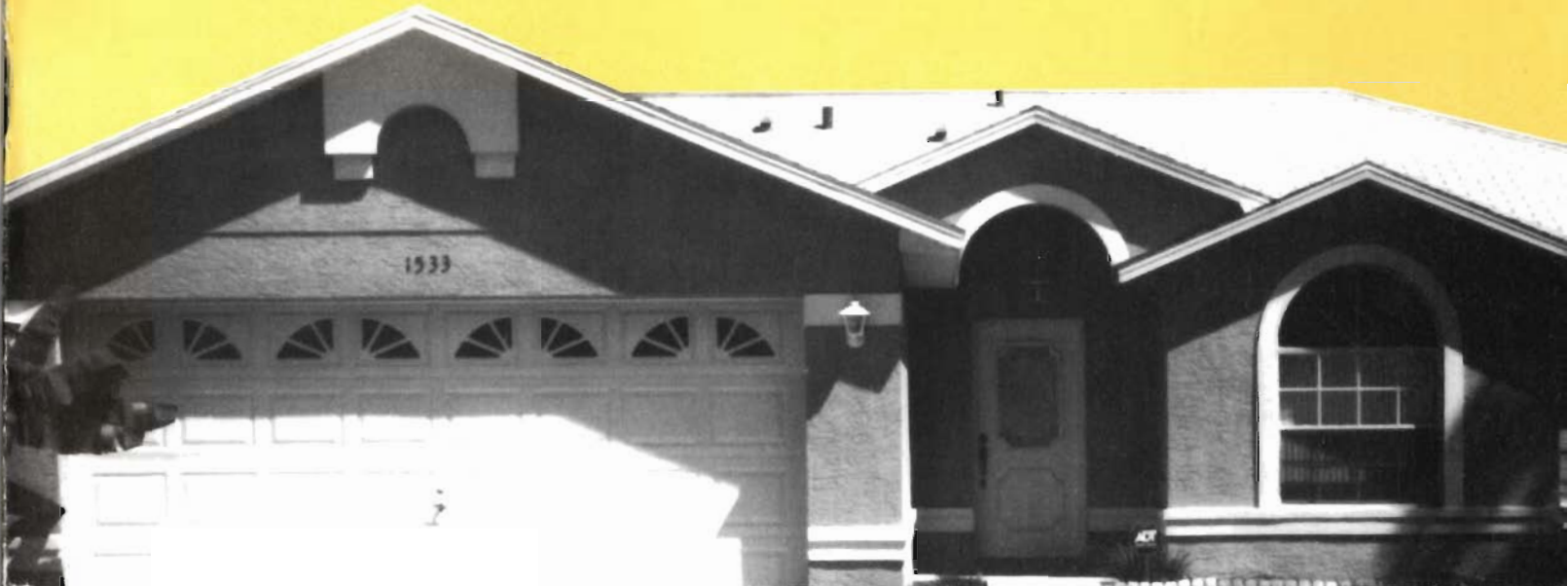


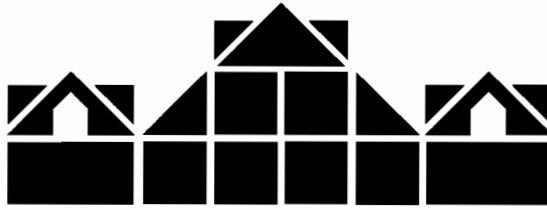
# THE AFFORDABLE HOUSING STUDY COMMISSION



## FINAL REPORT

1997





**THE AFFORDABLE HOUSING STUDY COMMISSION**  
*Dedicated to Promoting Affordable Housing in Florida Since 1986*

December 31, 1997

**Lawton Chiles**  
Governor

**The Honorable Lawton Chiles**  
Governor of Florida  
The Capitol  
Tallahassee, Florida 32399-0001

**Clifford B. Hardy**  
Chairman

**Members**

Mary Lawson Brown  
Susan Caswell  
Robert W. Clarkson  
Agustin Dominguez  
Arthur L. Fleming  
Rosemary F. Gallagher  
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Michele Hartson  
William E. Holland III  
Daniel R. Horvath  
Debra F. Koehler  
Barbara J. Lindstrom  
Sam D. Morrow  
Christine Papandreas  
Sylvia L. Poitier  
Claire F. Raley  
Jaimie A. Ross  
Thomas G. Wright  
Anne F. Yordon

**The Honorable Toni Jennings, President**  
Florida Senate  
409 The Capitol  
404 South Monroe Street  
Tallahassee, Florida 32399-1100

**The Honorable Daniel Webster, Speaker**  
Florida House of Representatives  
420 The Capitol  
402 South Monroe Street  
Tallahassee, Florida 32399-1300

**Dear Governor Chiles, President Jennings, and Speaker Webster:**

I am happy to submit the *1997 Final Report* of the Affordable Housing Study Commission, which fulfills the requirements of section 420.609, *Florida Statutes*. The report presents the results of the Commission's 1997 deliberations to improve the delivery of Florida's affordable housing programs in order to provide safe, affordable shelter to all Floridians.

**Staff**

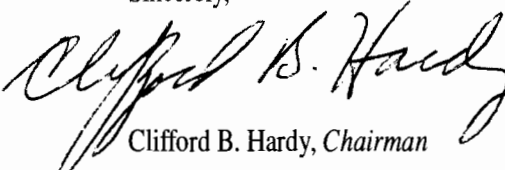
Nancy Muller, *Director*  
Joseph Addae-Mensah  
Jerry Anthony  
Scharome Wolfe

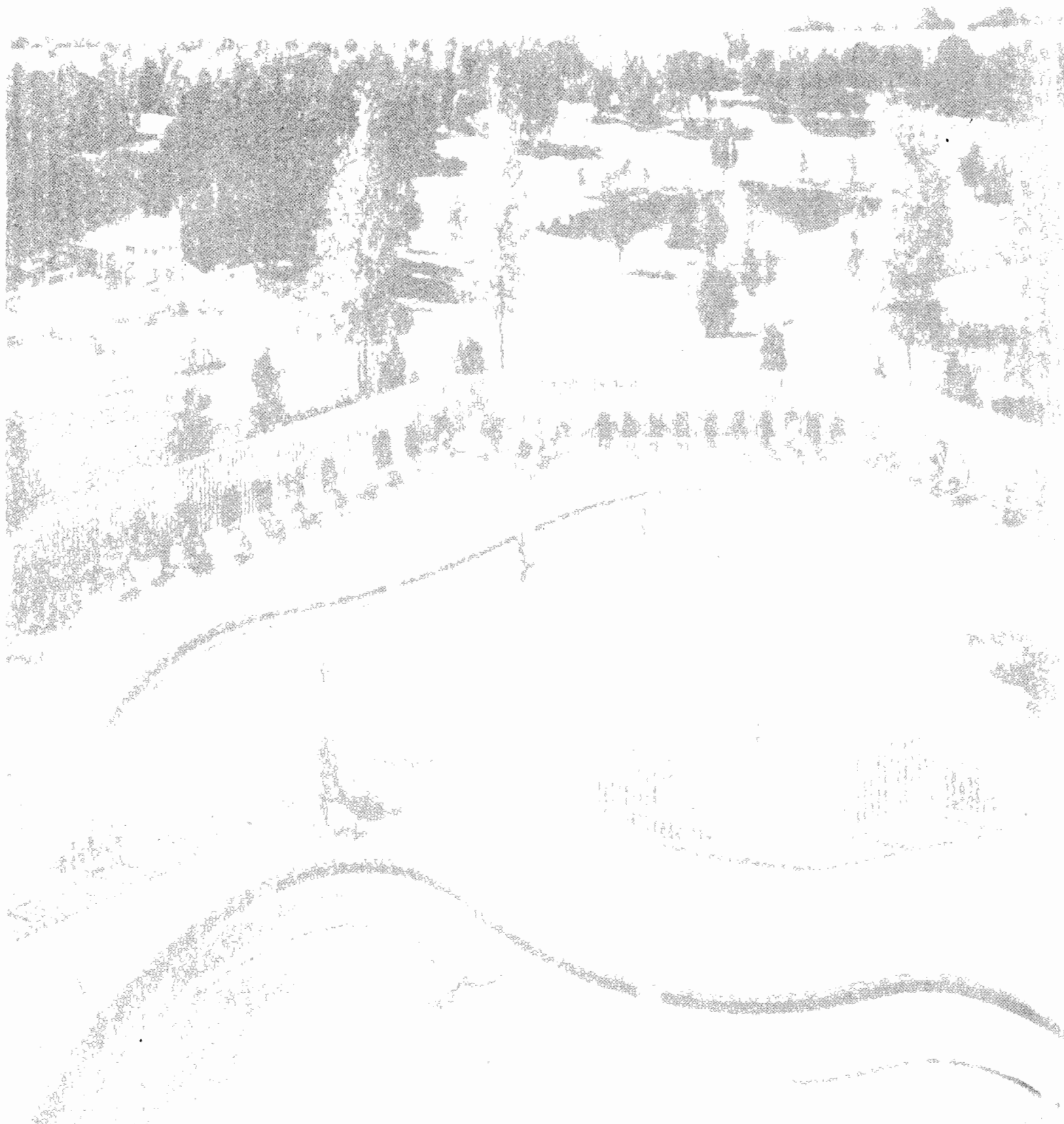
This year the Commission completed a two-year look at the NIMBY ("Not In My Back Yard") syndrome as it affects affordable housing, and has made two recommendations that will provide stronger tools to remove this impediment. In addition, a video was produced addressing the NIMBY issue, which can be used as an educational tool by local governments and others.

The Commission began the development of a comprehensive statewide affordable housing policy, to be completed in 1998, and a number of interim recommendations are presented on the policy. The Commission has been pleased with the interest and involvement of local governments and other interested groups this year, and we hope that these parties will continue to be involved with development of the housing policy in the coming year.

Thank you for the opportunity to serve the citizens of Florida. We look forward to continuing our work in 1998.

Sincerely,

  
Clifford B. Hardy, *Chairman*





# **THE AFFORDABLE HOUSING STUDY COMMISSION**

1997 FINAL REPORT

## **INSIDE**

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Affordable Housing Policy for Florida • Interim Report
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# THE AFFORDABLE HOUSING STUDY COMMISSION

## 1997 MEMBERSHIP

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Tampa  
*Citizen of the state*

**The Honorable Mary Lawson Brown**  
City of Palatka City Council  
*Represents Florida League of Cities*

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President, The Clarkson Company  
Orlando  
*At-large member*

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Planner, East Central Florida Regional Planning Council  
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Executive Director, Greater Miami Neighborhoods  
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*At-large member*

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*Represents home mortgage lending*

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Tallahassee  
*Represents elders' housing interests*

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Executive Director, Clearwater Neighborhood Housing Services  
*Represents community-based organizations with housing experience*

**Michele Hartson**  
Executive Director, Florida Housing Coalition  
Tallahassee  
*Represents interests of very low- and low-income persons*

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Vice President, Royal American Development  
Panama City  
*Represents apartment development*

**Daniel R. Horvath**  
President, Community Equity Investments  
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**The Honorable Sylvia Poitier**  
Broward County Commission, Fort Lauderdale  
*Represents Florida Association of Counties*

**Claire F. Raley**  
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**Jaimie A. Ross**  
Affordable Housing Director

1000 Friends of Florida  
Tallahassee  
*Represents interests of statewide growth management organizations*

**Frances L. Terry\*\***  
Executive Director, Suwanee River Economic Council  
Live Oak  
*Represents interests of community-based organizations with housing experience in communities with population under 50,000*

**Ann L. Thompson\*\***  
Administrator, Cathedral Residences  
Jacksonville  
*Represents elders' housing interests*

**Thomas G. Wright\***  
Senior Counsel, WCI Communities  
Coral Springs  
*Represents interests of residential community developers*

**Anne F. Yordon**  
Realtor  
Daytona Beach  
*Represents category of real estate sales*

\* Appointed in July 1997.

