriate for single-family housing.

However, multi-family properties can implement a range of resilient construction strategies that can reduce risks, which are not available to single-family homes. Resilience construction and major site improvements may increase development costs. However, the construction will reduce the flood risk for the property owners and renters, and potentially reduce operating costs. Local governments can use tools such as a limited density bonus to incentivize resilient construction using FORTIFIED Multifamily, for example, which goes above the Florida Building Code. Local governments can also seek technical amendments to the Florida Building Code to incorporate other "beyond code" resiliency features into developments.

When creating your inventory lists of public land appropriate for affordable housing, it is a best practice to consider flood risk factors. The National Flood Insurance Program (NFIP) has regulations that include planning factors for consideration involving flooding risk that can be helpful when devising a public land strategy. The NFIP factors include standards that:

- Divert development to areas outside the SFHA to reduce flood damage
- Provide full public disclosure to potential buyers of properties in the SFHA
- Acknowledge that SFHA development may increase flood risk of existing development
- Improve local drainage to control increased runoff that increases the probability of flooding on other properties
- Require additional elevation above the Florida Building Code (1-foot freeboard or more above Base Flood Elevation (BFE))

- Require elevation methods such as pilings or columns rather than fill to maintain the storage capacity of the floodplain and to minimize environmental impacts
- Require evacuation plans for manufactured home parks and subdivisions

Key Takeaways:

- State policy requires local governments to limit public expenditures in the CHHA.
- Federal flood insurance is required for all buildings with federally backed loans or mortgages if they are in the FEMA flood zones.
- Flood insurance rates are likely to increase over time as flooding impacts move further inland due to sea level rise in the next 50 years.
- FEMA updates flood risk maps and FIRMs periodically. Parcels outside but near high-risk zones may be in a high-risk zone in the next few decades.
- Some parcels may be suitable for multi-family properties, if they are elevated appropriately.

Storm Surge and Evacuation Zones. Storm surge is the abnormal rapid rise of water associated with hurricanes and tropical storms which drives water along the ocean front, bays and rivers. Evacuation zones are based on regional evacuation studies and are easily accessible to determine property-level evacuation zones. FDEM has an online mapping tool, and most counties publish local maps. Public entities should consider storm surge and evacuation zones when assessing land suitability for affordable housing.

Evacuation zones are labeled A through E. FDEM indicates that typically Zone A is the most vulnerable and the most likely to evacuate first. Zone E is most likely to evacuate last. Federal and state agencies have developed robust models which show that sea level rise will cause storm surge flooding to go further inland. This may change the boundary of future evacuation zones.

Key Takeaways:

- The importance of examining your site's evacuation zone is crucial and also requires consideration for design and construction requirements to ensure the property is built to withstand the extreme conditions.
- Residents in high-risk surge zones may be required to leave the property during certain types of coastal storm surge events, which creates costs.
- Leaving the property during these types of events can have a disproportionate effect on the elderly, or individuals with medical disabilities, lack transportation or other factors.
- Evaluation requires extra expense.
- If you are increasing density in these zones and are not meeting your evacuation times – you may require more analysis and need to design housing to allow shelter.

Current and Future Sea Level Rise. Sea level rise is already affecting many coastal communities. Since 2020, the Florida Department of Environmental Protection has been awarding grants to counties and local governments to conduct vulnerability assessments for flood risk to storm surge and projections for future impacts to sea level rise for 2040 and 2070 under different scenarios.

These data layers and maps provide projections for areas of your community that will be exposed to future tidal flooding. Small amounts of sea level rise exacerbate already-occurring drainage issues and flood events. Therefore, it is crucial for local governments to analyze if publicly owned land will be at risk for permanent inundation from sea level rise. Consult with your Certified Flood Plain Administrator to review your parcels and determine which ones should not be made available for affordable housing, or redevelopment.

Other Hazards to Identify

Chronic local flooding analysis. Your local government may have a general analysis that aggregates repetitive loss property by area. Considering working with your Flood Plain Manager to identify if any of the properties are considered Repetitive Loss Property or Severe Repetitive Flood Loss Property Generally, FIRMs, elevation certificates and local anecdotal data about flooding will provide a good base of information to characterize flood risk in a neighborhood. FEMA has a historical flood mapper which tracks flood events by County and provides some indication of historical flood risks and cost.[35]

Wetlands. It is important to identify the nearby watersheds and assess whether there are wetlands in the prospective neighborhood. The NWS National Wetlands

mapper is designed to deliver easy-to-use, map-like views of America's Wetland resources. It integrates digital map data along with other resource information to produce current information on the status, extent, characteristics and functions of wetlands, riparian, and deepwater habitats. [36]

Impervious Surfaces – Flooding and Heat Risks. The amount of nearby concrete and hardened surfaces can exacerbate both flood risks and heat impacts to a parcel and neighborhood. The "heat island effect" occurs in areas which have concentrations and large amounts of impervious surface, such as roads and parking lots, and limited natural landscape, trees and green space.[37] Sites that are primarily situated on or near pavement, roads, and reflective buildings can intensify the surrounding heat impacts. Residents will experience intensified heat and properties may face higher energy costs for cooling, unless designed to mitigate the risks.

Ideal sites for affordable housing have ample tree cover, vegetation, gardens, or landscaping elements. Areas that have a higher percentage of green space and permeable surfaces can absorb more rain and runoff.

Housing program managers can work with GIS staff to assess the areas around their parcel by using the National Oceanic and Atmospheric Administration, Office for Coastal Management updated mapping tool "Coastal Change Analysis Program (C-CAP) High-Resolution Land Cover."[38] This tool visualizes data to show impervious surfaces, tree canopy and water features. These data layers provide valuable information for a range of local level applications, including inundation mapping, stormwater management, and heat risk identification.

Brownfields. A brownfield is a site where a hazardous substance, pollutant or contaminant is present, typically from previous industrial use or development, which makes redevelopment difficult.[39] Brownfields left unrepaired potentially pose a major risk to human health, depending on the contaminant present on the site. However, funding from the Comprehensive Environmental Response, Compensation and Liability Act (known informally as the Superfund) provides funding for brownfield cleanup. The EPA's EnviroAtlas and Brownfields mapping tool can visualize the location of brownfields and their status.[40] Development of affordable housing near a brownfield can be impossible if the brownfield is remedied before construction starts or as a part of the site improvement process.[41]

Sinkholes. Florida's geological terrain makes it particularly vulnerable to sinkhole collapses. A sinkhole is an area of ground that has no natural external surface drainage and can be formed suddenly when a collapse occurs.[42] Nearly the entire state of Florida is geologically prone to sinkholes, so it is a hazard all developers and local governments should be aware of. A sudden collapse can endanger residents and can cause significant property damage. The threat of sinkholes is particularly acute for lower-income homeowners who have fewer financial resources. Your environmental team can review the Florida Department of Environmental Protection map of reported "subsidence incidents," which includes sinkhole collapses.[43] It is advisable to hire a licensed expert to assess the site if there are sinkholes nearby.

