

FLORIDA HOUSING FINANCE CORPORATION

Board Meeting

September 10, 2021

Action Items



LEGAL

Action

I. LEGAL

A. In Re: Kelsey Cove, Ltd – FHFC Case No. 2021-054VW

Development Name: (“Development”):	Kelsey Cove
Developer/Principal: (“Developer”):	TVC Development, Inc. James R. Hoover
Number of Units: 108	Location: Hillsborough County
Type: New Construction / Garden Apartments	Set Asides: 17 units @ 30% AMI 50 units @ 60% AMI 51 units @ 70%
Demographics: Family	Funding: 9% HC: \$2,000,000

1. Background

- a) Kelsey Cove, Ltd (“Petitioner”) successfully applied for an award of competitive Housing Credits under Request for Applications 2020-202 (the “RFA”) to assist in the construction of a 108-unit family development in Hillsborough County called Kelsey Cove.
- b) On August 20, 2021, Florida Housing received a Petition for Waiver of Rule 67-48.0075(3)(a), F.A.C. from Petitioner. A copy of the Petition is attached as [Exhibit A](#).

2. Present Situation

- a) Petitioner is seeking a waiver Rule 67-48.0075(3)(a), Fla. Admin. Code (2020), which provides in relevant part:
 - (3) Total Development Cost includes the following:
 - (a) The cost of acquiring real property and any buildings thereon, including payment for options, deposits, or contracts to purchase properties, of which the total cost cannot exceed the appraised value of the real property as determined in the credit underwriting process.
 - b) Petitioner seeks a waiver of the requirement in Rule 67-48.0075(3), F.A.C., that Total Development Cost for the cost of acquiring real property cannot exceed the appraised value of the real property. Petitioner seeks to have the Total Development Cost include the cost of acquiring the real property at the full purchase price.
 - c) Petitioner was selected to receive competitive housing tax credits under RFA 2020-202, Housing Credit Financing for Affordable Housing Developments Located in Broward, Duval, Hillsborough, Orange, Palm Beach, and Pinellas Counties. The site control documentation submitted with its application indicated that the purchase price of the property was \$3,240,000, and Petitioner asserts that this is the price actually paid for the property. During credit

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underwriting, an appraisal was conducted in accordance with Rule 67-48.0072(10), and the appraised value of the property was \$2,160,000.

- d) RFA 2020-202 had a funding goal to fund one Family Development that qualifies for the Geographic Areas of Opportunity/SADDA Funding Goal in Hillsborough County. Petitioner asserts that the negotiated purchase price reflects the value that the market placed on the Property due in large part to the limited number of properties in Hillsborough County that satisfy the Geographic Areas of Opportunity/SADDA funding criteria. Petitioner has not requested a new appraisal or requested a review of the appraisal.
- e) Rule 67-48.0072(10) provides in relevant part:
 - (10) For Competitive HC, SAIL, and HOME Applicants, an appraisal report conforming to the Uniform Standards of Professional Appraisal Practice in effect at the time of the appraisal and reported in a comprehensive format, and a separate market study shall be ordered by the Credit Underwriter, at the Applicant's expense, from an appraiser qualified for the geographic area and development type not later than completion of credit underwriting. The Credit Underwriter shall review the appraisal to properly evaluate the development property's financial feasibility.
- f) Petitioner asserts that the appraised value does not reflect the market value of the property, but Petitioner does not allege that the appraisal report did not conform to the Uniform Standards of Professional Appraisal Practice or otherwise did not meet the requirements of Rule 67-48.0072(10). Petitioner also asserts that because there are several different ways that the ultimate allocation of tax credits can be calculated, the Corporation will not be prejudiced by the grant of this Petition.
- g) Section 42(m) of the Internal Revenue Code requires Florida Housing to provide no more housing credits than deemed necessary to ensure the project's financial feasibility throughout the 15-year compliance period. The Code also requires Florida Housing to consider the reasonableness of the developmental cost of the project.
- h) Florida Housing administers its 42(m), I.R.C. obligation through Rule 67-48.0072(28)(e), which provides in relevant part:
 - (e) If the Credit Underwriter is to recommend a Competitive Housing Credit Allocation, the recommendation will be the lesser of:
 - 1. The qualified basis calculation result,
 - 2. The gap calculation result¹, or
 - 3. The Housing Credit award considered in the Application.