\*\* Term expired in June 1997.

### STAFF

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Department of Community Affairs • Tallahassee  
**Dawn McMillan**  
*Final Report design*  
Thanks to the staff at the Department of Community Affairs, especially the Strategic Planning Unit, and the Florida Housing Finance Agency, for their support.

**Photographs courtesy of:**  
Clearwater Neighborhood Housing Services  
Community Equity Investments, Inc.  
Greater Miami Neighborhoods, Inc.  
The Wilson Company



## **MISSION STATEMENT OF THE AFFORDABLE HOUSING STUDY COMMISSION**

*The Affordable Housing Study Commission recommends improvements to public policy to stimulate community development and revitalization and to promote the production, preservation and maintenance of safe, decent and affordable housing for all Floridians.*

### **STRATEGIES FOR ACCOMPLISHING THE MISSION**

The Affordable Housing Study Commission implements its mission through the following strategies:

- encouraging public-private partnerships and governmental coordination;
- identifying opportunities to streamline state, regional and local regulations affecting the affordability of housing;
- advocating development strategies which comprehensively address the housing, economic and social needs of individuals;
- advocating the provision of increased technical and financial resources;
- promoting research on affordable housing issues; and
- educating the public and government officials to understand and appreciate the benefits of affordable housing.





# THE AFFORDABLE HOUSING STUDY COMMISSION

## 1997 FINAL REPORT



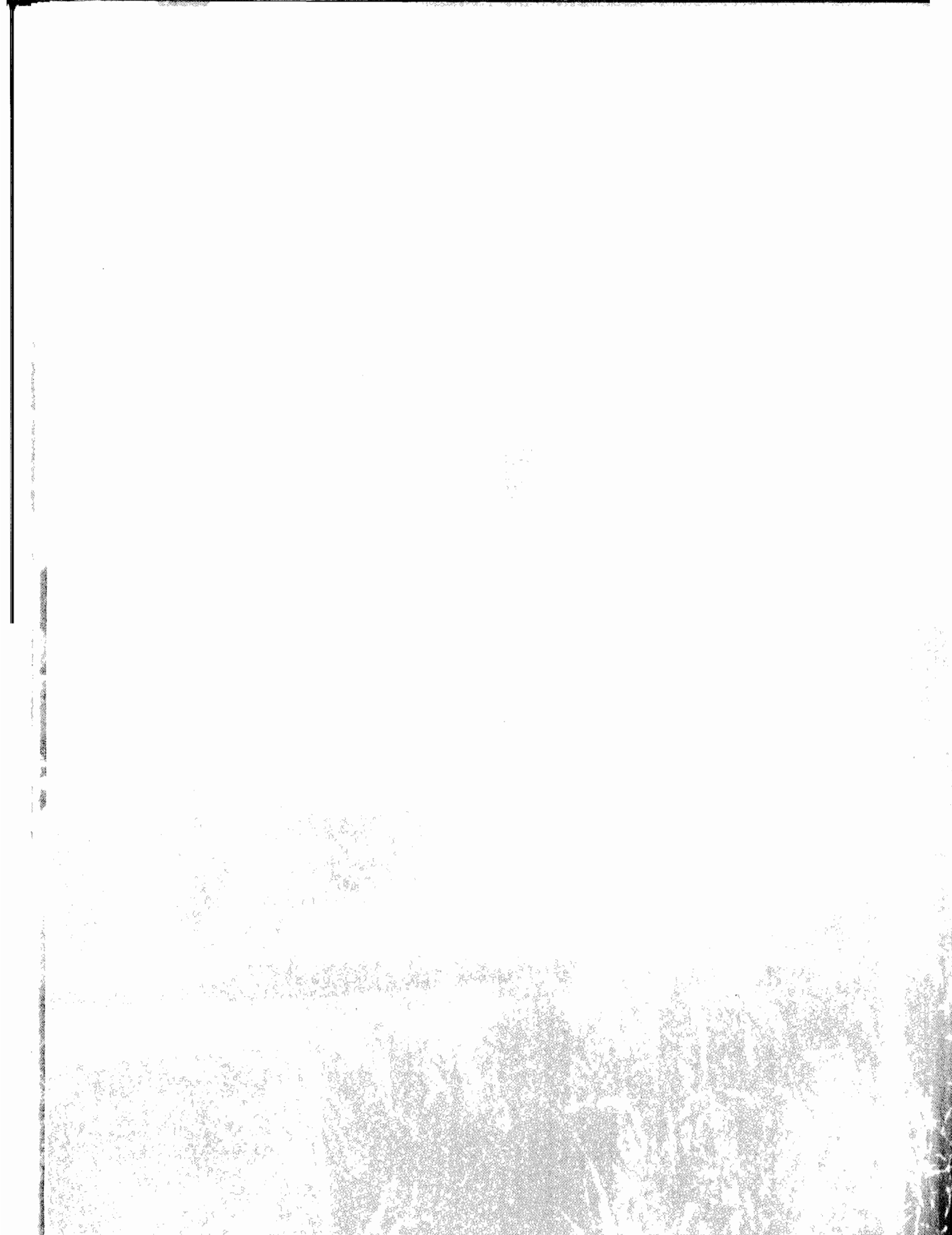
**I**n 1997, the Affordable Housing Study Commission focused on two issues that affect the provision of affordable housing in Florida:

- The NIMBY (Not-In-My-Back-Yard) syndrome's impact on affordable housing, and
- The development of a comprehensive statewide affordable housing policy.

This report summarizes the Commission's findings and recommendations on these issues, and outlines the Commission's 1998 work plans.







# THE AFFORDABLE HOUSING STUDY COMMISSION

## EXECUTIVE SUMMARY

### COMBATING THE NIMBY SYNDROME IN AFFORDABLE HOUSING

**T**he NIMBY, or “Not-In-My-Back-Yard,” syndrome is public opposition to proposals for unpopular projects being sited in or near a community or neighborhood. NIMBYism may occur on a variety of projects, including housing that is affordable to low- and moderate-income families. Opposition may occur on a range of housing types, from single family homes to apartment complexes. NIMBYism occurs because people are fearful of changes that may result in their neighborhood because of the new housing. Fears often center on the “different” group of people who will be living there. Concerns typically include fear of lowered property values, crime, drugs and physical deterioration.

Because of these prevailing attitudes, the NIMBY syndrome restricts housing opportunities and reduces the

supply of housing available to lower income residents. NIMBYism is recognized by the Commission and many housing providers and advocates as a major barrier to the placement of affordable housing in communities where it is needed most—close to employment opportunities and services such as health, day care and public transportation. Put simply, NIMBYism is an impediment to fair housing. The NIMBY phenomenon is widespread in Florida, occurring in both urban and rural communities up and down the state.

1997 marked the second and final year of Commission deliberations on this topic. To reduce the incidence of NIMBYism, the Commission believes that Florida must take a two-pronged approach: education and a more

effective legal remedy than those that currently exist in state law.

As part of the education strategy, the Commission produced a video showing what communities can and should expect from today’s affordable housing. Production of the video was paid for by donations from the private sector. By early 1998, the video will be available from the Florida Housing Coalition.

### THE COMMISSION'S NIMBY RECOMMENDATIONS:

- The Legislature should adopt revisions to Florida’s Fair Housing Act, Chapter 760, Part II, *Florida Statutes*, to ensure that the Act can be used to fight discrimination against housing built for the state’s very low-, low- and moderate-income residents. First, to the eight classes currently protected by the Act, a ninth class should be added: “source of income.” Second, a new section should be added to the Act that would make it unlawful to discriminate in land use or permitting decisions based on the protected classes or source of financing of a development.
- The Florida Department of Community Affairs’ effort to implement a NIMBY education strategy should be a multi-year commitment, with a financial commitment to implement the strategy in 1998 and future years.



**DEVELOPMENT OF A COMPREHENSIVE STATEWIDE AFFORDABLE HOUSING POLICY—INTERIM REPORT**

In 1996 the Affordable Housing Study Commission began a multi-year project to develop a state housing policy. The idea behind the policy is to increase the state's overall effectiveness in meeting its affordable housing needs and responding to changing conditions. The Commission began by evaluating Florida's progress in meeting its affordable housing needs, and found that there is a huge gap between those paying a large amount of their income for housing and the number of units being brought on line. Part of this problem is that many Floridians do not make a living wage.

Ultimately, the Commission's 1996 evaluation showed that housing policies and programs are only one important part of strengthening Florida's communities. To be successful, housing policy must be linked with community and economic development strategies.

Based on the 1996 evaluation, the Commission began in 1997 to develop a proposed affordable housing policy by concentrating on a series of topics that provided the framework for discussion. Four out of eight topics were addressed this year, with plans to take on the other four in 1998. Public involvement was sought, with local

governments and public housing authorities especially encouraged to participate in policy development.

The recommendations outlined below are presented as interim policy statements, because the final four work topics to be covered in 1998 must be integrated with these to create a complete policy. The Commission assumes that the final product as presented in 1998 may look somewhat different after all policy concerns have been considered.

**WORK TOPIC: Affordable Housing Providers**

- The private sector, both for profit and nonprofit, is the primary vehicle for the production of affordable housing. Local housing authorities have a role as developers and managers of affordable housing and are the primary vehicle for serving Florida's lowest income families. State and local governments should facilitate housing production by allocating financial resources, offering development incentives and implementing regulatory reform.
- Those housing providers who participate in neighborhood revitalization by developing community capacity, providing appropriate support services, and fostering neighborhood resident involvement, should be rewarded for that role.



# THE AFFORDABLE HOUSING STUDY COMMISSION

## EXECUTIVE SUMMARY

### WORK TOPIC: Preservation of Existing Affordable Housing

- The state should encourage the federal government to continue providing both subsidies for public housing, and federally subsidized units subject to mortgage prepayment and rent subsidy contract expiration.
- Restructuring of federally subsidized housing should be carried out in a manner which best serves the interests of its lowest income residents.
- The state should encourage alternative housing models that promote perpetual affordability.
- In targeted areas, state and local governments should create new incentives for improvements to existing privately held affordable housing.

### WORK TOPIC: Relationship of Housing Programs to Other Programs

- The state housing policy should focus on overall community revitalization as well as maximizing units produced. Recognizing that housing is just one component of an overall community revitalization strategy, it is critical to create linkages and partnerships with other community revitalization efforts,

such as economic development, transportation and infrastructure improvements, education, and job training.

- The state should direct funding and other resources toward infill development that is tied to other community revitalization efforts.