Infrastructure Considerations

Heavy rains, poor drainage structures, and even nearby construction projects can put a property at risk for flood damage. When assessing a site, it is important to look at the age and condition of the nearby infrastructure. Older areas may have minimal, or antiquated, infrastructure serving the community that cannot keep up with changing conditions.

Newer areas are generally built to more modern standards and policies, and stormwater regulations have generally improved over time to manage risk. However, improved areas may have higher utility fees which add costs to homeowners.

This section reviews the elements of infrastructure and several local government plans which can have impacts on prospective public land sites. The key impacts include: 1) the development costs for installing new or maintaining existing infrastructure; and 2) the predictability of costs to the residents and property owners in the longer term.

Undeveloped Areas/Limited Infrastructure. If a prospective site does not have infrastructure, it is important to provide information so that developers can understand the status of infrastructure permits and gain insight into financial obligations for future residents in a community. Infrastructure delivery can be complicated involving single or multiple levels of government depending on the type of infrastructure and its location in urban or more rural areas.

Infrastructure delivery can also impact property owners' ability to pay rent or mortgages after they move into a structure because unknown assessments, connection fees or other charges could affect the affordability of the units. If no infrastructure exists on a vacant site, Land Managers should indicate proximity to existing infrastructure to increase understanding of potential future connection expenses.

Stormwater Infrastructure. Stormwater delivery can be slightly less predictable and stormwater utilities can be formed to levy assessments for improvements, expansion or retrofits of stormwater projects in a community. Stormwater utilities are generally formed to fund projects for water management and water quality permit compliance for various state and Federal programs. Stormwater can be assessed as a non-ad valorem assessment or other model such as a user fee.

Stormwater utilities can be formed under their own Florida statutory provisions (Chapter 403, F.S.) and as communities are facing challenges with climate variability, stormwater utilities offer a source of revenue to fund projects. Stormwater assessments at the individual property owner level are generally not high ($20-$150 per year for the average single-family homeowner). Generally, projects are developed through a stormwater master plan and vetted publicly during an approval process by the governing body. The rates are adopted through a publicly noticed process annually or can be an effective rate for several years and then fluctuate as project and service needs evolve.

Capital Improvement Plans. Using your capital improvements plan can be a starting point to determine existing or planned infrastructure or connections or expansions for infrastructure.[44] Capital projects are generally collected and evaluated by an internal governmental process for vetting and inclusion in the final budget adopted by the local government. Most local governments will publish summaries or public facing "Budget Book" to help the public understand the budget process.[45]

Adaptation Plans. More and more local governments in Florida are developing "Adaptation Plans" and strategic activities for Adaptation Action Areas that include capital project priorities to respond to increasing flood risk. If your jurisdiction has a plan, you can use it to identify parcels that may be in those areas or proximal to future infrastructure projects and resilience improvements to mitigate flood damage.

Communicating About Plans. Identifying sites that align with areas and projects in the local government Comprehensive Plans and departmental plans such as Stormwater or Wastewater Master Plans is key to a public land strategy.[46] These types of plans are not required like the adoption of the annual budget or Capital Improvements Element of the Comprehensive Plan, but they can be instrumental in providing an understanding of local government planning and spending priorities for infrastructure.

Public Land Needed for Other Governmental Purposes

Not all publicly owned lands will be appropriate for affordable housing development because some are needed for other public purposes. There are instances when public land may be determined to be necessary for other essential public services such as public safety, public health, education, transportation, or emergency management.

While this factor should be included in a process to filter lands from a public inventory that would not be appropriate for affordable housing development, local governments can balance the need for affordable housing with these other community resources with a prescriptive local policy. For example, a local policy could allow public land being used for other governmental purposes to be eligible for affordable housing development if the land is within a targeted urban growth area. Or, if a parcel of public land is a good match for local plans to guide growth and is currently being used for another governmental purpose, but may be underutilized in that purpose, it could be made available for affordable housing depending on local discretion. It is recommended that local governments mindfully evaluate lands being used for other governmental purposes while also considering opportunities to guide growth in alignment with local priorities.

IV. LAND DISPOSITION

Up to this point in the guidebook, it has been established that public entities can:

- Utilize land they own to produce affordable housing;
- Acquire land, including executing targeted strategies and
- Identify the characteristics the make land specifically suitable for affordable housing.

However, the actions and obligations previously discussed aren't sufficient to support the production and preservation of housing. Once a list of properties has been identified, action must be taken to make the parcels available to private entities that possess the skills, resources, and experience willing to partner with a public entity in creating housing opportunities. In the final part of this guidebook, best practices supporting the disposal of publicly owned land to facilitate the production and preservation of affordable housing will be discussed.

The benefits of supporting housing production through sound policies on the disposal of publicly owned land typically outweigh tax revenue generation. Returning publicly owned parcels to the tax rolls is often the primary objective for government officials when disposing of publicly owned land that may lack a clear operational use. While generating tax income is a prudent goal for local government, it may not always be the best public purpose that land can serve and should therefore be a complementary objective for organizations. For instance, a land disposition program may effectively revitalize neighborhoods experiencing blight or destabilization. Infill housing programs can prioritize uses consistent with redevelopment or neighborhood improvement plans. These approaches enhance neighborhoods, increase property values, and consequently, tax base revenue. The subsequent section will define strategies and processes serving as specific mechanisms to ensure the community's investment is protected. In the sections that follow, these specific mechanisms will be referenced as part of the guidebook's discussion on how public entities can best take action to dispose of their land for affordable housing production.

NOTE: MECHANISMS TO PROTECT THE PUBLIC INTEREST

Land is a finite resource. Consequently, land that is available and less costly to develop, especially in populated areas, is often scarce. As discussed in the legal framework section of this guidebook, public entities have an obligation to maximize their resources while minimizing waste. Therefore, public entities should consider the tools and provisions of legal instruments when conveying publicly owned land. These terms will be referenced throughout the remainder of this guidebook.