¹ The gap calculation result is the difference between the project's Total Development Cost and the financing (other than equity raised through the housing credits and deferred developer fee.)

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- i) Petitioner is correct that if the actual purchase price of the land is considered in the Total Development Cost instead of the appraised value of the land, the gap calculation result will be higher than the result if appraised value is used. Under this scenario, the credit allocation based on the gap calculation would be higher than that of the qualified basis calculation and the Housing Credit award considered in the Application; therefore, the credit allocation would be determined by one of these two methods and not the gap calculation. Conversely, if the appraised value is considered in the Total Development Cost, based on preliminary numbers, the gap calculation would be the lowest of the three tests, showing that the Petitioner needs less credits than applied for to make the Development financially feasible, and would therefore return the excess credits to Florida Housing for re-allocation.
- j) Petitioner argues that the Corporation has a safeguard in the above referenced test; however, the result risks the potential of developments receiving more credits than necessary to be economically feasible, with the consequence that public funds end up being de facto used to compensate for land purchase price above appraised value. Waiving the Rule could have the effect, intended or not, of weakening Florida Housing's ability to guard against the intentional inflation of land costs at taxpayer expense.
- k) On August 23, 2021, the Notice of Petition was published in the Florida Administrative Register in Volume 47, Number 163. To date, Florida Housing has received no comments concerning the Petition.
- l) Section 120.542(2), Florida Statutes provides in pertinent part:

Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.
- m) Granting the requested waiver could impact other participants in funding programs administered by Florida Housing, and could have a detrimental impact on Florida Housing and the public. Petitioner has not demonstrated that compliance with the above Rules under these circumstances would constitute a substantial hardship or would violate principles of fairness. Petitioner has not demonstrated that the purpose of the underlying statute, which is to "establish procedures necessary for proper allocation and distribution of low-income housing tax credits" and to "ensure the maximum use of available tax credits in order to encourage development of low-income housing in the state" (§420.5099, Fla. Stat.), would still be achieved if the waiver is granted.

3. **Recommendation**

- a) Staff recommends the Board **DENY** Petitioner's request for a waiver of Rule 67-48.0075(3)(a), Fla. Admin. Code (2020).

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Action Supplement

I. LEGAL

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Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.
- m) Granting the waiver as requested could impact other participants in funding programs administered by Florida Housing, and could have a detrimental impact on Florida Housing and the public; however, upon continued communication between the Petitioner and the Corporation since the filing of the Petition, both parties agree that Petitioner has demonstrated substantial hardship would occur with application of the rule and that the purpose of the underlying statute, which is to "establish procedures necessary for proper allocation and distribution of low-income housing tax credits" and to "ensure the maximum use of available tax credits in order to encourage development of low-income housing in the state" (§420.5099, Fla. Stat.), would still be achieved if the waiver is granted on the following additional conditions being met at underwriting and final cost certification:
 - (1) The cost of acquiring real property and any buildings thereon, including payment for options, deposits, or contracts to purchase properties that exceeds the appraised value for the property will be included as a line-item development cost and included in the Total Development Cost Per Unit calculation, and the inclusive total cost amount is subject to the applicable Total Development Cost Per Unit limitation process;

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- (2) The development remains a 9% Competitive Housing Credit Award without any other corporation allocated resources associated with the Housing Credit Development; and
- (3) The Applicant and Developer provide must verified affidavits that there is no affiliation between any principals or affiliates of the principals of the Applicant and Developer and the seller or any affiliate of the seller of the subject property as well as no agreements, other than the purchase contract, between the Applicant and Developer and the seller or any affiliate of the seller of the subject property.

3. **Recommendation**

- a) Staff recommends the Board **GRANT** Petitioner's request for a waiver of Rule 67-48.0075(3)(a), Fla. Admin. Code (2020) upon the aforementioned conditions being met.

