STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA LOW INCOME HOUSING ASSOCIATES, INC., Petitioner, vs. FLORIDA HOUSING FINANCE CORPORATION, Respondent.	)	Case Nos. 02-4137 02-4594 02-4726

RECOMMENDED ORDER

Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing in Tallahassee, Florida, on February 25, 2003.

APPEARANCES

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For Respondent: Paula C. Reeves
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STATEMENT OF THE ISSUES

All cases involve loan funding in the 2002 funding cycle for the HOME Rental program. The issue in DOAH Case No. 02-4137

is whether Respondent properly determined that Petitioner's application for the Magic Lake Villas development failed to meet the applicable scoring threshold. If Petitioner fails to prevail in DOAH Case No. 02-4137, DOAH Case No. 02-4594 is moot. If Petitioner prevails in DOAH Case No. 02-4137, the issue in DOAH Case No. 02-4594 is whether Respondent's rescoring of the application of the competing developer of the Brittany Bay development erroneously placed the Brittany Bay application ahead of the Magic Lake Villas application. The issue in DOAH Case No. 02-4726 is whether Respondent's rescoring of the application of the competing developer of the Brittany Bay development erroneously placed the Brittany Bay application ahead of Petitioner's application for another development, Magnolia Village. The 2002 funding cycle is closed, so, pursuant to Rule 67-48.005(4), Florida Administrative Code, Petitioner's application or applications would be included in the 2003 funding cycle, if it prevails in DOAH Case No. 02-4594 or 02-4726.

PRELIMINARY STATEMENT

By Amended Petition for Formal Administrative Hearing Pursuant to Sections 120.569 and 120.57(1), Florida Statutes, filed September 12, 2002, Petitioner alleged that it submitted a HOME Rental Application for the 2002 funding cycle for funds to construct Magic Lakes Villas, a garden apartment complex of 72

units in Ocala. Respondent allegedly assigned 84 points to Petitioner's application, which allegedly would have been sufficient for funding. However, Respondent determined that Petitioner's application did not meet the scoring threshold because the application revealed that Petitioner lacked the required applicable developing experience. Petitioner's challenge of this determination is DOAH Case No. 02-4137.

By Petition for Formal Administrative Hearing Pursuant to Sections 120.569 and 120.57(1), Florida Statutes, filed November 12, 2002, Petitioner alleged that it submitted a HOME Rental Application for the 2002 funding cycle for funds to construct Magic Lake Villas. Respondent allegedly assigned 84 points to Petitioner's application, which allegedly would have been sufficient for funding. However, a competing applicant, the Brittany Bay developer, allegedly prevailed in an informal appeal of the scoring of its application, and its score increased from 81.55 to 86 points. This change in score allegedly caused Brittany Bay's developer to receive funding at the expense of Petitioner. Petitioner's challenge of this rescoring of the Brittany Bay application, so as to place it ahead of the Magic Lake Villas application, is DOAH Case No. 02-4594. In separate notes in the petition, Petitioner conceded that its eligibility for funding ahead of the Brittany Bay

developer was contingent upon its prevailing in DOAH Case No. 02-4137.

By Petition for Formal Administrative Hearing Pursuant to Sections 120.569 and 120.57(1), Florida Statutes, filed November 12, 2002, Petitioner alleged that it submitted a HOME Rental Application for the 2002 funding cycle for funds to construct Magnolia Village. Respondent assigned 82.65 points to Petitioner's application, which allegedly would have been sufficient for funding. However, the Brittany Bay developer allegedly prevailed in an informal appeal of the scoring of its application, and its score increased from 81.55 to 86 points. This change in score allegedly caused Brittany Bay's developer to receive funding at the expense of Petitioner. Petitioner's challenge of this rescoring of the Brittany Bay application, so as to place it ahead of the Magnolia Village application, is DOAH Case No. 02-4726.