### WORK TOPIC: Funding Priorities

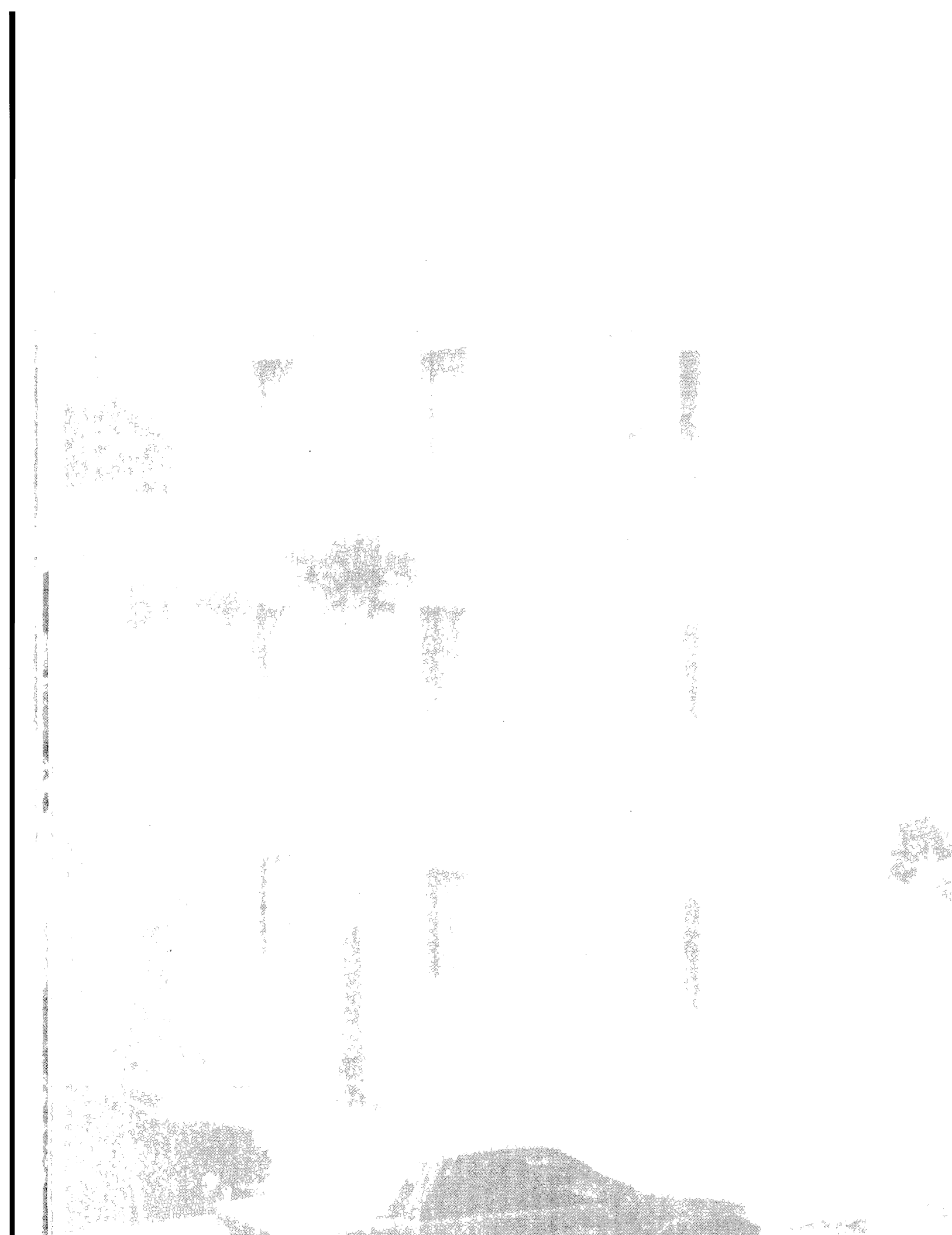
- The state should allow developers to openly compete for state funding to provide the highest quality housing across the state without regard to the number of projects any one developer submits.

## THE COMMISSION'S 1998 AGENDA: COMPLETION OF THE AFFORDABLE HOUSING POLICY

The Commission will address the following housing policy topics in 1998: obstacles to affordable housing, racial and economic integration, housing for special needs populations, and housing for households at 0-30 percent of median income. Once these topics have been covered, the Commission

will integrate the recommendations from the 1997 and 1998 topics, understanding that some changes will be necessary to develop a cohesive, integrated policy for presentation to the Governor and Legislature at the end of 1998. The Commission hopes to have continued public involvement in its 1998 discussions.





# THE AFFORDABLE HOUSING STUDY COMMISSION

## COMBATING THE NIMBY SYNDROME

**T**he NIMBY, or “Not-In-My-Back-Yard,” syndrome is public opposition to proposals for unpopular projects being sited in or near a community or neighborhood. NIMBYism may occur on a variety of projects, including housing that is affordable to low- and moderate-income families. Opposition may occur on a range of housing types, from single family homes to apartment complexes. NIMBYism occurs because people are fearful of changes that may result in their neighborhood because of the new housing. Fears often center on the “different” group of people who will be living there. Concerns typically include fear of lowered property values, crime, drugs and physical deterioration. Because of these prevailing attitudes, the NIMBY syndrome restricts housing opportunities and reduces the supply of housing available to lower income residents. NIMBYism is recognized by the Commission and many housing providers and advocates as a major barrier to the placement of affordable housing in communities where it is needed most—close to employment opportunities and services such as health, day care and public transportation. Put simply, NIMBYism is an impediment to fair housing. Public opposition to affordable housing often takes the form of protests to elected officials at public hearings. This may result in a local government decision to deny a

developer’s request for a rezoning or a development order, even when the proposed development meets all local development regulations.

How extensive is the NIMBY problem in Florida? In 1996 the Commission carried out interviews with builders to determine the scope of the NIMBY problem. Out of 31 surveyed in these interviews, 23 builders stated that their affordable housing developments had been affected by neighborhood opposition, with five of these 23 unable to build as a result. NIMBYism has occurred throughout Florida, from

north to south and in both rural and urban communities.

Recent NIMBY cases may be found in the appendix to this report. These demonstrate outcomes when there is public opposition to a proposed housing development. At the very least, NIMBY opposition causes a builder to spend more money in terms of technical and legal fees and time delays, and at the worst, the housing is never built. The case studies show that local governments have mixed responses to NIMBYism. Some officials make decisions to support

### **DOES AFFORDABLE HOUSING LOWER PROPERTY VALUES?**

*People are often concerned that affordable housing will lower their property values. However, a number of studies have shown that this preconception is usually incorrect. Why? Because property values are primarily determined by larger community factors such as overall community prosperity, including nearby large scale commercial and industrial development and the condition of area infrastructure.*

*Studies have been done in a variety of locations, from affluent suburbs to rural communities and inner city neighborhoods. The studies were conducted by different researchers, from the U.S. General Accounting Office, to independent researchers and academics. Using a variety of methodologies, ten out of twelve known studies determined that property values are not affected by various housing facilities. Another study could not determine if lowered property values were due to proximity to affordable housing or because of larger neighborhood conditions, while the final study showed mixed results.*

From ***Building Inclusive Community: Tools to Create Support for Affordable Housing***, by HomeBase/The Center for Common Concerns, 1996, and ***There Goes the Neighborhood? The Impact of Subsidized Multi-Family Housing on Urban Neighborhoods***, by Edward G. Goetz, Hin Kin Lam, and Anne Heitlinger, 1996.



**THE AFFORDABLE HOUSING STUDY COMMISSION**  
COMBATING THE NIMBY SYNDROME



affordable housing in the face of public opposition, while others react to this opposition by denying or being slow to support such development.

To reduce the incidence of NIMBYism, the Commission believes that Florida must take a two-pronged approach: (1) education, and (2) a more effective legal remedy.

### **EDUCATION**

In 1997 the Commission sponsored the production of a video showing what communities can expect from today's affordable housing developments and the people who live in them. Production of the video was paid for by donations from the private sector. By early 1998, the video will be in distribution through the Florida Housing Coalition, and can be used by developers, local governments, community organizations, and housing advocates to educate people about today's affordable developments.

As a result of the work done by the Commission, the Florida Department of Community Affairs is currently

designing a NIMBY education strategy to be implemented in 1998. The Commission strongly supports this endeavor and believes that such a program must be ongoing.

### **LEGAL REMEDY**

In Florida there are three statutes available to fight NIMBYism: the Growth Management Act, the Fair Housing Act and the Property Rights Act. While each has merit, these remedies are not always effective in addressing NIMBYism.

#### **The Growth Management Act**

Chapter 163, Part II, *Florida Statutes*, requires every local government in Florida to adopt a local comprehensive plan that is consistent with the Act. Land development regulations which implement the policies in the plan must also be adopted, and it is these standards that affordable developments must meet when a builder is seeking approval to develop a piece of property. If a development is consistent with these regulations, the local government may not deny a develop-

ment order or permits. In fact, over the last few years the courts have held that site specific rezonings, site plans and other development orders, and site specific land use amendments are quasi-judicial.<sup>1</sup> This means that local governments must make decisions on these issues based on competent substantial evidence, rather than the fact that neighbors do not like a proposed development.

Theoretically the Act should provide the needed protection for developers building affordable housing. However, two problems occur. The first is that many neighborhood groups have become savvy about the issues that they publicly contend are problems with a proposed development. For instance, traffic or environmental concerns are raised rather than racism or classism. These types of problems are much easier for local decision makers to hang their hats on when denying a development order. The second problem is that the burden of proof is on the developer when challenging a local decision, and the standard used is "fairly debatable"; that is, if reasonable minds could differ, the local government's decision is upheld. Combined, these realities make it difficult for developers in some communities to be protected under this law.

#### **The Fair Housing Act**

Chapter 760, Part II, *Florida Statutes*, provides that it is unlawful to discriminate in the sale or rental of housing, the provision of brokerage services, or in financing on the basis of race, color, national origin, sex, handicap, familial status or religion. Florida's law is



# THE AFFORDABLE HOUSING STUDY COMMISSION

## COMBATING THE NIMBY SYNDROME

substantially equivalent to the federal fair housing law.

Like the federal law, the state's fair housing law does not protect citizens on the basis of income. That is, housing decisions that discriminate on the basis of income do not constitute a violation of the state or federal fair housing law. As the fair housing law stands now, combating neighborhood opposition against the siting of housing for very low- to moderate-income families is difficult if the opposition stems only from the public's opposition to the economic status of these families.

In many situations, discrimination may occur for multiple reasons, such as income and race. In cases where a protected class and income are at issue, a fair housing complaint may be filed for the protected class only. For example, a recent complaint filed in Lee County (the Pueblo Bonito case, which is outlined in the appendix) addressed national origin, but neighborhood opposition was also directed at the building of housing affordable to low-income households. In summary, the current fair housing law cannot be used in cases where income discrimination is the only concern.

### The Bert Harris Property Rights Act

Chapter 70, *Florida Statutes*, provides a dispute resolution process with a special master for a property owner and a local government to resolve their land use dispute. If no resolution can be reached, the special master determines in writing whether the action by the local government is unreasonable or unfairly burdens the subject

**STATE APPEAL AND OVERRIDE PROCESS**—*In place in Massachusetts, Rhode Island and Connecticut, this process gives a state appeals committee or judge the power to override a local government's denial of a permit to build affordable housing. As practiced in these states, the law places a substantial burden on the local government to justify its decision to deny an application for affordable housing. The main advantage of this process is that the threat of an override encourages local officials to negotiate with developers to a mutually satisfactory end.*

**FAIR SHARE PROGRAM**—*This type of program is intended to equitably distribute affordable housing for low-income persons throughout a region or state. Such a program attempts to "de-concentrate" affordable housing in minority and low-income areas and redistribute it to areas with greater economic opportunities, primarily suburban communities. State programs in New Jersey and California require local participation, while Connecticut runs a voluntary program that requires several regions in the state to negotiate affordable housing goals for each jurisdiction.*

**FAIR HOUSING REMEDY**—*This remedy would strengthen the current fair housing law to prohibit discrimination against housing built to house lower income families. By virtue of case law, current federal and state fair housing laws prohibit discriminatory public or private land use practices and decisions. Some states, such as California, have codified this case law, and in statute refer to restrictive covenants, zoning laws, and permit denials as examples of possibly discriminatory practices.*

property. In this process, the local government is not required to take the special master's recommendation. Once the local government acts on the special master's recommendation, the owner may elect to file suit in circuit court.

This process shows promise in NIMBY situations, and was used successfully in the aforementioned Lee County case. However, the success of the property rights remedy appears to





have been directly related to the concurrent pressure brought to bear from the Fair Housing Act complaint which was also filed in this case.

Thus, while the remedies just described are useful in some situations, they each have limitations and cannot be relied upon every time. Understanding this, the Commission looked for an additional legal remedy that could be used on its own or in combination with these. Three remedies were of particular interest to the Commission—a state appeal and override process; a fair share program, and a more effective fair housing remedy.

Ultimately, the Commission focused on the fair housing remedy as a recommended first step, because it would be the least onerous of the three options. The structure to administer this remedy is already in place through the courts, and state, local and non-profit fair housing agencies. Most importantly, this remedy is the least prescriptive of the three. It is outlined in the recommendations below. The Commission believes that combining a more effective legal remedy with focused, proactive and ongoing education at the local level can go a long way to build support for the development of affordable housing.