Mechanisms to Protect the Public's Interest

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Legal Instruments

The following types of legal instruments are commonly implemented as mechanisms to ensure programmatic rules are memorialized and can be used individually or, if the situation dictates, utilized in combination. It is important to note that the first three types listed are often of lesser term than those that follow:

1. Conveyance Agreement: A conveyance agreement refers to the contract agreed upon in the transfer of property from one party to another. The agreement or contract specifies the terms and conditions of the sale, including essential details such as the purchase price, date of transfer, and the responsibilities of both parties involved, which may include some development and future conveyance requirements.
2. Development Agreement: A development agreement is an agreement between a local jurisdiction and a person or entity who owns or controls property that specifies the standards and conditions that will govern development of the property and details the obligations of both parties.
3. Grant Agreement: A grant agreement is a legal instrument of financial assistance between a funder and recipient. It is used to transfer anything of value from a funder to a recipient to carry out a program or otherwise utilize the funds in accordance with the terms and conditions of the grant, including the project activities, duration, budget, and obligations.
4. Land Use Restriction Agreement: Most often implemented in multi-family residential rental deals, a Land Use Restriction Agreement (LURA) is an agreement in which the property owner, in exchange for the promise of future tax credits or other considerations of value, gives up some rights of the land use such as tenant income restrictions, unit set-asides to be rented to lower income tenants, and other affordability restrictions. The LURA documents the land use restrictions in a public record and runs with the land, which simply means that the rights in the real estate deed remain with the land despite a change in ownership.
5. Deed Restriction (for a sample, refer to the Grounded Solutions Network Model Declaration of Covenants[47]): Most often implemented in residential for-sale deals (ownership), deed restrictions are the most common legal agreements and are also called deed-restricted covenants or declaration of covenants and are similar to a LURA. Deed restrictions are legally binding provisions that, like a LURA, specify the use of the property such as buyer income restrictions and other affordability restrictions and run with the land.

6. 99-year Ground Lease (for a sample, refer to the Grounded Solutions Network Model Ground Lease[48]): A ground lease is an agreement in which ownership of the property is retained by the landlord while granting a tenant the right to utilize the land including owning and developing improvements during the lease period, after which the improvements are turned over to the property owner. Similar to LURA and Deed Restrictions, 99-year ground leases establish the permissible uses of a parcel and can include provisions that restrict use and ensure affordability during the lease period. A 99-year lease is the key instrument used by community land trusts to create permanent affordability of housing, which will be discussed in greater detail in the next section.

Important Provisions of Legal Instruments

Protecting the investment of a public entity's interest isn't solely reliant on implementing the discussed legal instruments. These instruments outline the recipient's obligations in exchange for land and other items of value. It is recommended that public entities incorporate the following provisions into legal instruments, whether existing or newly created, to govern the use of property available at or below market price to developers and initial (and ideally subsequent) users (buyers or tenants).

Alignment of Terms

When multiple public entities support the same project or organization, such as a CLT, it's prudent to ensure that legal instruments, including grant and loan agreements, liens, and covenants, are consistent with one another. For instance, in North Carolina, the Orange Community Housing and Land Trust developed a restrictive covenant that meets the administrative needs of both Orange County and the Town of Chapel Hill, enabling the organization to layer funding from the two sources without regulatory conflicts.

Reversion

A reversion clause allows the public entity to regain control of a parcel if the original recipient (developer or contractor) violates the agreement, such as failing to construct and sell a unit to an income-eligible household during the performance period. Often lasting 18 months to two years for smaller scale projects such as a single family detached unit, a reasonable time for performance considers activities like permitting, construction, and marketing of homes. When reversion occurs, the land reverts to the public entity donor, often at little to no cost.

Right of First Refusal

The right of first refusal (ROFR), also known as first right of refusal, is a contractual right retained by a donor of publicly owned land to repurchase a property before it's offered or sold to any other party. A ROFR is typically granted to the benefiting party after a recipient of publicly owned land fulfills its initial obligations, such as developing unit(s) on vacant land. If the donor or benefiting party with ROFR declines, the seller is free to seek and entertain other offers.

Long-Term Affordability

The primary public benefit of publicly owned land disposition policy is the opportunity to create a supply of long-term or permanently affordable housing (99 years). Provisions of long-term affordability mandate that the assisted home or unit remain affordable to a certain income category (initial and subsequent buyers) for an extended period, typically beyond 30 years. For example, in exchange for a parcel zoned for a single-family detached unit, the recipient may be required to rent the home to households with income not exceeding 80% of the area median income, at a rent not exceeding 30% of income for 50 years. While additional subsidies may be necessary, lasting affordability can align with funding sources and local initiatives.

Shared Equity

For units offered for homeownership, merely restricting a home to sale to low-to-moderate income households isn't enough to create long-term or permanently affordable housing. Shared equity provisions, also known as resale formulas or restrictions, effectively remove the home from the speculative market and complement long-term affordability provisions. Resale formulas determine the future price of homes, allowing the seller to retain a percentage of the appreciation, benefiting the community with reduced resale prices to subsequent buyers. Common methodologies for resale formulas include appraisal-based, fixed-rate, and indexed formulas.

Community Land Trust

The Community Land Trust (CLT) model integrates the discussed provisions alongside ongoing stewardship, making it optimal for ensuring long-term affordability. CLTs are nonprofit organizations that acquire, separate

ownership of improvements from land, and steward land subject to a 99-year ground lease, primarily offering permanently affordable rental or homeownership opportunities to eligible low- and moderate-income households. Key features of CLT activities include:

- Removal of land cost from the purchase price to ensure housing affordability for future generations.
- A resale price restriction balancing wealth building and future affordability.
- Requirements for initial and subsequent tenants and homebuyers to meet income eligibility criteria.
- Implementation of a subsidy retention strategy ensuring long-term affordability.
- Retention of ROFR to purchase units when the original buyer wishes to sell.
- Serving as a land bank for a public entity, though reversion clauses in conveyance agreements may be counterproductive.
- Use of other restrictive covenants to impose requirements ensuring long-term affordability.

Additionally, the mission, goals, and objectives of public entities often align with those of CLTs, making them logical partners. Beyond creating a stock of permanently affordable housing, CLTs offer numerous benefits for homebuyers, tenants, communities, and the environment. These shared benefits suggest that although a CLT is an independent organization, it could be considered an effective extension of local government for affordable housing provision.

In supporting a CLT, it is recommended that parties enter into both a development agreement stating the CLT's project development responsibilities and a grant agreement detailing its long-term obligations in maintaining occupancy and affordability of units. Instead of a mortgage and note, the public entity would require a CLT to record a declaration of restrictive covenants securing performance of grant and development agreements, requiring preservation of unit affordability through a 99-year ground lease, and designating the public entity as beneficiary of remedies assuring long-term affordability.