MULTIFAMILY PROGRAMS

Action

I. MULTIFAMILY PROGRAMS

A. Request Approval to Reserve Corporation Funds for Development Viability Request for Applications

1. Background/Present Situation

- a) Florida, along with the rest of the United States, is experiencing a strong real estate construction boom that escalated in 2020, continuing through 2021. The demand for building materials has increased accordingly. However, various material supply chains and their labor forces have experienced prolonged shortages creating stress in the supply and demand equilibrium nationwide, which has continued into 2021. Construction costs have been increasing over this period with such uncertainty about future prices that construction contracts have escalated at an unprecedented pace. Finalizing general contractor construction contracts has been difficult and once contract pricing has been determined, current pricing has proven to increase at a greater pace than expected at the time certain Request for Applications (RFAs) were issued.
- b) There are many Applicants that applied to Florida Housing for funding since 2018 and have received an Active Award but have not yet started construction or rehabilitation of their proposed developments. Applicants have indicated that due to the volatile market circumstances and without any reasonable assurance of market stabilization, awards in the pipeline are experiencing issues that include funding gaps impacting the feasibility of developments.
- c) As proposed development costs are being finalized, developers are required to address the need to obtain additional funding sources as well as the need to comply with RFA and administrative rule requirements. Florida Housing distributed a voluntary survey in June 2021, seeking pro forma information for developments in the pipeline to gauge the scope of issues in order.
- d) Staff reviewed unique survey data from over 76 developments, reviewing the proposed gap funding to be requested, funding shortfalls indicated by the developer, and the level of percent deferred developer fee proposed. The responses ranged broadly, as some submitted responses were for developments that have just recently been invited to enter credit underwriting and do not have completed plans or a schedule of values, while some developments are through underwriting with plans completed. Some indicated affirmatively that they are experiencing funding gaps, and some indicated it is unknown at this point. Staff reviewed the responses to identify potential solutions for the development community that maintain the viability of developments in the pipeline and facilitate the delivery of units in a timely and cost-effective manner. Since distributing the survey, some developments have successfully completed underwriting approvals or closed transactions, and no longer need gap loan funding.
- e) To maintain the scope of the developments as committed in the original Applications and to address potential gaps for these awards that cannot be handled through deferred developer fee, value engineering or other sources alone, staff proposes the reservation of \$20 million of Corporation funding from unrestricted net position, to provide 0% loans due at maturity to cover identified funding gaps for those 9% LIHTC and SAIL/RRLP projects in the development

MULTIFAMILY PROGRAMS

Action

pipeline, over the next few months so the developments remain viable¹. It should be noted that there is potential that there may not be enough source available to fund all developments seeking gap financing, and there is also potential that not all developments will be able to meet suggested program requirements.

- f) Guiding requirements and criteria regarding this funding would be:
- (1) 40% minimum deferred developer fee would be a condition of applying for the funding.
 - (2) Applicants must have a current letter of intent from an equity provider.
 - (3) If the credit pricing is offered with “upward adjusters”, and those adjusters result in a better credit pricing situation in the end, the “gain” would have to be used to pay down the FHFC viability loan principal.
 - (4) Awards will have a per development and a per unit limit on funding.
 - (5) Consider limiting the total amount of loan funding to any one developer.
 - (6) Employ a conservative approach to the allocation of these funds, the need would be determined and sized in credit underwriting; our expectation would be that they exhaust all possible opportunities for other funding sources first, e.g., Surtax/local government funds.
 - (7) Funding will be available to all developments in the pipeline that have not yet commenced construction or closed on funding.
 - (8) Successful Applicants will be required to complete underwriting by their original due dates, or no later than 6 months from the date of the viability loan award. Successful Applicants will be required to close on financing by their original due dates, or no later than 6 months from the date of the underwriting approval/update.
 - (9) Tiebreakers for funding selections will include, but are not limited to, 1) the amount of new non-corporation funding commitments Applicants demonstrate that have been added to the transaction since the original application pro forma; 2) the amount of viability loan funding request per unit produced.
 - (10) The principals of successful Applicants will be limited to submitting Priority II Applications in the 2022-2023 cycle 9% Housing Credit Competitive Geographic RFAs. Successful Applicants will also be precluded from submitting Self-Sourced Applications in the 2022-2023 cycle SAIL Family/ Elderly RFA. Successful Applicants principals are otherwise eligible to fully participate in all RFAs and the Noncompetitive Application.