## Recommendations

**1. The Legislature should adopt revisions to Florida's Fair Housing Act, Chapter 760, Part II, Florida Statutes, to ensure that the Act can be used to fight discrimination against housing built for the state's very low-, low- and moderate-income residents. Two revisions are recommended:<sup>2</sup>**

**a. To the eight classes currently protected by the Act, a ninth class should be added: "source of income."**

**b. A new section should be added to the Act, as follows:**

**(760.26) Discrimination in land use decisions and permitting of development.** — It is unlawful to discriminate in land use decisions and, or the permitting of development based on race, color, national origin, sex, handicap, familial status, source of income, religion, or based on source of financing of a development or proposed development.

### Comments:

- Adding "source of income" would forbid discrimination against households using income such as public assistance, supplemental security income, Section 8 vouchers and other forms of financing or housing assistance to pay for housing.
- The concept of "source of income" is utilized by a number of states, including Utah, Oregon, California, the District of Columbia, and Connecticut, as well as many cities throughout the nation.<sup>3</sup>

**2. The Florida Department of Community Affairs' effort to implement a NIMBY education strategy should be a multi-year commitment, with a financial commitment to implement the strategy in 1998 and future years.**

### Comment:

- The Department should coordinate with existing groups and agencies that are interested in or would be affected by such a strategy. Examples of these are the Florida Commission on Human Relations, the Florida Housing Finance Corporation, the Florida League of Cities and the Florida Association of Counties.

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## Endnotes:

<sup>1</sup> Board of County Commissioners of Brevard County v. Snyder, 627 So.2d 469 (Fla. 1993), Park of Commerce Assoc. v. Delray Beach, 636 So.2d 12 (FL. 1994), Florida Institute of Technology, Inc. v. Martin County, 641 So.2d 898 (Fla. 4<sup>th</sup> DCA 1994).

<sup>2</sup> The text of the state Fair Housing Act with proposed revisions is found in the appendix.

<sup>3</sup> F. Willis Caruso, Adjunct Professor of Law and Clinical Director, the John Marshall Law School Fair Housing Legal Support Center, 1997.



# THE AFFORDABLE HOUSING STUDY COMMISSION

## DEVELOPMENT OF A COMPREHENSIVE STATEWIDE AFFORDABLE HOUSING POLICY FOR FLORIDA

### INTERIM REPORT

#### EVALUATION OF FLORIDA'S AFFORDABLE HOUSING NEEDS

In 1996 the Affordable Housing Study Commission began a multi-year project to develop a state housing policy. The idea behind the policy is to increase the state's overall effectiveness in meeting its affordable housing needs and responding to changing conditions. The Commission began by evaluating Florida's progress in meeting its affordable housing needs. This was done by measuring progress toward the goal set by the Legislature in 1988 that states: "[by] the year 2010, this state will ensure that decent and affordable housing is available for all of its residents."<sup>1</sup>

The Commission found that there is a huge gap between those paying a large amount of their income for housing

#### THE PURPOSE OF A COMPREHENSIVE AFFORDABLE HOUSING POLICY

*The purpose of such a policy is to provide a framework for statewide coordination of programs and funding for affordable housing in Florida. The policy will guide related housing decisions of government, and is a commitment to:*

- *Improve communication and coordination between all levels of government and with the private sector;*
- *Promote the most effective use of public and private sector funds;*
- *Provide a structure for the coordination of housing and non-housing programs; and*
- *Remove obstacles to the development and preservation of decent, safe and affordable housing in Florida.*

and the number of units being brought on line.<sup>2</sup> A review of the population data for those living under the poverty level made clear that Florida housing programs, including federal and local programs, can do little to ensure that all Floridians will have decent, affordable housing by the year 2010. Considering the fact that Florida's housing programs and delivery system are the best in the nation, the Commission asked, how then does

Florida close the gap between the number of families that need more affordable housing and making more of this housing available? The conclusion was that, besides continuing to assess how we can do more with the dollars we have, Florida must acknowledge that the state has an income problem. An important reason why many Floridians are paying so much of their income for housing is that they do not make a living wage. Ultimately, the Commission's 1996 evaluation showed that housing policies and programs are only one important part of strengthening Florida's communities. To be successful, housing policy must be linked with community and economic development strategies.



# THE AFFORDABLE HOUSING STUDY COMMISSION

DEVELOPMENT OF A COMPREHENSIVE STATEWIDE AFFORDABLE HOUSING POLICY FOR FLORIDA • INTERIM REPORT

## THE COMMISSION'S HOUSING POLICY WORK TOPICS

- Affordable Housing Providers
- Preservation of Existing Affordable Housing
- Relationship of Housing Programs to Other Programs
- Funding Priorities
  
- Housing for Special Needs Populations
- Obstacles to Affordable Housing
- Racial and Economic Integration
- Housing for Households at 0-30% of Median Income

### DEVELOPMENT OF THE HOUSING POLICY

Based on the 1996 evaluation, the Commission began in 1997 to develop a proposed affordable housing policy by concentrating on a series of topics that provide the framework for discussion. Four out of eight topics were addressed this year, with plans to take on the other four in 1998. After information presentations and discussions on each topic, preliminary policy statements were developed. In addition to policy guidance found in housing program statutes, rules and applications, the Commission is evaluating the existing "State Housing Strategy,"<sup>3</sup> which outlines how Florida will reach the 2010 housing goal.

Public involvement was sought, with local governments and public housing authorities especially encouraged to participate in policy development. Regular newsletters were sent out to keep interested parties abreast of progress, and once initial policy statements were developed, the Commission held a workshop to get public input. This feedback was

incorporated into the recommendations in this report.

The recommendations outlined on the following pages are presented as interim policy statements, because the final four work topics to be covered in 1998 must be integrated with these to create a complete policy. The Commission assumes that the final product will look somewhat different after all policy concerns have been considered.

### WORK TOPIC: Affordable Housing Providers

The Commission narrowly defined the Affordable Housing Providers topic to include the private sector, both for profit and nonprofit, and local public housing authorities which operate public housing and many other programs in the state.<sup>4</sup> The focus was on these entities as developers and property managers. Other entities support these providers — for ex-

**TABLE 1: Construction Type by For Profit and Nonprofit Provider  
Fiscal Years 1993/94—1995/96**

Fiscal Year	For Profit Providers		Nonprofit Providers	
	New Construction Units	Rehabilitation Units	New Construction Units	Rehabilitation Units
1993-94	14,944	1,544 (9.4%)	3,156	793 (20.1%)
1994-95	3,983	890 (18.3%)	1,540	354 (18.7%)
1995-96	5,437	700 (11.4%)	1,185	537 (31.2%)
<b>Total Units</b>	<b>24,364</b>	<b>3,134 (11.4%)</b>	<b>5,881</b>	<b>1,684 (22.3%)</b>

NOTE: The figures in parentheses represent the percentage of units rehabilitated out of total units produced by for profit and nonprofit developers in each fiscal year.

SOURCE: Florida Housing Finance Agency, 1997.



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ample, state and local government and lenders are just two examples of entities that make it possible for providers to build and maintain affordable housing.

The Commission looked at the roles played by these providers. It found that state affordable housing programs access by providers mostly serve families with incomes between 30 and 80 percent of median income. The state relies on local housing authorities to house families with incomes up to 30 percent of this median, the poorest of the poor.

While many assume that nonprofit developers serve lower income populations than for profit developers, the difference is not as great as expected. Based on data compiled on programs administered by the Florida Housing Finance Agency (FHFA) from 1993-94 through 1995-96, 13.5 percent of the affordable units provided by for profits in 1993-94 were occupied by very low-income households, as compared to 25.7 percent of those provided by nonprofits. This is a difference of 12.2 percent. These



percentages narrow to 4.4 and 4.5 percent for the next two years.

The Commission also examined the roles played by nonprofits and for profits to see if one entity rehabilitates existing units more often, while the other focuses on construction of new units. Overall, for profit developers build more units, whether new *or* rehab, than do nonprofits. More new housing units are built than rehabilitated by each category of provider. For every *eight* new units built by for profits, they rehab one unit. For every *four* new units built by nonprofits, they

rehab one unit. So overall, nonprofits put more of their resources into the rehabilitation of existing units.

During this period of federal cutbacks, housing authorities, which have historically received all or most of their funds from the federal government, are beginning to consider how they can diversify in order to continue to serve the lowest income households. This includes obtaining state funds as well as drawing higher income families into their developments to ensure that the housing authorities can continue serving the very poorest. This

**TABLE 2: Housing Units Set Aside for Income Groups — Fiscal Years 1993/94–1995/96**

INCOME GROUPS SERVED	UNITS PROVIDED BY FOR PROFIT DEVELOPERS			UNITS PROVIDED BY NONPROFIT DEVELOPERS		
	1993/94	1994/95	1995/96	1993/94	1994/95	1995/96
Very Low-Income*	2,219 (13.5%)	1,281 (29.2%)	949 (15.5%)	988 (25.7%)	541 (33.6%)	355 (20.0%)
Low-Income*	14,201 (86.5%)	3,108 (70.8%)	5,188 (84.5%)	2,860 (74.3%)	1,068 (66.4%)	1,417 (80.0%)
Total Units Set Aside	16,420 (100%)	4,389 (100%)	6,137 (100%)	3,848 (100%)	1,609 (100%)	1,772 (100%)

\* **Very low-income** refers to households with incomes between 31 and 50 percent of an area's median income. **Low-income** refers to incomes between 51 and 80 percent of that median. The Commission wants to examine this more closely next year to determine whether these data reflect the true incomes of the residents in these housing units.

**NOTE:** The figures in parentheses represent the percentage of units set aside out of total units produced by for profit and nonprofit developers in each fiscal year.

**Source:** Florida Housing Finance Agency, 1997.



strategy means that fewer very poor households will have access to this housing over time.

The Commission finds that, overall, state programs are being used to serve lower income levels than was originally thought, mostly due to the competitive nature of the programs. However, the very low-income households, the ones that require the deepest subsidy, are rarely served by these programs. In addition, the Commission's 1996 housing evaluation showed that only a small part of the overall need is being met. A conservative estimate suggested that in 1995 an additional 700,000 households in Florida were living in homes that cost them over 50 percent of their income. Some of this is by choice, but by far, the families with the most housing cost burden are the lowest income families.

The Commission also examined how these providers are involved in the communities where they build housing. Overall, for profit developers and property managers may provide excellent tenant amenities and services, but this is usually limited to the development itself. Nonprofit developers and property managers may provide the same type of services, but may also be more of a community-based provider. That means that the nonprofit may have other types of programs such as job training in place or may be involved in neighborhood-wide redevelopment efforts. While it cannot be said across the board, nonprofits are more often involved in this manner than for profits.

Based on this, the Commission recommends the following interim policy statements.

## RECOMMENDATIONS

- 1. The private sector, both for profit and nonprofit, is the primary vehicle for the production of affordable housing. Local housing authorities have a role as developers and managers of affordable housing and are the primary vehicle for serving Florida's lowest income families. State and local governments should facilitate housing production by allocating financial resources, offering development incentives and implementing regulatory reform.***

### Comments

- State and local governments *alone* cannot meet Florida's affordable housing need because they are not in the business of housing production. The housing development industry *alone* also cannot meet the need because of the high costs of housing construction. Providing affordable housing in Florida requires a cooperative effort between state and local governments and the private sector. Government can stimulate affordable housing production by providing financial resources to developers through federal, state and local funding sources. It can also work to eliminate unnecessary regulations that increase housing production costs, and provide incentives to build affordable housing.
- Because of federal cutbacks, local housing authorities' continued ability to provide for the lowest income families (0 to 30 percent of area median income) depends on their ability either to obtain deep subsidies, which means they will have to compete for other public funds, or diversify their tenant base. Without alternative funding to compensate for the federal cutbacks, housing for these families will be lost. Thus, the Commission strongly disagrees with the federal government's decision to cut these funds. In 1998 the Commission will take a further look at policy issues surrounding the housing needs of households in the 0 to 30 percent income category.