Protecting the public's interest in land is a vital component to administering publicly owned land for affordable housing. There is significant opportunity in the establishment of long and permanently affordable housing which can be accomplished through utilization of the legal instruments and provisions discussed depending on the conveyance method, project type, etc.

Putting Public Land to Use for Affordable Housing

Now that mechanisms and tools to protect a community's investment in publicly owned land and other resources have been established, the guidebook will focus on the driving forces guiding decision-making and actions for an effective policy on disposing of public land. In general, a land disposition policy should address the five W's and H (Who, What, When, Where, and How) questions, which may include the objectives of the policy, the staff leading the disposition process, criteria for selecting parcels, methods for conveying land, tools for securing public entities' investments, and monitoring terms of the investment.

In the following sections, topics appropriate for inclusion in a local government's policy on publicly owned lands will be detailed, potentially driving the development of a solicitation to dispose of land in the absence of an approved overarching policy. It is important to note that these items are not intended to supersede a local government's existing processes for establishing or implementing policy and should not be considered comprehensive or "one size fits all."

Best practices on disposition policy are discussed in the recommended order of performance when establishing a policy or implementing major action items. However, consideration should be given to pairing some tasks to work in parallel. Topics to be addressed include:

1. Identify Lead Staff
2. Clear Title
3. Determine Greatest Community Housing Needs and Existing Objectives
4. Evaluating The Potential Use of Each Publicly Owned Parcel
5. Determine Conveyance Methodology
6. Conveyance Method Types
7. Elements of Identifying Recipients of Public Land
8. Monitoring Outcomes

Identify Lead Staff

Identifying the staff to lead the creation and implementation of a policy on disposing of public land requires collaboration among experts to incorporate multiple processes into the policy. Representation from various public entity departments or divisions should be considered on the workgroup to ensure comprehensive coverage and timely updates.

- Legal: Directs discussions on liability, agreements, and conveyance processes, including clearing title.
- Real Estate: Leads the establishment and maintenance of the inventory of publicly owned land, including coordinating quiet title action. May also identify land acquisition targets.
- Procurement: Directs discussions on methods and rules for offering parcels for conveyance, including developing recipient selection criteria.
- Housing: Advocates for affordable housing and evaluates potential housing use of each parcel, among other responsibilities. May also identify land acquisition targets.
- Planning/Zoning: Describes the entity's goals and legal uses anticipated on a parcel and contributes to identifying housing needs.
- Social Services Advocates for programming and community benefits a project may offer, contributing to identifying housing needs.
- Building/Public Works/Economic Development: Evaluate the potential development and economic impacts of housing projects.
- Dependent Special Districts: Collaborate with the workgroup on the parcels it owns that could be added to the inventory of parcels appropriate for housing; Coordinate with workgroup members for the evaluation of the potential housing use of each parcel
- Consultant: May provide guidance, draft a policy or implement parts of the process.

No matter the organizational structure of your entity, having the people best suited to lead the activities associated with disposing of publicly owned land is vital to the success of policy development and execution.

Clear Title

Due to the nature of various methods of acquisition, most notably tax delinquency and escheatment, publicly owned parcels often have a long history of liens and title actions. In some circumstances, the tax debt that preceded a parcel becoming publicly owned could be paid current and in so doing, potentially revert ownership back to the previous owner even after the recipient of the publicly owned land improved the parcel or structures sited on it.

To that end, title issues and necessary legal work should be identified early, and actions to clear title should be initiated promptly. Transparency about any defects should be maintained during the marketing and negotiation process with the receiving entity. How the public entity will handle title quieting actions should be detailed in a proposed policy such as:

- What staff are responsible for initiating a review to determine if action is necessary;
- What actions are to be completed by the entity;
- What staff are responsible for coordinating action;
- Authoritative discretion on title quieting action such as using in house counsel or using a third-party vendor.

Prioritizing the clearing of title of the parcels most likely to be developed may be accomplished after evaluating the parcel's best use and establishing the community's greatest needs as discussed in subsequent sections.

Determining Greatest Community Housing Needs and Existing Objectives

Before drafting a policy on the disposition of publicly owned parcels or strategically acquiring parcels for affordable housing, it is crucial for the government entity, through its workgroup, to identify and evaluate the community's housing needs and goals for housing initiatives. Conducting a housing needs assessment, although time-consuming, informs critical decisions such as project types to support, proposal scoring methods, and target demographics. To achieve this, consider the following methodology, encompassing three key activities:

1. Synthesize: Numerous reports and resources, including those from the Shimberg Center for Housing Studies, Community Redevelopment Agency

Plans, and Consolidated Plans, likely provide valuable data and insights. Combining information from these reports with the following action items forms a comprehensive understanding of housing needs.

2. Visualize: Spatial analysis and visualization enhance data interpretation, providing insights beyond numerical data alone. Mapping data points based on geographies helps visualize housing markets and economic flows, aiding in understanding current and future housing needs.
3. Analyze: Collect and review quantitative and qualitative data to conduct a detailed housing ecosystem assessment, facilitating accurate forecasting. Beyond presenting data points, this analysis aims to answer specific questions such as current unmet housing needs, household characteristics, economic factors driving growth, and infrastructure capacity.

Upon completing the needs assessment, comparing findings with existing goals and objectives outlined in documents like the Comprehensive Plan and Neighborhood Initiatives aligns information with strategy. Incorporating these findings into policy documents supports drafting community-specific recommendations on land disposition provisions, covering aspects such as the following:

- Target People Groups and Demographics: Address housing cost burdens, increase homeownership rates among minorities and women, and identify income levels to serve.
- Target Neighborhoods: Focus on maximizing economic impact and revitalization, addressing blight, preserving existing units, and reducing displacement due to gentrification.
- Housing Typology: Consider various housing types, including Missing Middle Housing, large apartment complexes, single-family attached and detached homes, and their suitability for rental or homeownership.
- Environmental Features: Prioritize climate resilience and energy efficiency in housing development.
- Tools for Driving Achievement: Leverage tools such as Community Land Trusts, 99-year leases, deed restrictions, and financing options like revolving loan programs and homebuyer assistance.

While needs assessments and existing policy documents inform strategic recommendations for land disposition provisions, they should also guide parcel evaluation for the highest and best use, as discussed in the next section, along with recipient selection criteria addressed later in this guidebook.