¹ Active awards in the Pipeline with HOME funding will be handled separately within the HOME program. Staff is still reviewing the program requirements of the CDBG-DR program for appropriate solutions for the CDBG-DR developments in the pipeline. Such analysis will determine whether CDBG-DR Applications will be eligible for this viability loan funding.

MULTIFAMILY PROGRAMS

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- g) Staff plans to workshop this concept on September 22, 2021 to further develop the application criteria and make it available through an RFA with a tentative issue date of October 12, 2021 and Application Deadline of November 2, 2021. Staff plans to hold the Review Committee Meeting on November 18, 2021, with preliminary awards being presented at the December 2021 Board meeting.

2. Recommendation

- a) Approve a reservation of \$20 million in Corporation funding for use in a competitive gap funding loan program and to authorize staff to develop, workshop, and issue the Development Viability loan funding RFA.

PROFESSIONAL SERVICES SELECTION (PSS)

Action

I. PROFESSIONAL SERVICES SELECTION (PSS)

A. Request for Qualifications (RFQ) 2021-03 for Management Company Services

1. Background

- a) At the June 18, 2021 meeting, the Board authorized Florida Housing staff to issue a competitive solicitation for Management Company Services and authorized the Executive Director to establish a Review Committee to make a recommendation to the Board.

2. Present Situation

- a) Request for Qualifications (RFQ) 2021-03 was issued on June 21, 2021. The deadline for receipt of responses was 2:00 p.m., July 21, 2021. A copy of the RFQ is provided as [Exhibit A](#).
- b) One response was received by the deadline from Royal American Management, Inc.
- c) Members of the review committee were Todd Fowler (Chairperson), Special Assets Director; Allison Files, Special Assets Manager/Closing Coordinator; and David Hines, Compliance Monitoring Administrator.
- d) Each member of the Review Committee individually reviewed the proposal prior to convening for the Review Committee meeting which was held at 10:00 a.m., Wednesday, August 4, 2021.
- e) At the August 4th meeting, the Review Committee provided final scores for the response. The score sheet is provided as [Exhibit B](#).

3. Recommendation

- a) The Review Committee recommends that the Board authorize Florida Housing to enter into contract negotiations with Royal American Management, Inc.

PROFESSIONAL SERVICES SELECTION (PSS)

Action

B. Request for Qualifications (RFQ) 2021-04 for Technical Assistance Provider Services

1. Background

- a) At the June 18, 2021 meeting, the Board authorized Florida Housing staff to issue a competitive solicitation for Technical Assistance Provider Services and authorized the Executive Director to establish a Review Committee to make a recommendation to the Board.

2. Present Situation

- a) Request for Qualifications (RFQ) 2021-04 was issued on June 22, 2021. The deadline for receipt of responses was 2:00 p.m., July 22, 2021. A copy of the RFQ is provided as [Exhibit C](#).
- b) One response was received by the deadline from the Florida Housing Coalition, Inc.
- c) Members of the review committee were Rob Dearduff (Chairperson), Assistant Director of Special Programs; Cameka Gardner, Special Programs Manager; and Elaine Roberts, Policy Administrator.
- d) Each member of the Review Committee individually reviewed the proposal submitted prior to convening for the Review Committee meeting which was held at 2:00 p.m., Thursday, August 5, 2021.
- e) At the August 5th meeting, the Review Committee provided final scores for the response. The score sheet is provided as [Exhibit D](#).

3. Recommendation

- a) The Review Committee recommends that the Board authorize Florida Housing to enter into contract negotiations with Florida Housing Coalition, Inc., and authorize staff to issue a new competitive solicitation to increase the pool of providers of these services.