- 2. Housing providers who participate in neighborhood revitalization by developing community capacity, providing appropriate support services, and fostering neighborhood resident involvement, should be rewarded for that role.***

### Comments:

- Community capacity refers to the ability of a community's residents and stakeholders to identify and meet community needs and to resolve issues affecting the community's quality of life.
- Support services might include day care, job training, public transportation, assistance for elders, etc. The types of support services a community needs should be identified by the community's residents and stakeholders.
- Implementation of this policy should include detailed requirements of housing providers and conditions for monitoring of projects to ensure continued provision of support services.



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### WORK TOPIC: Preservation of Existing Affordable Housing

Florida has made great strides in increasing the production of new, affordable housing. This topic focuses on how long this housing will remain available to lower income households, both in terms of affordability and long term structural condition. The question is, what mechanisms are built into the existing housing delivery system to prevent the disappearance of affordable housing in Florida? How well does Florida's policy framework protect and preserve existing affordable units for the long term?

Rental housing units built through FHFA administered programs have a series of affordability controls built into the terms of their contracts, including requirements for a certain number of units to be set aside for lower income households and a set period that the units will be affordable. Because of the competitive nature of

the application process, developers have been willing to contract for higher unit set-asides and longer affordability periods than required by law and rule. Data to monitor the number of units that are set aside for lower income households are not compiled to show when these contracts will expire, although we do know that all units built through these programs are still restricted by contracts.

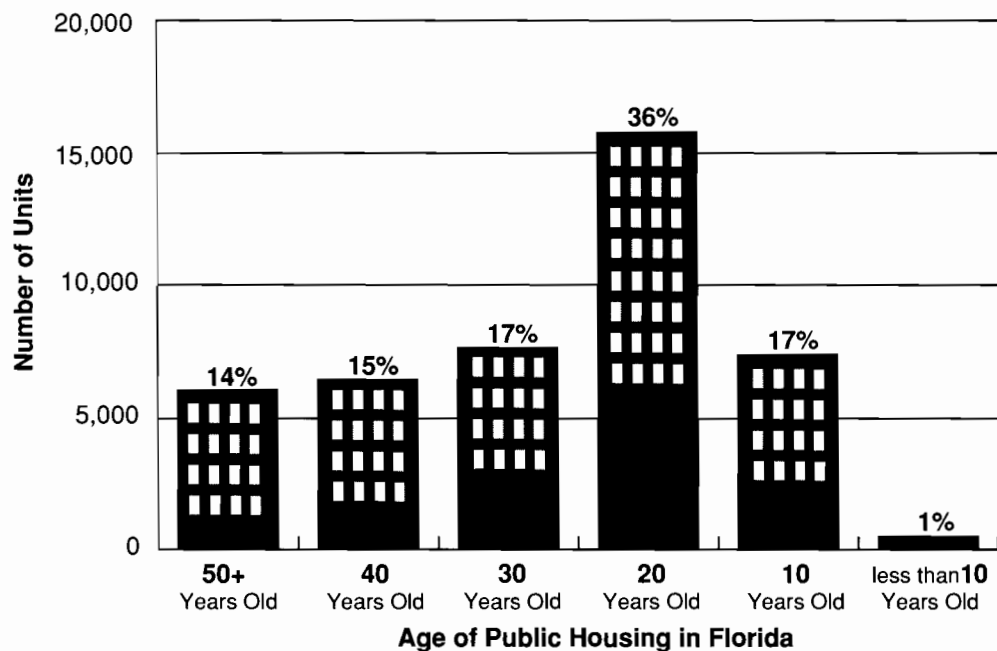
Units built for homeowners do not have the controls built into them beyond the initial move-in by an eligible family. There are recapture provisions if the family moves out before a certain period has passed, but monitoring how well these units stay affordable is problematic.

Changes at the federal level are beginning to impact the public housing stock and project-based Section 8 units

that have been available especially for the very poor until now. The federal government is moving in the direction of providing more tenant-based vouchers and getting out of managing public housing and long-term contracts with property owners. While the same number of households may receive housing in the short run, in the long run this may change, and Florida will have lost its investment in actual housing stock.

Rehabilitation of existing housing is becoming a major concern. In 1995, more than 2.2 million units were 30 or more years old, and another 1.8 million units were 20 or more years old. Forty years is generally considered to be the economic life of a housing unit. Thus, it makes sense to begin now to ensure that resources are directed in such a way that Florida does not lose its investment in this housing.

**Figure 1: The Age of Public Housing in Florida**



Source: U.S. Department of Housing and Urban Development, Jacksonville Office, Florida, 1997.



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The structural condition of rental units built through FHFA administered programs is controlled for the life of the contract, up to 50 years. Homeowner units do not have the same controls. Federally assisted units, especially public housing, are some of the oldest affordable stock in the state. In some cases, these units may not be worth rehabilitating.

In low-income neighborhoods, the majority of rental housing is owned by the private sector. In many instances, these units serve as an irreplaceable source of affordable housing. For a variety of reasons, these units are deteriorating and in need of substantial rehabilitation. Homeowners in these same neighborhoods may live in substandard or deteriorating homes without any source of affordable financing for improvements. This housing adds to a neighborhood's overall decline.

Based on these findings, the Commission developed the following recommended policy statements.

### RECOMMENDATIONS

1. *The state should encourage the federal government to continue providing both subsidies for public housing, and federally subsidized units subject to mortgage prepayment and rent subsidy contract expiration.*
2. *Restructuring of federally subsidized housing should be carried out in a manner which best serves the interests of its lowest income residents.*
3. *The state should encourage alternative housing models that promote perpetual affordability.*

#### Comment:

- There are several examples of alternative housing. *Community land trusts* are local nonprofit organizations established to keep land under community ownership and control. In these organizations, deed restrictions are permanent. In *housing cooperatives* each member owns a share of the cooperative corporation and leases her or his unit from that corporation. *Limited equity co-ops* can be an especially effective means of maintaining housing affordability, as they limit the price of resale units to ensure long term moderation in price. Unlike land trusts, however, deed restrictions can usually be reversed, allowing the co-op to charge full market value. *Mutual housing associations* are organized along the same principles as cooperative housing, but with formalized input from the larger community and a mandate to produce more cooperative housing.

4. *In targeted areas, the state and local governments should create new incentives for improvements to existing privately held affordable housing.*

#### Comment:

- Note that the focus of this recommendation is on *privately owned* market rate and subsidized housing. Many of the currently available funds for rehab are utilized by new owners and developers who purchase substandard properties specifically for rehab purposes. In some cases, this is an issue of marketing available funds to current owners of this housing.



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### WORK TOPIC: Relationship of Housing Programs to Other Programs

Under this topic, the Commission focused on community revitalization and barriers in existing state programs which limit the ability of communities to use these programs as they are now structured. In particular, affordable housing programs are structured in such a way that community revitalization is not supported.

Each community is different. They differ in income levels, size, types of housing and businesses, resident involvement, and their issues may be different. But every community has the

same general set of components by which we can measure the vitality of that community. Examples of components include the crime rate, level of services provided across neighborhoods, education level, occupancy rate of businesses and houses, and the condition of infrastructure, such as roads, sidewalks, and houses. These and other signs help to tell the story of whether a community is healthy. To maintain a healthy community or revitalize a distressed one, all of the above factors must be considered.

Decent, affordable housing is but one aspect of a community, and by itself cannot ensure the vitality of an area. Any revitalization effort becomes stronger when participants within and outside the community work together.

Because of its importance, housing should not be developed without regard for a community's needs. While housing is only one component, it provides a vital foundation for much of the other work of the community. Living in decent housing provides security, comfort, and a safe environ-

**FIGURE 2: Distressed Versus Healthy Neighborhoods**

CHARACTERISTIC	DISTRESSED	HEALTHY
Crime Rate	Drug Sales, juvenile arrests, prostitution, perception: unsafe	Perception: safe, active Crime Watch
Occupancy Rate	Cluster of vacant and boarded buildings	Homes occupied
Property Values	Decreasing values, property worth less than purchase price	Increase in values
Property Maintenance	Overgrown lots, trash in yards, peeling paint	Well maintained properties, pride in community
Renter-to Owner Ratio	More renters than owner occupied housing	More owners than renters
Economic Opportunities	No jobs or training programs	Training programs, jobs
Education Level	Dropouts, truancy, maybe a high school diploma	High school diploma, majority college-educated
Streets, Alleys, Sidewalks	Potholes, broken sidewalks, unpassable alleys	Physical structure in good condition
Family Structure	Babies having babies, half/stepchildren with boyfriends	Stable family
Income Levels	Low income, social service recipients, high numbers in poverty	Moderate income or higher
Private Investments	Area redlined by banks; no loans available	Private development, loans available
Housing Starts	Few, if any; too many vacant structures	New construction; if no land available, renovations
Level of Services	Services as needed; police and social services	Sports leagues, libraries, social & health services
Quality of Life	Low birth weights, birth complications, domestic quarrels	Healthy babies
Resident Involvement	None generally	Neighborhood association, Crime Watch

SOURCE: Florida Department of Education, Florida Department of Community Affairs, Florida Institute of Education, *Inside Out: Neighborhood Redevelopment and Revitalization*, 1996.





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ment. At the community level, the condition of housing affects property values, crime, and economic vitality, to name a few impacts.

In Florida, most housing production has been done in isolation. Current state policies do not encourage the use of housing funds tied to revitalization efforts. State rules and application procedures do not require developers to show how their projects will enhance community efforts. Furthermore, there are few mechanisms at the state level to blend housing programs with other community revitalization tools, such as education, job training and infrastructure improvements. However, the Commission believes that this relationship must be fused

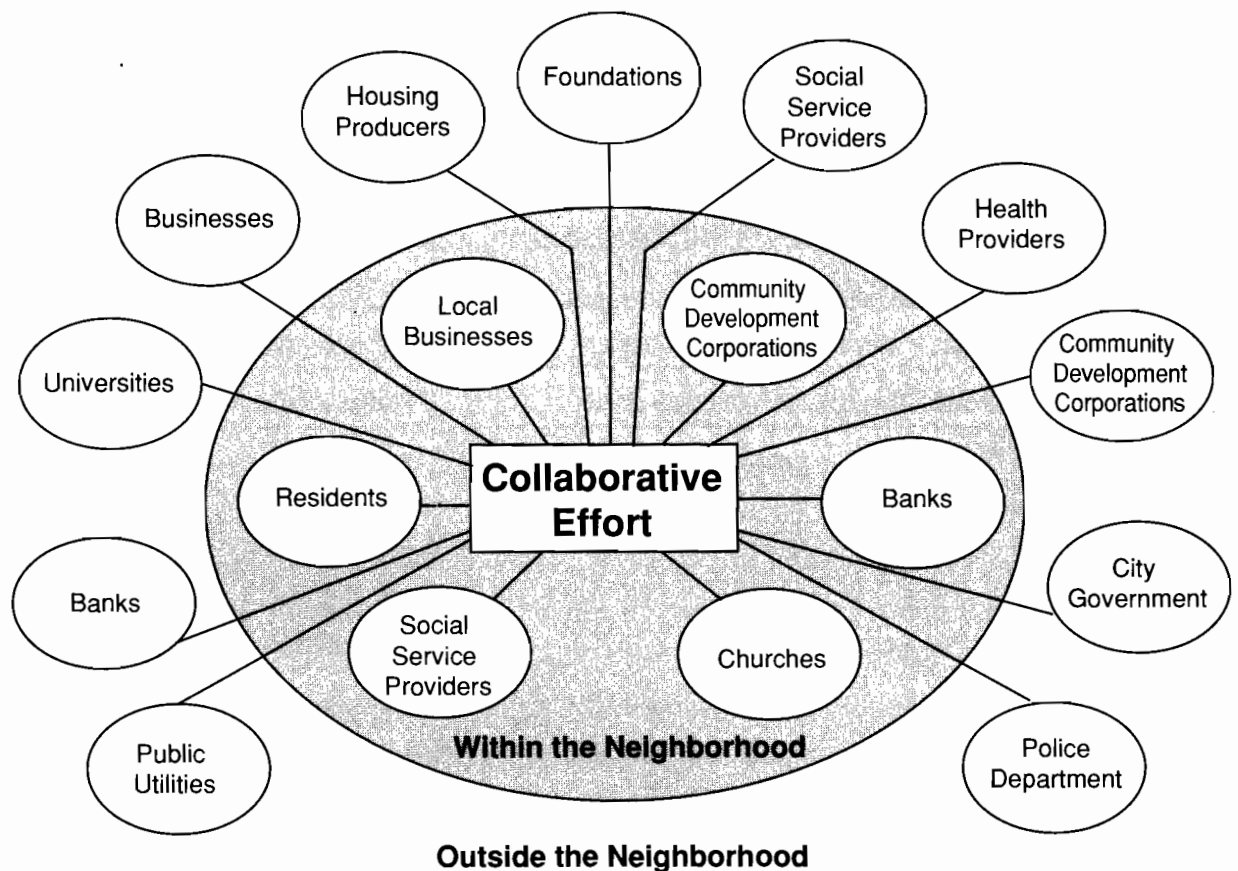
### **“IN FLORIDA, MOST HOUSING PRODUCTION HAS BEEN DONE IN ISOLATION.”**

together, because the current target groups for Florida’s housing programs are lower income families, and these residents are usually the ones who live in distressed communities and have other needs as well.