Evaluating the Potential Use of Each Publicly Owned Parcel

Identifying community housing needs and goals is vital to inform decision-making. However, understanding the development opportunities presented by each publicly owned parcel requires an evaluation of applicable land use regulations. Assessing the community's housing needs and goals alongside evaluating a parcel's highest and best use, informed by its potential development entitlements, should precede formally offering or conveying a publicly owned parcel.

It is crucial to note that parcels do not need to be established as surplus land by the local government to be considered for affordable housing. All land owned by the local government or dependent special district must be reviewed every three years for its potential use for affordable housing, as specified in Florida Statutes (F.S. 125.379 for counties; and F.S. 166.0451 for municipalities). An annual review by relevant staff is considered best practice.

Subject matter expert members of the workgroup, such as staff from planning, zoning, and building departments, play a vital role in this evaluative effort. Each can provide perspective on linking parcel use with identified needs and goals. This approach positions public entities to offer parcels with updated land use reforms, incentives, and subsidies, facilitating the production of sought-after housing quickly.

Additionally, establishing a basis for evaluating each publicly owned parcel's potential use for housing, including infill housing or new neighborhoods, helps minimize future staff impacts. Incorporating the applicable site identification and resilience criteria discussed in previous sections of this guidebook is best practice. Determining the likely or desired method of conveyance is recommended as part of this evaluative process.

Determine Conveyance Methodology

Before discussing conveyance and offering methods, let's recap the topics covered in the disposition section of the guidebook:

- Established types of legal instruments, provisions, and tools commonly used for affordability.
- Identified a team to lead the development of a policy on disposing of land.
- Determined the greatest community housing needs and existing objectives.
- Discussed the evaluation of each publicly owned parcel suitable for housing.

The tools and topics detailed earlier will be referenced frequently in the final sections including conveyance methods and recipient selection.

Conveyance Method Types

Before finalizing the eval-uation process discussed earlier, it's crucial to determine how each parcel will be conveyed. A policy may permit one or multiple conveyance methods to support affordable housing production, generally falling into three categories:

1. Market Rate Sale: Selling at or near market rate may be viable when proceeds are earmarked for other affordable housing purposes. This approach is suitable for sites with limited residential financial value. Preferred purchasers could include private market-rate builders or adjacent property owners specified in policy. Establishing a plan for handling proceeds beforehand, including setting up a trust fund, ensures transparency and alignment with affordable housing goals.

   Proceeds from the sale can fund various initiatives, including affordable housing development, infrastructure costs, targeted land acquisition, rehabilitation, and emergency repair programs. Additionally, proceeds can support new rental unit construction, financial assistance programs, and revolving loan funds for construction, enhancing the development of new units alongside the conveyance of publicly owned land.

   However, if long-term affordability measures are desired, such as resale or rent price restrictions, incentives like density bonuses or fee reductions may be offered to purchasers. Policies should outline how staff quantify incentives or price reductions for affordability requirements.

2. Donate or Sell at Nominal Price: Policies should establish expectations for restrictions when selling parcels above nominal prices, prioritizing nonprofit housing organizations committed to creating permanently affordable housing. Recipients could include community land trusts, Community Housing Development Organizations, Community Development Corporations, and similar entities.

   Legal instruments mentioned earlier, such as conveyance agreements, development agreements, and deed restrictions, should be integrated into the conveyance process to protect the public's interest and ensure long-term affordability.

3. Retain Ownership and Lease: Retaining ownership via a 99-year ground lease offers advantages, especially in markets with limited developable land. This approach allows public entities to maintain control and generate revenue from land leasing, enhancing program productivity.

   For land acquired with specific funding sources, retaining ownership may be required. For instance, Florida law mandates that land acquired with surtax funds be owned by the entity, ensuring affordability for a percentage of developed units.

   Public entities can act as title holders and lease land through a competitive process, ensuring compliance with affordability requirements. Alternatively, Chapter 689 land trusts, where the entity serves as a beneficiary, can be established, managed by trustees like Housing Finance Authorities (HFAs). Pinellas County, Florida, exemplifies successful implementation of this.

Incorporating these conveyance methods in tandem with the legal instruments and affordability provisions on property that has clear title and has been evaluated to determine its best use to support the community's greatest needs maximize the impact of publicly owned land for community benefit. However, this approach must be extended to those that can create the needed units through a transparent and equitable process.

Elements of Identifying Recipients of Public Land

A clear and efficient process detailing how potential recipients will be identified for land conveyance is essential. The process should be transparent, designed for quick and informed decisions, and follow established policy and guidelines when identifying potential recipients of publicly owned land. To support affordable housing, two primary objectives are essential: selecting organizations likely to produce affordable units and ensuring the proposed projects are likely to produce affordable units.

Two primary methods to offer publicly owned land for affordable housing are competitive solicitation and open-ended processes. The selection of these options is at the discretion of policy makers. Local governments and dependent special districts must make the inventory of land suitable for affordable housing available on their website. While statutes do not require surplus of publicly owned parcels before disposal for affordable housing, a different disposal process may be established to entertain unsolicited offers, as part of an ongoing application process or formally offering parcels.

In any case, the public entity should specify the desired information and evidence from potential recipients and their proposed projects. This process (or the process to establish the policy) typically involves procurement professionals or other staff familiar with applicable processes associated with disposing of publicly owned land. Policy should include clear conditions and expectations for staff and requesting entities, incorporation of response requirements, and details on drafting closing documents and agreements.

Also, various procurement laws may impact the future process of sale, lease or use of public property. Staff will need to be mindful of federal procurement regulations and guidelines when preparing to dispose of property purchased using a federal affordable housing funding source such as CDBG or HOME. The following provides a summary of items included in a solicitation associated with publicly owned land:

1. **Detailed Timeline:** A detailed timeline, following the entity's procurement protocol, should outline events associated with offering publicly owned land. This includes launch dates, deadlines for questions, proposer's conferences (if applicable), response due dates, potential interview dates, announcement of finalists, and final awards.

2. **Who Can Make Proposal:** Policy should establish the types of organizations eligible to participate in each conveyance method. Requirements for potential recipients may include legal establishment evidence, financial capacity, relevant experience of the entity in developing similar parcels but also of staff proposed to participate in the project.

3. **Details on Parcel Offered:** Sharing information collected on a parcel, such as zoning, market studies, appraisals, and environmental evaluations, fosters transparency and realistic proposals. This information minimizes unexpected changes and aligns expectations.