PROFESSIONAL SERVICES SELECTION (PSS)

Action

C. Contract Renewals for Capital Needs Assessment Provider Services

1. Background

- a) At the September 14, 2018 meeting, the Board authorized Florida Housing staff to enter into contract negotiations with AEI Consultants; Clampett Industries, LLC d/b/a EMG; GLE Associates, Inc.; Moran Construction Consultants, L.L.C.; On Solid Ground, LLC; Partner Assessment Corporation d/b/a Partner Engineering and Science, Inc.; and Varian Associates, P.A.
- b) Current contract information is as follows:

Contract Number	Vendor	Initial Term Start Date	Current Expiration Date
024-2018	All Environmental, Inc. d/b/a AEI Consultants	12/12/2018	12/11/2021
025-2018	Clampett Industries, LLC d/b/a EMG	12/12/2018	12/11/2021
028-2018	On Solid Ground, LLC	12/17/2018	12/16/2021
029-2018	Partner Assessment Corporation d/b/a Partner Engineering and Science, Inc.	12/27/2018	12/26/2021
030-2018	V.G. Varian Associates, P.A.	1/2/2019	1/1/2022
026-2018	GLE Associates, Inc.	1/9/2019	1/8/2022
027-2018	Moran Construction Consultants, LLC	1/9/2019	1/8/2022

- c) Contingent upon satisfactorily performing its obligations under the contract as determined by Florida Housing, these contracts may be renewed for an additional three-year period.

2. Present Situation

- a) Florida Housing staff supports using the three-year renewal option for all seven contracts.

3. Recommendation

- a) Staff recommends the Board direct staff to proceed with the three-year renewal option for all seven contracts.

SINGLE FAMILY HOMEOWNERSHIP PROGRAM

Action

I. SINGLE FAMILY HOMEOWNERSHIP PROGRAM

A. Homebuyer Loan Program Bonds

1. Background

- a) Florida Housing issues bonds under two master bond indentures. The 2009 Homeowner Mortgage Revenue (Special Program) Bond Indenture (the “NIBP Master Indenture”) was created for the purpose of implementing the United States Treasury’s New Issue Bond Program (the “NIBP”). The NIBP Master Indenture is currently rated “Aaa” by Moody’s Investors Service. Florida Housing also issues single family bonds under its 1995 Homeowner Mortgage Revenue Bond Indenture (the “1995 Master Indenture”). The 1995 Master Indenture is currently rated “Aaa” by Moody’s Investors Service.
- b) Florida Housing has \$460.6 million of tax-exempt bond volume cap that has been allocated for single family bond issuance. The \$460.6 million consists of \$260.6 million of 2019 carry forward, \$200 million of 2020 carryforward. It is expected that additional allocation from 2021 will be added to the carry forward from prior years.
- c) Due to difficult conditions in the municipal bond market but attractive pricing of Mortgage-Backed Securities (“MBS”) in the mortgage market, commencing on October 31, 2008, and subsequently thereafter, the Board has approved resolutions allowing staff to access funding for Florida Housing’s Homeowner Mortgage Program (the “Single Family Program”) through the sale of specified pools or To-Be-Announced (“TBA”) commitments in the MBS mortgage market.
- d) This year, through July 31, 2021, Florida Housing has settled over \$301.2 million of newly originated Ginnie Mae MBS, \$223.9 million of Fannie Mae MBS and \$38.9 million of Freddie Mac MBS through various market options. Of the Ginnie Mae totals, \$124.1 million settled in bonds, \$36.3 million settled in the specified pool market and \$140.8 million settled in the TBA mortgage market. Of the Fannie Mae MBS totals, \$0.6 million settled in bonds and \$223.3 million were sold in the TBA mortgage market. Of the Freddie Mac totals, \$0.3million was settled in bonds and \$38.6 million were sold in the TBA mortgage market.
- e) Staff expects to continue periodic funding of the Single Family Program through the sale of MBS when market conditions are favorable at the time of sale, however, financing alternatives in the municipal market have again become more attractive. The sale of bonds in the municipal market can be for: (1) refunding outstanding high coupon bonds that are currently subject to optional redemption, (2) refunding outstanding bonds currently subject to special redemption to preserve volume cap, (3) continuing Florida Housing’s single family lending program through the pooling of Mortgage Loans into Guaranteed Mortgage Securities under Florida Housing’s Homeowner Mortgage Program. Staff will continue to evaluate market conditions and, should market conditions warrant, may sell a portion or all MBS in the TBA or specified pool market,

SINGLE FAMILY HOMEOWNERSHIP PROGRAM

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rather than issue bonds, to fund new production and refund the outstanding bonds subject to optional redemption.