At the local level, the tool that has the most capacity to bind together different components in a community is the local government comprehensive plan. However, the housing elements of

most local plans are not strongly intertwined with the rest of the plan. Although local comprehensive plans are not necessarily thought of as community revitalization plans, they provide the appropriate arena to pull together many of the important components of what makes a community strong. Not using this tool further sets housing off to be planned and developed in isolation. The State Housing Initiatives Partnership program, or SHIP, has done much to strengthen the community planning framework for housing. However, SHIP plans are required only to address housing and they are often not linked to the more encompassing comprehensive plan.

**FIGURE 3: Stakeholders in Community Revitalization**



SOURCE: U.S. General Accounting Office, *Community Development: Comprehensive Approaches Address Multiple Needs but are Challenging to Implement*, 1995.



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The bottom line is that we must strengthen housing's role as a partner at the community table, and it must be done in such a way that other partners are encouraged to join. At the state level, policies must encourage local governments to be partners in accessing funds to rebuild and maintain their neighborhoods. At the local level, planning efforts must be truly comprehensive and address neighborhoods in need as well as traffic, environmental and regulatory issues. This means looking beyond individual projects to the infrastructure needs of neighborhoods, including roads, basic drainage, water, sewer, parks and schools.

The most likely mechanisms for community revitalization will occur through local initiatives that bring housing providers together with other partners. State policies must be revised to ensure that communities are encouraged to do this.

The Commission urges a new focus aimed at supporting both new and rehab housing in appropriately scaled developments to revitalize neighborhoods. These developments are not intended to be stand alone housing programs. Local governments and communities must show their commitment to community revitalization through:

- Allocation of local resources and developing partnerships of which housing is only one element along with economic development, job creation and training, education, transportation, infrastructure improvements, social services, and others; and

- Reflection of a community revitalization commitment in the local comprehensive plan, with clear linkages throughout the plan.

To support this type of development, the state should promote the use of traditional local government financing strategies, such as tax increment financing, that have seldom been used for residential applications.

Infill developments envisioned within the community revitalization approach would have substantial impacts on small developers, builders and subcontractors. Construction dollars would more likely stay in the community and create new local job opportunities.

Community revitalization should be promoted in urban, rural and suburban neighborhoods and communities, and aimed at both new construction and rehab of housing units. This focus would increase the residency base, provide increased support for local businesses for goods and services, and raise the real estate tax base in those neighborhoods. To implement this policy, community revitalization should be "incentivized" in order to pull together disparate elements needed for a successful, holistic approach.

Based on these findings, the Commission recommends the policy statements below.

### RECOMMENDATIONS

1. ***The state housing policy should focus on overall community revitalization as well as maximizing units produced. Recognizing that housing is just one component of an overall community revitalization strategy, it is critical to create linkages and partnerships with other community revitalization efforts, such as economic development, transportation and infrastructure improvements, education, and job training.***

**Comment:**

- Currently state programs focus mainly on maximizing the number of units produced.

2. ***The state should direct funding and other resources toward infill development that is tied to other community revitalization efforts.***

**Comments:**

- Infill development should be "appropriately scaled" to the neighborhood in which it is being built. This means that its size and design "fits" the community, whether it be urban, suburban, rural, large or small.
- The focus on infill development should be tied to Florida's Sustainable Communities Demonstration Project, which was enacted by the 1996 Legislature to test a more flexible, results-oriented approach to community planning. The strategies of infill development and community revitalization fit well with a number of the principles behind this program. The interest in sustainability results from the belief that today's progress should not be achieved at the expense of future generations. Continued community revitalization is the only way to ensure that communities remain sustainable into the future.



### WORK TOPIC: Funding Priorities

This topic relates to state policies concerning the funding of housing programs and how funds are targeted to meet stipulated priorities. The Commission focused on two sub-issues: revitalization, and demographic and income targeting.

When the Commission looked at how funds for affordable housing are used by the FHFA, it found that programs are efficient. That is, funds are mostly used for production rather than program administration, and many of the programs loan these funds rather than providing them as grants, thus ensuring that some funds will be available for re-use in the future. Funds are also heavily leveraged, meaning that they are used to pull in other private and local funds to help develop housing.

Currently, housing policies target very low- and low-income households, elders, farmworkers and commercial

fishers, large families, and the homeless. However, the extremely low-income households, the ones that require the deepest subsidy, are rarely served by these programs. In this state, housing the 0-30 percent median income households is still considered the purview of housing authorities.

State housing programs also target funds geographically. One approach requires funds to be distributed by population distribution. The other approach targets funds by local economic and neighborhood characteristics. Regularly produced housing market studies help the FHFA determine the target areas from year to year. In some cases, developers are provided with incentives to build developments in difficult to develop areas and qualified census tracts.

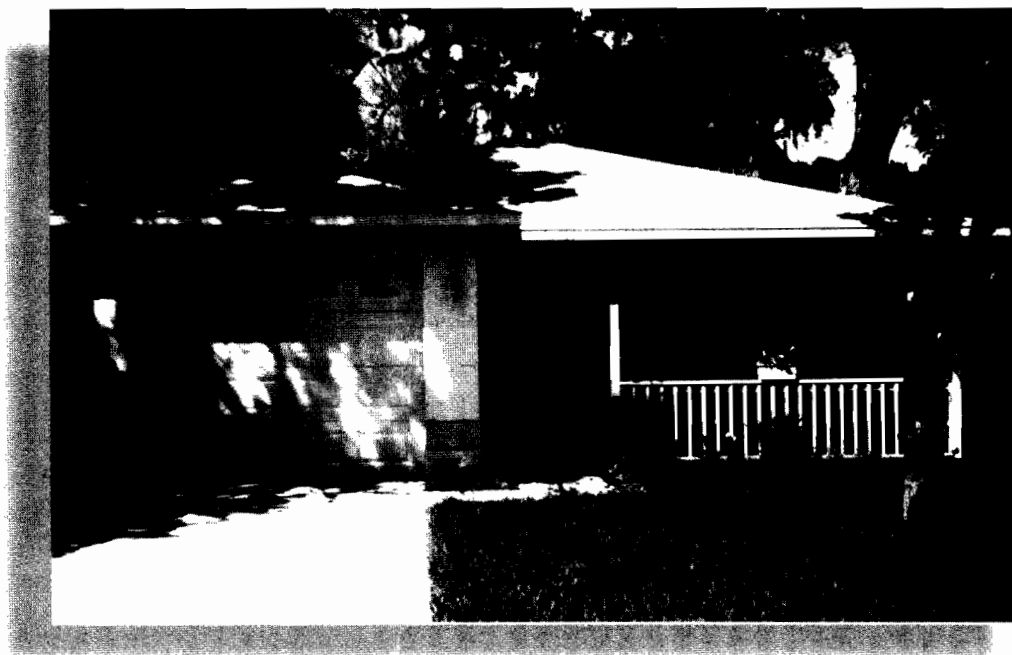
On the issue of revitalization, the Commission found that funds for affordable housing tend to be dispersed

in a vacuum with no attention to the neighborhood surrounding the units. While it is understood that housing dollars can only be spent on housing, the programs themselves are production oriented and not integrated with larger community revitalization efforts.

Only one policy statement is recommended this year. Because the issue of funding relates to all of the other work topics to such an extent, the Commission decided to address funding priorities again at the end of 1998 when all of the topics have been fully addressed.

### RECOMMENDATION

1. *The state should allow developers to openly compete for state funding to provide the highest quality housing across the state without regard to the number of projects any one developer submits.*



# THE AFFORDABLE HOUSING STUDY COMMISSION

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### THE COMMISSION'S 1998 AGENDA: COMPLETION OF THE AFFORDABLE HOUSING POLICY

The interim policy statements just presented may change in 1998 when the final four work topics are covered. The Commission will address the following housing policy topics in 1998:

#### ■ **Obstacles to Affordable Housing**

Includes obstructions to the development of new affordable housing and preservation of existing housing, such as NIMBYism and onerous regulations.

#### ■ **Racial and Economic Integration**

Issues of promoting racial and economic integration in all communities

and within developments themselves. This also includes the integration of people with disabilities and elders as appropriate.

#### ■ **Housing for Special Needs Populations**

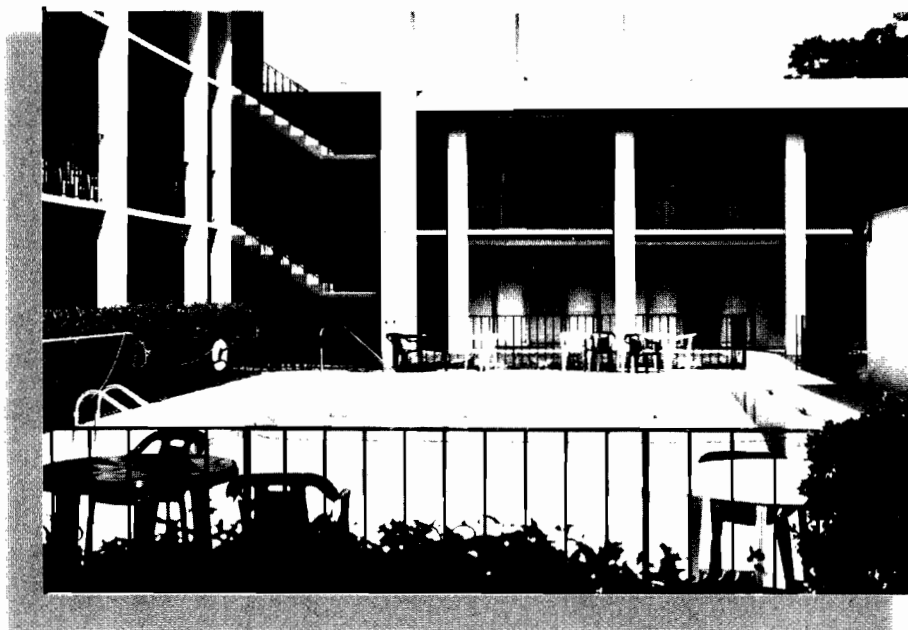
Includes the homeless (including the alleviation and prevention of homelessness), elders, farmworkers and persons with disabilities.

#### ■ **Housing for Households at 0-30 % of Median Income**

This topic will explore the housing need of populations with the greatest financial need, including the role that

local housing authorities do and should play in the provision of housing for Florida's very poorest households.