4. **Details on Supplemental Resources Offered:** In addition to publicly owned land, formal solicitations should include resources supporting affordable housing, such as funding from federal, state, or local sources. Clear communication of terms and conditions for these resources is crucial.

Specifying Desired Unit Breakdown and Other Attributes: Requests for proposals should align with community needs and local initiatives, specifying income levels, housing types, and affordability goals. Unit reservation breakdowns provide guidance for developers and can provide general direction for incorporation into written policy on land disposition and/or can be

detailed in a formal solicitation. For example, the following breakdown of unit reservation serves as an example of ways to incorporate many of the discussed points and identify income level and owner tenant status obligations of developing entities:

a. **Homeownership units.** Up to 30% of the total units to be developed on the site are preferred to be for-sale units. 100% of the on-site for-sale dwelling units shall be restricted in perpetuity for affordable units, 20% of which are to be reserved for households that are considered "Special needs" as defined at s. 420.0004. Fla. Stats. Desired homeownership reservation goals by income category:

   i. Up to 20% of on-site for-sale dwelling units are affordable to individuals with a median household income of 60% AMI or less.

   ii. Up to 30% of on-site for-sale dwelling units are affordable to individuals with a median household income of 60%-80% AMI or less.

   iii. Up to 50% of on-site for-sale dwelling units are affordable to individuals with a median household income of 80%-140% AMI or less.

b. **Rental dwelling units.** At least 50% of the total units to be developed on the site reserved for rental is preferable. 100% of the new rental dwelling units shall be deed restricted in perpetuity for affordable units, 20% of which are to be reserved for households that are considered "Special needs" as defined at s. 420.0004 Fla. Stats. or homeless as defined at s. 420.621 Fla. Stats. Desired rental reservation goals by income category:

   i. At least 50% of the rental dwelling units must be affordable to individuals with a median household income of 60% AMI or less. 30% of the 50% total to be available at 30% AMI or less.

   ii. Up to 30% of the rental dwelling units are affordable to individuals with a median household income of 60%-80% AMI or less.

   iii. Up to 20% of the rental dwelling units are affordable to individuals with a median household income of 80%-140% AMI or less.

c. **Non-Residential Space.** Up to 20% of unit space can be purposed for restaurant, retail, office, childhood education, or other space deemed acceptable by the public entity.

6. **Legal Instruments:** Versions of legal instruments should be included or detailed in advertisements, covering aspects like affordability, resale values, right of first refusal, and reversion. Instruments include Conveyance Agreement, Development Agreement, Grant Agreement, Land Use Restriction Agreement, Deed Restriction, and 99-year Ground Lease.

   Ensuring clarity and transparency in the identification of recipients and projects for publicly owned land supports the goal of affordable housing production. Proper documentation and adherence to procedures facilitate effective decision-making and equitable allocation of resources.

7. **Application or Solicitation Response and Evaluation:** In the complex process of selecting the most suitable organization and project for a particular parcel, it is vital to reflect on prior research and policy work. This informs how to appropriately value various aspects of an application or proposal. Procurement professionals should ensure that every step of making land available follows established policies, guidelines and, when applicable, adheres to the rules governing the funding source that may have been used to acquire the property. Using a scoring rubric is a best practice for both competitive and non-competitive processes, providing a predetermined evaluation tool to assign value to key elements of each proposal. The rubric outlines each element to be scored and offers a range of values from which the scoring committee can choose effectively establishing expectations that drive decision making on awarding resources. The rubric should:

   - Clearly describe expected information in responses from interested parties.
   - Explain how each requirement will be valued for scoring.
   - Confirm if the applicant meets minimum threshold requirements for local funding.
   - Detail the applicant's capacity to carry out the project within the proposed timeframe.
   - Indicate the targeted income level of buyers or tenants.
   - Address preferences for long-term or permanent affordability.

For example, the table below illustrates selection criteria and corresponding points for evaluating proposed projects:

SELECTION/RANKING CRITERIA	POINTS ALLOWED
Proposer's history experience in performing similar projects (including subconsultant teams) through examples and references as well as financial capacity	15
Conceptual site plan that captures all the elements and considerations described in the scope	20
Proposed rental rate schedule including the unit mix, number of units, income levels served, & flexibility for lower income families. Permanent affordability measures.	15
Marketing plan to identify potential tenants	10
Financial packaging & Leverage of proposal	10
Landscape/streetscape, public art	5
Public participation methodology and expertise	10
Inclusion of Minority and Women Owned Business Enterprises	5
On-site Amenities Proposed	10
TOTAL POINTS	**0-100**

Additional topics for evaluation can include:

- Target market served and community priorities.
- Alignment with planning and economic development goals.
- Agreements with service providers.
- Community engagement efforts.
- Financial stability and past project performance.

It's crucial to define application and proposal evaluation processes, as well as selection and award procedures, in local policy. If a non-competitive process is followed, minimum criteria and scoring expectations should be established.

Technical procurement activities are not covered in this guidebook, so staff should consult local procurement staff throughout the process of making publicly owned land available for affordable housing production. The expectations established to identify recipients of publicly owned land prior to entering any of the legal instruments previously discussed are only part of ensuring public resources will be used for their intended purpose. Having planned oversight for the expected activities may be the most important part of an effective land disposition program.

Monitoring Outcomes

Land, funding, and other incentives are pivotal for the success of an affordable housing development. Selecting and awarding land and other resources is typically followed by finalizing the applicable legal instruments discussed in the "Mechanism to Protect the Public's Interest" section of the guidebook and then conducting a closing. Coordination of provisions and closing is advisable when other organizations offer resources to supplement a project's support, such as local and state governments, dependent districts, and financial institutions.

However, resource providers must consistently ensure provisions of legal instruments are upheld in alignment with the expectations established by the program and its policy through compliance monitoring. Legal instruments are established to safeguard the public's interest and serve as a roadmap for construction and ongoing activities, ideally

ensuring permanent affordability or long-term sustainability (ideally 50 years or more). Implementing legal instruments requires foresight regarding necessary resources and expectations during construction, unit lease-up or sale and ongoing oversight.

During construction, public entity staff should establish schedules to monitor completion, as outlined in legal instruments, to ensure timely projects and avoid triggering reversion clauses. When necessary local government staff often oversee subsidized housing projects, creating a new process may not be difficult, but consideration should be given to additional workload from publicly owned land.

Before the initial sale or lease of produced units, it is essential to designate responsible staff or entities for overseeing compliance with affordability and other post-construction provisions outlined in legal instruments. Income eligibility requirements apply to publicly owned lands for affordable housing processes, necessitating developers' commitment to adhere to program requirements.