Even if Petitioner prevails in DOAH Case No. 02-4594 or DOAH Case No. 02-4726, the Brittany Bay development would not be adversely affected. The Brittany Bay application has proceeded to credit underwriting and may even have proceeded to funding. The practical result of these cases would only be to allow Petitioner to obtain funding in the next funding cycle, not obtain the funding already allocated to the Brittany Bay developer.

At the hearing, Petitioner called four witnesses and offered into evidence 19 exhibits: Petitioner Exhibits 1-11 and 13-20. Respondent called three witnesses and offered into evidence three exhibits: Respondent Exhibits 1-3. At the hearing, all exhibits were admitted except Petitioner Exhibits 8, 11, 16, and 20 which were proffered.

Due to evidentiary problems that arose at the hearing, the Administrative Law Judge gave Petitioner ten days after the hearing to authenticate and produce certain exhibits. On March 7, 2003, the parties filed a Joint Stipulation as to Authenticity of Petitioner's Exhibits. In this stipulation, Respondent agreed to authenticity, but reserved all other objections, which are now overruled. It is clear from the stipulation that Petitioner has provided the basis for the admission of Petitioner Exhibits 11 (which is also Respondent Exhibit 3) and 20, so those exhibits are now admitted. (As to Petitioner Exhibit 20, the February 7, 2003, letter is from the original set of exhibits, but the February 12, 2003, response is now from the stipulation attachments, not the original set of exhibits.) The rulings at the hearing excluding Petitioner Exhibits 8 and 16 were on grounds other than authenticity, so those rulings stand. It appears that the remaining materials attached to the stipulation are either intended to fall within Petitioner Exhibits 14 or 17, and they are admitted as well.

For ease of reference, the Administrative Law Judge has added the stipulation with attachments to the exhibits, rather than try to incorporate stipulation attachments into exhibits identified at the hearing, and whenever the stipulation attachments conflict with any of the exhibits admitted at the hearing, the former shall prevail.

The court reporter filed the transcript on March 11, 2003. The parties filed their proposed recommended orders on April 1, 2003.

FINDINGS OF FACT

1. Respondent is a public corporation whose purpose is to administer programs for the financing and refinancing of affordable housing in Florida. The HOME Rental program is one of the programs administered by Respondent.

2. Petitioner is a not-for-profit corporation that is in the business of developing affordable residential housing in Florida. Petitioner filed two applications for funding in the 2002 HOME Rental funding cycle. Petitioner's Magic Lake Villas application sought $5 million in HOME funds for a development costing about $6.5 million, and Petitioner's Magnolia Village application sought $3 million in HOME funds for a development costing about $3.5 million.

3. Respondent receives funds for the HOME Rental program from the U.S. Department of Housing and Urban Development (HUD).

Because the federal funds allocated to Florida are insufficient to meet demand, Respondent has adopted a competitive process for the allocation of these funds to developers seeking to develop qualifying projects.

4. Rules 67-48.004 and 67-48.005, Florida Administrative Code, detail the scoring procedure applicable to HOME Rental applications. The application for the HOME Rental program 2002 funding cycle contains certain threshold items. Respondent rejects any application that fails to pass the threshold items. The scoring process for qualifying applications starts with a preliminary score for each application. Applicants may challenge these preliminary scores assigned to competing applications for scoring errors by issuing Notices of Possible Scoring Error (NOPSEs).

5. After examining the NOPSEs filed against its application, as well as Respondent's proposed decision concerning each NOPSE, a developer may submit supplemental information, which is known as a Cure. The Cure information is limited to material responsive to the NOPSEs or preliminary scoring. After the applicant has submitted a Cure, competing applicants may issue Notices of Alleged Deficiencies (NOADs) to challenge the information submitted as a Cure. Respondent then rescores each application, issues a final score, and ranks all applications based on their final scores. Aggrieved applicants

may challenge these pre-appeal scores in formal or informal hearings. After the conclusion of the hearings, Respondent issues the post-appeal scores and the final rankings of the applications. If a challenger prevails after the final rankings are approved by Respondent, the challenger's approved application is assigned to the next year's funding cycle. In these cases, Respondent issued the final rankings on October 8, 2002.