Once these topics have been covered, the Commission will integrate the recommendations from the 1997 and 1998 topics, understanding that some changes will be necessary to develop a cohesive, integrated policy for presentation to the Governor and Legislature at the end of 1998. The Commission hopes to have continued public involvement in its 1998 discussions.



#### Endnotes:

- <sup>1</sup> Section 420.0003(2), *Florida Statutes*.
- <sup>2</sup> See the Affordable Housing Study Commission's *1996 Final Report* for this evaluation.
- <sup>3</sup> Section 420.0003, *Florida Statutes*.
- <sup>4</sup> Homeless shelter providers will be addressed in 1998 under the "Special Populations" work topic.



FROM A2 R-CELLS

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# APPENDIX

## EXAMPLES OF THE NIMBY SYNDROME IN AFFORDABLE HOUSING

**T**he following case studies provide a sense of the problems that often arise when a developer plans to build affordable housing in a community. Each situation is slightly different, but there are similarities that run through all the cases. Local governments vary in their approaches to NIMBYism—some officials do not let public opposition get in the way of their support for such housing, while other local officials are swayed by the public. Even with NIMBYism, some developments are built without time delays or much greater cost. On the other hand, some developments never get built because of opposition. One thing is certain, however. In most NIMBY situations, the developer spends more money in terms of time delays, human resources and building materials, and/or litigation expenses in order to build affordable housing. The following examples illustrate the common threads of NIMBYism.

### **RENTAL APARTMENTS – LACK OF GOVERNMENT SUPPORT Wyndham Lakes Apartments, Flagler County**

The intersection of Pine Lakes Parkway and Belle Terre Parkway in Palm Coast, Flagler County, was the proposed site for Wyndham Lakes, an affordable apartment community project consisting of 216 units, to be built on 22 acres. About 20 percent of the units were to be rented at market rate, while the remaining units were to be set aside for families with incomes not exceeding 60 percent of area median income. The site for this development was zoned for multi-family residential.

A group of residents constituted themselves into “Citizens Against Wyndham Lakes” to oppose the building of these apartments in their neighborhood. They complained that Flagler County did not need any affordable housing. In addition, they were concerned with the possibility of lowered property values, increased crime and overcrowded schools as a result of the development. They also distributed a petition claiming that the project would provide housing for

criminals, prostitutes and drug users.

After the site plan was reviewed by county planning staff and submitted to the county Planning and Zoning Board for approval, opponents appeared before the Board. As a result, approval of the site plan was tabled, which meant that the developer was unable to meet the funding application deadline set by the Florida Housing Finance Agency.

The public also demanded that the Board of County Commissioners implement a 180-day moratorium on all multi-family development. The developer solicited support for the building of the project from the local affordable housing commission, local newspapers and a local legal council. In spite of all of this, the opponents were successful in stopping the Wyndham Lakes development by convincing the Board of County Commissioners to implement the moratorium. The development is now defunct.



**PLANNED SUBDIVISION – LACK OF GOVERNMENT SUPPORT**  
**Heron Lakes, City of Riviera Beach**

In early 1995, a major homebuilder, a community development corporation (CDC), and a consortium of banks joined forces to develop a planned community of 92 single family homes in the City of Riviera Beach in Palm Beach County. The site of the planned community was two parcels owned by the city. The western parcel abuts a medium-sized public housing apartment complex and the eastern parcel abuts single family housing about twenty to thirty years old with varying levels of deferred maintenance.

The development and financing team approached city staff with a proposal that would result in a community of single family, detached homes ranging from 1,261 to 1,696 square feet with three or four bedrooms, two baths and garages. The community would have a homeowners' association, gated entrance and home sales prices ranging from \$81,000 to \$89,000. The

sales prices were higher than the resale values of single family units in the neighborhood.

The city staff and City Council were pleased with the proposal. The Council granted approval to transfer ownership and title to the CDC in consideration of the CDC applying for state funds to support the development of the project. The city also committed other support in order for the project to be competitive in the application for state funds. However, when the city staff later reviewed the application which had been successfully submitted to the state, they disagreed with the fact that the units were to be sold to low- and moderate-income buyers.

The development and finance team attempted to counter the staff's new opposition by presenting income data. The units in the community were to be sold to families earning 50 and 60

percent of county median income, i.e., very low- and low-income. In Palm Beach County, the median income at that time was \$48,000. As such, in real income, 50 percent of the median was \$24,000 and 80 percent was \$38,400. The census tract where the proposed development was to be located had a median income of only \$19,000. Therefore, 50 percent of county median was still \$5,000 over the neighborhood's median income. The development would have raised the neighborhood's median income.

The city staff and later the City Council by virtue of staff insistence requested that the land be returned to the city on the basis that they did not want "low- and moderate-income" persons in their community. In spite of the facts, the staff and Council were fixated on the term "low-income" which was only used in the application for state funds, and at a later public hearing, the Council rescinded its monetary support.

**RENTAL HOUSING – LACK OF GOVERNMENT SUPPORT**  
**Pueblo Bonito, Lee County**

Pueblo Bonito was started in 1994 by Partnership in Housing, Inc. (PIH), a nonprofit corporation, in response to a growing need for affordable, adequate rental housing for farmworkers in the Bonita Springs area in Lee County. A 26.5 acre parcel, located next to Imperial Harbor, a senior citizen mobile home community, was picked for the development. This is an urban area serviced with shopping, school and other public amenities. The project includes 150 units, a combination of duplexes and single family homes of two, three and four bedrooms, to be completed in the year 2000.

Opposition arose immediately when PIH presented the proposed development at a community meeting.

Opponents complained about possible adverse impacts of Pueblo Bonito on the social, racial and economic stability of their neighborhood. They used various methods of protest, including picketing, threats, letter-writing campaigns to local lawmakers and newspapers, and fund-raising activities to fight the development.

The Pueblo Bonito site was originally zoned for a maximum of 70 mobile homes. PIH filed a request for a rezoning from mobile home to residential multiple family. In a three-to-two vote, county commissioners rejected the rezoning request. As a result, prospective residents of Pueblo Bonito filed a fair housing discriminatory complaint with HUD against Lee County on the grounds of racial,

national and familial status implications of the opposition. HUD referred the case to the U.S. Department of Justice.

Once the rezoning to residential multiple family request was turned down, PIH requested a special master hearing under the Land Use and Environmental Dispute Resolution Act, section 70.51. *F.S.*, to have the parcel rezoned to Residential Planned Development (RPD). Based on a special hearing master's recommendation, the Board of County Commissioners voted at a public hearing to approve the RPD rezoning. PIH has purchased the land, is waiting for a development order from the Lee County Commission, and expects to break ground for the project in December 1997. According to PIH, the Department of Justice has closed the case.



## RENTAL APARTMENTS – LACK OF GOVERNMENT SUPPORT

### Lakeview, City of Miami

Lakeview is a completed 40-unit rental development on three acres in Miami targeted to families with incomes between 40 and 60 percent of the area median family income. Greater Miami Neighborhoods, Inc. (GMN) purchased the property at a bargain price with the infrastructure and site plan approval in place for the third phase of a previous condominium development. GMN then requested a variance to the existing approved site plan to allow an additional eight units on the site.

The GMN proposal soon ran into organized opposition. In an effort to resolve controversies GMN met with

organized opposition groups. At the meeting, GMN presented details about the site plan, property management and tenant selection criteria. Once it was clear to the opponents that the development would have Section 8 tenants, most of them seemed to stop listening. One woman stated that “she had come a long way to leave those people behind.” The developer believed that the meeting harmed the progress of the development, because it served as a forum for opponents to get fence-sitters over to their side.

When the developer requested an extension of GMN’s funding, the County Commission, learning about the opposition to the project, denied the request, and the developer lost \$1 million in guaranteed funds. GMN then withdrew its variance application, filed for replacement financing at the state level, and received recaptured State Incentive Apartment Loan money. Within nine months GMN had adequate funds to move ahead with the project, and it was completed in 1992. Since completion Lakeview has won the acceptance and approval of the neighbors who formerly opposed it.

## RENTAL APARTMENTS – LACK OF GOVERNMENT SUPPORT

### Atlantic Pines, Big Pine Key

Atlantic Pines is a clustered development of 14 rental units on a four-acre site on Big Pine Key. It was developed to provide much needed affordable housing for farmworkers, fishers and their families with incomes up to 80 percent of the area median income.

When the developer initiated the development process, the Monroe County planning staff reviewed the site plan and found it to be in compliance with local regulations. Since the site area fell within the state designated Area of Critical State Concern, the plan required state approval and this was also received. In anticipation of residents’ concerns, the developer held workshops on the development

which were attended by about 75 people, all opposed to the project. At the workshops, the developer discussed how the development would be made attractive and compatible with the surrounding neighborhood. He also explained the tenant screening process. According to the developer, those attending the workshops refused to listen to his side of the story. The developer also called local newspapers to explain the project.

Residents believed that the development would attract criminals, be incompatible with surrounding neighborhoods, reduce property values in the area, and become an instant slum. These fears caused the develop-

ment to be rejected by the Monroe County Planning Board first and then, on the developer’s appeal, by the Board of County Commissioners. The case went to the district court which ultimately approved the development order.

Delay caused by litigation increased the cost of the project by \$20,000 in legal fees. In addition, Hurricane Andrew hit during the litigation period, and building and landscaping materials valued at \$60,000 were lost. Since the completion of the project in 1993, many who originally opposed the development have told the developer that Atlantic Pines has turned out to be attractive and well maintained.





## **RENTAL APARTMENTS – LACK OF GOVERNMENT SUPPORT**

### **Ospreys Landing, Collier County**

Ospreys Landing is a 176-unit joint venture development on 20 acres in Collier County, about three miles outside of Naples. The apartments were completed in 1994, with units rented to families with incomes less than 60 percent of area median income. The property abuts upscale retirement neighborhoods with home values ranging from \$100,000 to \$300,000.

According to the developer, RTG Properties, the site development and design standards were consistent with Collier County's land development

requirements, and a staff recommendation for rezoning approval was obtained. However, the County Commission denied the rezoning and the site plan approval. The commissioners' decision was influenced by opposition mounted by nearly 100 residents of nearby Moon Lake subdivision. At a neighborhood meeting, RTG Properties demonstrated how the development would be compatible with the surrounding neighborhoods, but the opponents vehemently rejected the plan to have a low-income apartment complex in

their backyard. This was a classic case of NIMBYism: the opposing residents argued that they understood the need for affordable housing in the county and would support development of such units, they just did not want them to be built near their properties.

RTG Properties sued the Collier County Commission for denying the development order petition and won the case. As a result of the opposition, RTG Properties lost \$85,000 in legal fees and the project was delayed for two and one half years.

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## **RENTAL APARTMENTS – WHERE LOCAL GOVERNMENT SUPPORT OVERCAME NEIGHBORHOOD OPPOSITION**

### **Woodbury Apartments, City of Bradenton**

Woodbury Apartments is an affordable housing development on 27 acres in Bradenton. The project consists of 270 rental units for families whose incomes do not exceed 60 percent of area median income. Woodbury's site did not require a rezoning because the site was zoned for multi-family residential, with up to ten housing units per acre. The site plan was reviewed by the staff of the City Planning and Zoning Department, and approved by the City Council.

Woodbury Apartments is sited in a neighborhood consisting of single family homes, where home values range from \$75,000 to \$200,000. When the developer of the apartments met with neighborhood groups and the homeowners' association to introduce

the development, fierce opposition to the project arose, including physical threats. Opponents complained that the apartments would lead to depreciation in property values, increased crime, and overcrowded schools in their neighborhood. They picketed the City Council meeting where approval of the site plan was requested and threatened to sue if the development was approved.

With the support of local elected officials, including the city mayor, the City Council, and the National Association for the Advancement of Colored People (NAACP), the developer took a legal action in order to meet the deadline to close the construction loan for the project. As a result, the developer received an

injunction to stop neighborhood opposition to the development. One year later, after expending thousands of dollars in legal fees, the suit was settled. Woodbury Apartments, built with tax credits under the Low Income Housing Tax Credit program, was completed in December of 1995 and is currently 95 percent leased.