After units are sold, engaging the same compliance monitor for projects that received FHFC funding (typically for rental housing), is considered best practice when possible. The longer the affordability term, of course, the longer activities must be monitored. Annual review is considered best practice and can be performed by staff or a private partner. In cases where a community land trust (CLT) owns the land, the land and improvements are owned separately but stewarded by the CLT through a 99-year ground lease to ensure permanent affordability. Compliance monitoring is a common function of stewardship expected by a CLT, and partnering with a CLT to monitor whether the CLT owns the land is an excellent consideration.

In conclusion, the success of any project hinges on securing essential resources like land, funding, and incentives. With developers committed to adhering to program regulations in exchange for support, utilizing the suggested legal instruments requires foresight regarding construction expectations and affordability requirements, and a process to ensure obligations are met. Establishing schedules for monitoring completion during construction and designating responsible entities for post-construction oversight enhances project effectiveness and maximizes the impact of public resources.

Land Disposition Summary

Maximizing the impact of publicly owned land, including resources to acquire land, for community benefit is the primary objective of this section of the guidebook. Impactfully successful disposal of publicly owned land is accomplished through many technically oriented tasks. A team of qualified staff to implement conveyance methods alongside suitable legal instruments and affordability provisions is paramount. "Unclouding title" and a thorough evaluation to ascertain the optimal use of land in addressing the community's most pressing housing needs. Establishing clear expectations and ensuring transparency and equity in recipient selection is key. Committing to ongoing oversight and monitoring, are essential components of this endeavor.

V. Conclusion

General Recommendations for the Design and Operation of a Publicly Owned Land Program

1. Publicly owned land programs should be focused on the goal of utilizing 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 publicly owned land programs including 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 a publicly owned 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 public 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 owners, liens, judgments, and other title data.

7. The strategy of the publicly owned land program must be both short term and long term. The program is operated with a strategic vision for the entire jurisdiction but is focused on housing production for low- and moderate-income households and the workforce.

8. The publicly owned 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.

CONTEXT & COMMENTS

1. Cite the definition that applies to your jurisdiction. Section 125.379 is for counties and section 166.0451 is for municipalities.

2. Each publicly owned land policy should have two core components: 1) Land identification; and 2) Land disposition. The targeted acquisition of land can also be clearly defined.

3. It is important here to identify the City/ County department Real Estate department that will take the first look at all publicly owned parcels to identify which parcels are completely undevelopable for housing purposes or are needed for another governmental purpose.

Appendix A:

Model Land Identification for Affordable Housing Policy

This policy document is intended to be used by local governments to identify publicly owned lands that are appropriate for use as affordable housing. Each jurisdiction may have its own specific criteria to add or remove to this policy. Additionally, a jurisdiction may already have an existing land identification policy and use language in this model to supplement their existing policy. The goal of this document is to share best practices for identifying public land to be used for affordable housing.

I. Purpose

The purpose of this policy is to provide clear direction as to how the county/ municipality will identify whether publicly owned parcels are "appropriate" for use as affordable housing.

II. Background

Section 125.379/Section 166.0451 of the Florida Statutes[1] requires each county/municipality to prepare an inventory list of all land owned by the county/ municipality, or any dependent special district within its boundaries, which is appropriate for use as affordable housing. Each county/municipality must prepare this inventory list at least once every three years. The inventory list must include the address and legal description of each identified parcel and specify whether the property is vacant or improved. The Board of City/County Commissioners must review the inventory list at a public hearing and adopt a resolution that includes the inventory list. Each county/municipality must then make the inventory list publicly available on its website.

The (Board of City/County Commissioners) recognizes the importance of dedicating publicly owned land for affordable housing purposes. As state law does not provide a definition on what makes a parcel "appropriate for use as affordable housing," the purpose of this policy is to provide clear direction as to how the county/municipality will identify whether publicly owned parcels are "appropriate" for use as affordable housing. Parcels identified as "appropriate" through this Policy shall then be used for affordable housing purposes in accordance with an accompanying **Land Disposition policy.**[2]

III. Internal procedures to identify subject parcels

A. For the purposes of this Policy, a "subject parcel" is a parcel of City/ County-owned or dependent special district-owned land within the City/ County boundaries that is developable for housing and will be analyzed for appropriateness for affordable housing purposes. A "subject parcel" does not include parcels that are undevelopable due to their size, shape, or other factors or are needed for other governmental purposes. **The Real Estate Division** [3] will be the lead entity for identifying subject parcels.

B. The Real Estate Division shall be responsible for and use criteria to determine whether a publicly owned parcel is developable for housing and thus considered a "subject parcel". **Such criteria includes, but is not limited to, lot size, lot shape, whether the parcel is prone to excessive flooding or other risk factor, or whether the parcel is needed for another non-housing governmental purpose.**[4] Whether a parcel is currently zoned for residential uses should not be a determining factor as to whether a parcel is developable for housing. If the Real Estate Division is unable to definitively state that a parcel is undevelopable for housing, then the parcel shall be deemed a "subject parcel."

C. Once the Real Estate Division identifies subject parcels, the Division shall circulate a list of subject parcels to **the Housing Department**[5] to gauge the Housing Department's interest in the properties. **The Housing Department has _____ days**[6] to notify the Real Estate Division of which subject parcels they have interest in reserving for affordable housing purposes. The Housing Department shall use the criteria in Section IV to analyze whether a subject parcel is appropriate for use as affordable housing. Upon receipt of the Housing Department's notification, the Real Estate Division shall circulate a list of subject parcels identified by the Housing Department as appropriate for use as affordable housing to all other governmental departments to determine whether a parcel(s) is needed for another governmental purpose. Subject parcels claimed by the Housing Department as appropriate for use as affordable housing that are not needed for another governmental purpose shall be used for affordable housing purposes under the control of the Housing Department.

IV. Criteria for whether subject parcels are "appropriate" for use as affordable housing

The Housing Department is responsible for determining whether a subject parcel is appropriate for use as affordable housing. **The Housing Department has _____ days**[7] **t**o analyze subject parcels and notify the Real Estate Division which parcels they are interested in reserving for affordable housing purposes.

The Housing Department shall consider the following criteria when determining whether a parcel is appropriate for use as affordable housing. A parcel does not need to meet all the criteria to be considered appropriate for use as affordable housing. If the Housing Department determines that a parcel is not appropriate for use as affordable housing, the Department must clearly state the reasons for that decision.