6. In DOAH Case No. 02-4137, Petitioner challenges Respondent's determination that its Magic Lake Villas application fails to meet the threshold requirements. The Magic Lake Villas application is for funding to construct a 72-unit garden apartment complex in Ocala.

7. Item III.A.3 of the HOME Rental Application (Application) requires the applicant to indicate the type of development design by checking a box next to one of eight categories. The categories are: "garden apartments," "townhouses," "high rise (a building comprised of 7 or more stories)," single family," "duplexes/quadraplexes," "mid-rise with elevator," "single-room occupancy," and "other."

8. Petitioner selected "garden apartments" to describe the 11 one-story buildings that it was proposing to develop on 9.67 acres for a gross density of 7.45 units per acre. The proposed development nearly encircles a lake that is used for drainage.

9. Item II.B.1 of the Application requires the applicant to "Provide the Developer's Prior Experience Chart behind the tab labeled "Exhibit 11." Exhibit 11 contains a certification, which Petitioner executed, that represents, among other things: "I have developed and completed at least two affordable housing developments similar in magnitude to the Development proposed by this Application as evidenced by the accompanying prior experience chart."

10. The "Chart of Experience" that Petitioner attached as part of Exhibit 11 lists information under six columns: "Name of Development," "Location (City/State)," "New Const. or Rehab.," "Design Type," "# of Units," and "Affordable/Subsidized market." Petitioner's chart supplies four rows of information, by development. The first development is "Citrus County Scattered Sites," which comprise 40 single-family units of new construction in Citrus County under the HOME program. The second development is "Marion County Scattered Sites," which comprise 40 single-family units of new construction in Marion County under the HOME program. The third development is "Heron Woods Homeownership," which comprises 49 single-family units of new construction in Inverness, Florida. The fourth development is Heron Woods Rental, which comprises 50 single-family units of new construction in Inverness, Florida.

11. Item II.B.1.c of the Home Rental Application Instructions and Information (Instructions) addresses the requirement of developer experience. The Instructions require:

> The Developer or principal(s) of Developer must demonstrate experience in the completion of at least two affordable housing developments of similar magnitude by providing a prior experience chart behind a tab labeled "Exhibit 11." The chart must include the following information . . ..

12. For the developer-experience chart, the Instructions require: "Name of Development," "Location (City & State)," "Construction Category (New Construction or Rehabilitation)," "Design Type: garden, townhouses, high-rise, duplex/quad., mid-rise w/ elevator, single family, or other (specify type)," and "Number of Units."

13. The ninth Threshold Requirement contained in the Instructions states: "Experience of the Development team must be demonstrated."

14. Petitioner has failed to prove that any of its listed single-family development experience is similar in magnitude to garden apartment development. Petitioner has thus failed to satisfy the threshold requirement of prior developer experience.

15. Garden apartments are a form of multifamily residential development--usually involving 6-12 units per building and a limited number of buildings, which may be one to three stories. As reflected by the itemization contained in the

instructions, each of these types of development represents differences in developed density and development difficulty. In ascending order of developed density and development difficulty, the typical order would be single family, townhouses, duplex/quadraplex units, garden apartments, mid-rise with elevator, and high-rise.

16. Petitioner's development experience has involved single-family construction, which contains simpler draw schedules than does multi-family construction. Petitioner's development experience has involved projects that were all consistent with the zoning, which may often not be the case with higher-density development. Petitioner's development experience has been limited to providing the typically less-demanding infrastructure needs of the relatively low-density single-family development. Higher-density multi-family development normally requires more planning for stormwater management, common area and facilities, parking and roads, and central water and sewer.

17. Petitioner has failed to prove that its single-family development experience, as reflected on its application, was of a similar magnitude to the garden apartments that it proposed as Magic Lake Villas. Petitioner has thus failed to prove that Respondent incorrectly determined that Petitioner's Magic Lake Villas application failed to pass the threshold requirement of

developer experience. This determination moots DOAH Case No. 02-4594.