Several neighbors who were originally opposed to the development now have friends or relatives living at Woodbury. Another neighbor who was opposed to the apartments recently appeared in the NIMBY video produced by the Affordable Housing Study Commission to encourage others to support such housing.



**RENTAL APARTMENTS – WHERE LOCAL GOVERNMENT SUPPORT OVERCAME NEIGHBORHOOD OPPOSITION**  
**Willow Brook Village, City of Melbourne**

Willow Brook Village is a completed rental development on six acres of land in Melbourne. The 56 apartment units are targeted at very low- and low-income families.

When the development was initiated, homeowners of surrounding upscale neighborhoods argued that it would attract crime, add congestion to the area and lower property values. The opponents voiced their concerns and opposition to the development by writing to city officials and neighbors in the surrounding developments. In

response to this opposition the developer, Community Housing Initiative Trust, Inc. (CHIT), organized a public meeting with concerned residents of neighboring areas, informing them about the construction and management details of the project. CHIT believes that only a few of the 60 people who attended this meeting were convinced by the information shared with them.

The proposal met with all local comprehensive plan requirements and land development regulations. It

received site plan approval from the Melbourne City Council in 1994 and construction work started soon after. In effect, opposition did not really slow it down. The project, funded by SAIL funds, was completed in December 1996.

Currently, the apartments are fully occupied. Since completion Willow Brook Village has won the acceptance of the neighbors who formerly opposed it.

**RENTAL HOMES AND DUPLEXES – WHERE LOCAL GOVERNMENT SUPPORT OVERCAME NEIGHBORHOOD OPPOSITION**  
**City of Sanibel**

Because of high land and transportation costs, and the need for construction techniques that provide storm protection, housing costs on Sanibel Island tend to be well above the national average, and builders develop homes for the well-off. As a result, the Sanibel comprehensive plan identified a growing shortfall of moderate-, low- and very low-income housing on the island.

In April 1983, Sanibel created a below market rate housing (BMRH) program to provide rental housing opportunities for residents who cannot afford high-priced market units in the city. The program is administered by a non-profit private housing foundation, Community Housing and Resources, Inc. (CHR). Homes built under the program must be identical with existing market rate units in the neighborhood and meet all building requirements applicable to the area.

The program units must be on scattered sites rather than clustered together.

Currently, 42 rental units have been built under the program, with an additional twelve units planned for the coming year. The units consist of duplexes and single family homes at nine different locations. Under the city's comprehensive plan, a total of 100 units will be constructed under the program, to be completed by the year 2010.

A group of about five residents, the Responsible Housing Committee of Sanibel, opposed the BMRH program for over ten years, spreading misleading information about the program. The group argued that the state does not require Sanibel to provide BMRH within the city limits; that BMRH units are too close to one another, creating the appearance of low-income neighborhoods, thus devaluing

neighborhood property; and that the program would be more cost-effective if the city administered it. Unable to convince the City Council over the years to agree with its viewpoint, the group proposed an amendment to the City's charter which would have had the effect of doing away with the BMRH program. Fortunately, the amendment was overwhelmingly defeated by island voters.

The only difference between the units built by CHR and those built by other developers on the island is the socio-economic status of the residents. The CHR units are occupied by working people, some who may have grown up on the island and cannot afford to live in the now exclusive area without a housing subsidy. The Sanibel NIMBY problem is an example of opposition to identical housing being made available to people of the same race, but of lower socio-economic status.



# APPENDIX

## FAIR SHARE HOUSING PROGRAMS

**F**air share housing programs are intended to equitably distribute affordable housing for low-income persons throughout a region or state. Primarily they aim to increase the development of affordable housing in areas with greater economic opportunities, such as suburban communities. Fair share housing programs currently being applied in various states can be broadly classified into three categories.

### **CATEGORY 1: Mandatory Statewide Fair Share Programs**

In 1985, the New Jersey Legislature passed the Fair Housing Act, which provided a comprehensive planning and implementation process for affordable housing, and established the Council on Affordable Housing. The Council was given the power to define housing regions and estimate the present and prospective need for low- and moderate-income housing at state and regional levels. Using the Council's guidelines, municipalities are required to determine their share of the regional housing need. To meet local fair share allocations, the state's housing law encourages local governments to rezone land at higher densities. Local governments adopting housing elements that meet regulatory requirements receive "substantive certification." These localities then have special taxing and financial privileges. In the period 1987-95, approximately 15,510 affordable units were built, rehabilitated, or approved for construction in the state.

In California, total state housing need is determined by the state Department of Housing and Community Development. Regional Councils of Governments (COGs) develop regional housing need figures. Local governments and COGs then determine each jurisdiction's share of the regional housing need. State law requires that local governments use zoning to designate sufficient buildable land at

adequate densities to accommodate low-income housing. The state does not track the number of affordable units produced as a result of its fair share laws.

The main advantage of the state mandated approach is that it distributes the responsibility for affordable housing throughout the state in an equitable way. The main disadvantage is the weightiness of the process. The adoption of fair share legislation, developing the often complex allocation formulas, and getting regional and local acceptance could be very time consuming and potentially unpopular.

### **CATEGORY 2: Voluntary Regional Fair Share Programs**

Connecticut's Fair Housing Compact Pilot Program was enacted in 1988 for the Hartford and Bridgeport regions. The Act required community representatives within each region to negotiate a compact by which all parties agree to numeric affordable housing goals, both for the entire region, as well as for each jurisdiction. The state, through the use of incentives, sought to stimulate municipalities to reach voluntary agreements on fair share allocations of affordable housing. The three primary incentives provided were: 1) bonus points under several competitive housing programs, 2) protection from the state land use appeals law, and 3) infrastructure trust fund money for local governments.

Under the Hartford Compact, between July 1989 and March 1995 a total of 4,657 affordable "housing opportunities" (new and rehabilitated units, and mortgage and rental assistance for existing units) were created which exceeded the region's minimum five-year goal. However through the Bridgeport Compact, only about 250 affordable units were produced during 1990-95, against a goal of 3,000 units. This low achievement rate is partly explained by the reduced incentive for local government participation because the infrastructure trust fund was unfunded.

The advantages of this approach are: 1) state incentives provide motivation for communities to participate; 2) the fair share affordable housing allocations can respond to regional housing market conditions; and 3) the allocation mechanisms can be less cumbersome than in the mandatory approach since the allocations are arrived at by negotiation. A disadvantage of this approach is that the state's total affordable housing need may not be adequately addressed.

### **CATEGORY 3: Local Policies for the Equitable Distribution of Locally Unpopular Land Uses**

The City of Tampa adopted a Minority Affairs Element in 1994 as part of its local comprehensive plan. This element contains a goal with supporting objectives and policies for the equitable distribution of locally



## APPENDIX

### FAIR SHARE HOUSING PROGRAMS

unpopular land uses, which includes group homes and public housing in addition to power plants, transmission lines and landfills. Although these provisions have never been used as a means to site affordable housing, tenant organizations and affordable housing providers could potentially

use them to support the siting of affordable housing.

An advantage of this approach is that it recognizes the negative impacts on low-income people resulting from combining high concentrations of low-income housing, unsightly land uses and land uses that pose environ-

mental risks. The main disadvantage to this approach is that it labels affordable housing as an undesirable land use, casting it in a negative light. In addition, no actual process has been developed to apply the standards of this provision to the distribution of affordable housing sites.

## PROPOSED REVISIONS TO THE FAIR HOUSING ACT

### Chapter 760, PART II, Florida Statutes

*[Note: not all sections of the act are included here.]*

**760.20 Fair Housing Act; short title.** — Sections 760.20-760.37 may be cited as the “Fair Housing Act.”

History: s. 1, ch. 83-221.

**760.21 State policy on fair housing.** — It is the policy of this state to provide, within constitutional limitations, for fair housing throughout the state.

History: s. 2, ch. 83-221.

**760.23 Discrimination in the sale or rental of housing and other prohibited practices.**—

(1) It is unlawful to refuse to sell or rent after the making of a bona fide offer, to refuse to negotiate for the sale or rental of, or otherwise to make unavailable or deny a dwelling to any person because of race, color, national origin, sex, handicap, familial status, source of income or religion.

(2) It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, national origin, sex, handicap, familial status, source of income or religion.

(3) It is unlawful to make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, national origin, sex, handicap, familial status, source of income or religion or an intention to make any such preference, limitation, or discrimination.

(4) It is unlawful to represent to any person because of race, color, national origin, sex, handicap, familial status, source of income or religion that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(5) It is unlawful, for profit, to induce or attempt to induce any person to sell or rent any dwelling by a representation regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, national origin, sex, handicap, familial status, or religion, or based on their source of income.

(6) The protections afforded under ss. 760.20-760.37 against discrimination on the basis of familial status apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

(7) It is unlawful to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of:

- (a) That buyer or renter;
- (b) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or
- (c) Any person associated with the buyer or renter.

(8) It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of:

- (a) That buyer or renter;
- (b) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or
- (c) Any person associated with the buyer or renter.

(9) For purposes of subsections (7) and (8), discrimination includes:

- (a) A refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such



modifications may be necessary to afford such person full enjoyment of the premises; or

- (b) A refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

(10) Covered multifamily dwellings as defined herein which are intended for first occupancy after March 13, 1991, shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site as determined by commission rule. Such buildings shall also be designed and constructed in such a manner that:

- (a) The public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons.
- (b) All doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by a person in a wheelchair.
- (c) All premises within such dwellings contain the following features of adaptive design:
1. An accessible route into and through the dwelling.
  2. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations.
  3. Reinforcements in bathroom walls to allow later installation of grab bars.
  4. Usable kitchens and bathrooms such that a person in a wheelchair can maneuver about the space.

(d) Compliance with the appropriate requirements of the American National Standards Institute for buildings and facilities providing accessibility and usability for physically handicapped people, commonly cited as ANSI A117.1-1986, suffices to satisfy the requirements of paragraph (c).

State agencies with building construction regulation responsibility or local governments, as appropriate, shall review the plans and specifications for the construction of covered multifamily dwellings to determine consistency with the requirements of this subsection.

History: s. 5, ch. 83-221; s. 2, ch. 84-117; s. 2, ch. 89-321.

#### **760.24 Discrimination in the provision of brokerage services.—**

It is unlawful to deny any person access to, or membership or participation in, any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership, or participation, on

account of race, color, national origin, sex, handicap, familial status, or religion.

History: s. 7, ch. 83-221; s. 3, ch. 84-117; s. 3, ch. 89-321.

#### **760.25 Discrimination in the financing of housing or in residential real estate transactions.—**

(1) It is unlawful for any bank, building and loan association, insurance company, or other corporation, association, firm, or enterprise the business of which consists in whole or in part of the making of commercial real estate loans to deny a loan or other financial assistance to a person applying for the loan for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him in the fixing of the amount, interest rate, duration, or other term or condition of such loan or other financial assistance, because of the race, color, national origin, sex, handicap, familial status, or religion of such person or of any person associated with him in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance, or because of the race, color, national origin, sex, handicap, familial status, or religion of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given.

(2) (a) It is unlawful for any person or entity whose business includes engaging in residential real estate transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, national origin, sex, handicap, familial status, or religion.

(b) As used in this subsection, the term "residential real estate transaction" means any of the following:

1. The making or purchasing of loans or providing other financial assistance:
  - a. For purchasing, constructing, improving, repairing, or maintaining a dwelling; or
  - b. Secured by residential real estate.
2. The selling, brokering, or appraising of residential real property.

History: s. 6, ch. 83-221; s. 4, ch. 84-117; s. 4, ch. 89-321; s. 17, ch. 90-275.

#### **760.26 Discrimination in land use decisions and permitting of development. — It is unlawful to discriminate in land use decisions and, or, the permitting of development based on race, color, national origin, sex, handicap, familial status, source of income, religion, or based on source of financing of a development or proposed development.**





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