2. Present Situation

a) Below is a chart of bonds that may be optionally redeemed in 2022:

NIBP Indenture			
Bond Series	2011 Series B	2011 Series C	2009 Series B-5
Bond Balance*	\$4,835,000	\$7,385,000	\$27,380,000
Bond Yield	4.33%	4.10%	2.32%

*as of July 1, 2021

- b) Staff and its Independent Registered Municipal Advisor will determine the amount of refunding bonds to be issued and whether they are executed as one or more refunding transactions based upon market conditions. Florida Housing may also opt to sell a portion of the MBS backing such bonds and use the proceeds of such sale to optionally redeem the bonds should this be deemed more economically prudent.
- c) Conditions in the municipal bond market have improved significantly making the issuance of new money bonds feasible. Staff expects that it would be financially prudent to issue new money bonds under several separate series throughout 2022 to continue funding single family loans, including the potential to fund down payment and closing cost assistance loans under its program.
- d) The investment banking team, bond counsels, Independent Registered Municipal Advisor and special counsels have been approved by the board pursuant to Florida Housing’s competitive solicitation process. The following professionals may serve as senior and co-senior managing investment bankers for the 2022 Phase One Bonds, in alphabetical order: BofA Securities, Inc., Citigroup Global Markets Inc., Morgan Stanley & Co. LLC., and RBC Capital Markets LLC. Caine Mitter & Associates Incorporated will serve as the Independent Registered Municipal Advisor.
- e) The 2022 Phase One bonds will be issued under the 1995 Master Indenture, the NIBP Indenture or a new master indenture, but the aggregate amount of such 2022 Phase One Bonds shall not exceed \$450,000,000. The 2022 Phase One Bonds are expected to be rated “Aaa” by Moody’s Investors Service if issued under either the 1995 Indenture or the NIBP Indenture, however, in consultation with the underwriting team and our Independent Registered Municipal Advisor, staff may opt to solicit ratings from additional rating agencies. If the bonds are issued under a new master indenture, the rating is expected to be “Aaa” by Moody’s Investors Service. It is anticipated that the 2022 Phase One Bonds and any additional new money bonds issued will, for the foreseeable future, be secured by MBS.

SINGLE FAMILY HOMEOWNERSHIP PROGRAM

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- f) Authorization necessary to issue the 2022 Phase One Bonds requires (1) adoption of an authorizing resolution by Florida Housing's Board and (2) approval of a fiscal determination by the State Board of Administration. To work within the constraints of regularly scheduled public meetings, to maintain Florida Housing's goal of providing continuously available single family mortgage funding, and to take full advantage of the current market conditions for refunding, the authorizing resolution for the 2022 Phase One Bonds is being presented for consideration at Florida Housing's September 10, 2021 meeting.
- g) Staff will determine the timing of issuance, size of issuance, and the most applicable documents for the issuance of each series of 2022 Phase One Bonds based upon prevailing market conditions and recommendations from the Independent Registered Municipal Advisor.
- h) To ensure sufficient time for obtaining required approvals for the 2022 Phase One Bonds, staff requests authorization to commit up to \$65 million of indenture assets and/or other funds available to Florida Housing to provide interim funding for single family mortgage backed securities and down payment and closing cost assistance loans. Additionally, Florida Housing may also use the line of credit secured with the Federal Home Loan Bank as previously approved by the Board.
- i) The Board Resolution is included as [Exhibit A](#).

3. **Recommendation**

- a) Staff recommends the Board approve the necessary funding, staff actions and the Resolution to permit the issuance of the proposed 2022 Phase One Homeowner Mortgage Revenue Bonds.