- Availability of existing infrastructure such as water, sewer, electricity, roads, drainage, and broadband
- Proximity to community amenities such as public transit, grocery stores, medical facilities, pharmacies, schools, parks, or other community-based services
- Whether the parcel is located in an area that makes it eligible for or grants priority for affordable housing funding such as a Community Redevelopment Area, Difficult Development Area, Qualified Census Tract, or Neighborhood Revitalization Strategy Area
- Whether the parcel is at risk of flooding, sea level rise, or other natural hazards [8]

CONTEXT & COMMENTS

4. **Here, the jurisdiction can enact its own criteria for what makes a parcel "developable." Note that at this phase in the process, no distinction shall be made between different types or affordability levels of housing. At this phase, the jurisdiction should only be looking to see whether a site can feasible be used to develop housing.**
5. **State the name of the department responsible for affordable housing.**
6. **Define a reasonable time period for the Housing department to analyze the subject parcels.**
7. **Match the # of days in Section III.C.**
8. **These model criteria are broad and intended to show the breadth of all the criteria than can be used to define what makes a parcel "appropriate" for affordable housing. A jurisdiction can provide greater detail on each of these criteria. For example, a city may decide to provide greater detail in its policy as to how to assess flood risk, sea level rise, or proximity factors.**

V. Using publicly owned parcels for affordable housing purposes

Once a subject parcel is deemed appropriate for use as affordable housing and goes through the process provided in Sections III and IV of this Policy, the Housing Department will be in control of the parcel and be responsible for its use subject to other policies and procedures that govern land disposition for affordable housing[9].

9. While this model only governs identifying public land to be used for affordable housing, it could include the land disposition procedures as well.

Endnotes

1 See Boca Raton v. Gidman, 440 So. 2d 1277, 1280 (Fla. 1983).
2 50 So. 2d 532 (Fla. 1951).
3 See generally Boschen v. City of Clearwater, 777 So 2d 958 (Fla. 2001) for a list of cases finding valid municipal purposes within the meaning of Article VII, s. 2(b) of the Florida Constitution.
4 Boca Raton at 1280.
5 Marriott Corp. v. Metro. Dade Cty. 383 So 2d. 662, 665 (Fla. 3d DCA 1980).
6 258 So. 3d 516 (Fla. 3d DCA 2018).
7 Fla. AG Opinion 72-219, available at https://www.myfloridalegal.com/ag-opinions/lease-of-property-to-private-nonprofit-corporation.
8 Matheson at 523-24.
9 Section 163.340(9), Fla. Stat. (2023).
10 Section 163.360(2)(c), Fla. Stat. (2023).
11 Fla. Const. Art. IV, s. 4(f).
12 Section 253.034(5), Fla. Stat. (2023).
13 See generally Tex. Dep't of Hous. & Comm. Affairs v. Inclusive Comms. Project, 576 U.S. 519 (2015).
14 Atwater v. Kortum, 95 So. 3d 85 (Fla. 2012) (quoting Holly v. Auld, 450 So. 2d 217, 219 (Fla. 1984).
15 Id. at 90.
16 See generally City of Hollywood v. Mulligan, 934 So. 2d 1238 (Fla. 2006).
17 See D'Agastino v. City of Miami, 220 So. 3d 410 (Fla. 2017).
18 Id. at 421.
19 Id.
20 https://www.urban.org/sites/default/files/publication/30426/411909-The-Impacts-of-Foreclosures-on-Families-and-Communities.PDF
21 https://nvaha.org/wp-content/uploads/2015/02/ULI_PublicLandReport_Final020215.pdf
22 https://www.escambiahfa.com/homebuyers/urban-infill-escambia-county-only
23 https://www.cityofpensacola.com/DocumentCenter/View/23919/2022-Affordable-Housing-Incentive-Plan-Review-Report
24 https://www.tampa.gov/housing-and-community-development/community-development/infill-phase-ii
25 https://harvardlawreview.org/print/vol-135/addressing-challenges-to-affordable-housing-in-land-use-law/
26 https://www.planning.org/planning/2022/spring/a-business-case-for-dropping-parking-minimums/
27 https://www.brookings.edu/articles/connecting-people-by-proximity-a-better-way-to-plan-metro-areas/
28 https://planning-org-uploaded-media.s3.amazonaws.com/publication/download_pdf/Housing-Policy-Guide-rev.pdf
29 https://view.officeapps.live.com/op/view.aspx?src=http%3A%2F%2Fwww.shimberg.ufl.edu%2Fpublications%2F7c2_Blanco_et_al_evaluating_locations_AHS.docx&wdOrigin=BROWSELINK
30 https://ngmdb.usgs.gov/topoview/viewer/#15/27.3436/-82.5280
31 Beginning January 1st, 2023, Section 472.0366, F.S. requires a surveyor and a mapper to submit a digital copy of every Elevation Certificate (EC) they complete to the Division.
32 https://florida.withforerunner.com/properties
33 https://www.floridadisaster.org/elevation-certificates/
34 https://www.fema.gov/blog/fema-flood-maps-and-zones-explained and address Look up portal here: https://msc.fema.gov/portal/search
35 https://www.fema.gov/data-visualization/historical-flood-risk-and-costs
36 https://www.fws.gov/program/national-wetlands-inventory/wetlands-mapper
37 https://www.epa.gov/heatislands
38 https://coast.noaa.gov/digitalcoast/data/ccaphighres.html
39 https://www.epa.gov/brownfields
40 https://www.epa.gov/enviroatlas/enviroatlas-brownfields
41 https://www.epa.gov/superfund-redevelopment/superfund-sites-residential-reuse
42 https://www.usgs.gov/special-topics/water-science-school/science/sinkholes
43 https://geodata.dep.state.fl.us/datasets/FDEP::florida-subsidence-incident-reports/about
44 See example 2024 adopted Capital Improvements Plan for Martin County: https://www.martin.fl.us/CIP.
45 See Orange County's Budget Book: https://www.orangecountyfl.net/OpenGovernment/Budgets.aspx.
46 Lee County Utilities Wastewater Master Plan example: https://www.leegov.com/procurement/Project%20Documents/Three%20Oaks%20Water%20Reclamation%20Facility%20Expansion%20DB200309ANB/199611%20-%20LCU%20Wastewater%20Master%20Plan%20Update%20Report%20-%20Final%2020191109.pdf.
47 https://groundedsolutions.org/wp-content/uploads/2018-10/2011%20Model%20Ground%20Lease%20and%20Commentary.pdf
48 https://groundedsolutions.org/wp-content/uploads/2024/02/2021-Model-Declaration-of-Affordability-Covenants.pdf

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