18. In DOAH Case No. 02-4726, Petitioner challenges Respondent's decision to fund another development, rather than Magnolia Village. Petitioner's Magnolia Village application passed the threshold requirements and received 82.65 points, which would have been sufficient for funding, until Respondent, following an informal hearing, rescored the application for the Brittany Bay, which is located in Collier County. The rescoring raised Brittany Bay's score from 81.55 points to the maximum available 86 points.

19. To prevail, Petitioner must prove that Respondent erroneously added at least 3.35 points to Brittany Bay's score. Although Petitioner has identified two issues concerning the rescoring of Brittany Bay's application, one of them involves only 0.4 points, so it is irrelevant to this case, given the point spread of 3.35 between Petitioner's Magnolia Village score and Brittany Bay's rescore. The other issue is relevant because it involves 4.45 points. If Petitioner demonstrates that Respondent improperly awarded these points to the Brittany Bay application, Petitioner's Magnolia Village application would receive funding in the 2003 funding cycle.

20. Respondent assigned the Brittany Bay application 4.45 more points because it qualified for a nonfederal match. In

this case, Petitioner must prove that the match identified in the Brittany Bay application did not qualify as match under applicable law.

21. Item III.F of the Instructions addresses match and states in relevant part:

> 1. Insert requested HOME loan amount and calculate the state required match amount. HUD regulation 24 CFR Part 92.220 requires Florida Housing to match funds for each HOME dollar spent on a Development. Applicants who can provide the full 25 percent match requirement will receive the maximum score of 5 points. For information on eligible match sources and instructions on how to calculate match, refer to the HUD HOME regulations at 24 CFR Part 92.220. . . .
>
> 2. Provide amounts of each source of match. For each source of match funding identified, Applicant must provide a signed statement from the source detailing the type of contribution, amount, and how it was calculated. If the amount of contribution is determined based upon a present value calculation, include the actual present value calculation as described in 24 CFR 92.220. No points will be awarded for any source for which a narrative and documented evidence are not provided. This documentation must be provided behind a tab labeled "Exhibit 28."

22. The specific references to 24 CFR Section 92.220 do not relieve the applicants or Respondent from the necessity of complying with all applicable HUD regulations. The first sentence of the Instructions states: "All Applicants are

encouraged to review Rule 67-48, F.A.C., 24 CFR Part 92 and the following instructions before completing this Application."

23. The original Brittany Bay application contained no documentation for Exhibit 28 because the developer was not seeking points for match. Even though no NOPSE addressed match, the Brittany Bay developer added match information in its Cure, pursuant to a practice--endorsed by Respondent and unchallenged by Petitioner--in which developers may add match to a Cure even though their original applications omitted match.

24. The Cure contains three elements in describing the match for which points are sought. First, the Cure states: "Collier County's commitment to or issuance of $10,200,000 in Multi-Family Housing Revenue Bonds will result in $5,100,000 in eligible HOME match. This match created by other affordable housing communities is being made available to Brittany Bay . . . by the Housing Finance Authority of Collier County."

25. Second, the Cure states that "tax-exempt bond financing may be utilized to provide HOME match equal up [sic] to 50% of the amount of tax-exempt financing," again noting Collier County's "commitment to provide up to 50% of the tax-exempt financing issued or committed to on [sic] behalf of other multi-family projects in 2002 to Brittany Bay . . . for purposes of a HOME match."

26. Third, the Cure incorporates a letter dated June 26, 2002, from the general counsel of the Housing Finance Authority of Collier County, which states:

> The Housing Finance Authority of Collier County (the "Authority") has committed to or has issued Multifamily Housing Revenue Bonds totaling $10.2 million for two affordable housing communities this year.
>
> It is our understanding that fifty (50) percent of the loan amounts made from bond proceeds to multifamily affordable housing developments quali[f]y as HOME Match funds under the HUD regulations.
>
> Based upon this understanding, we are requesting that [Respondent] consider the appropriate percentage of our Multifamily Housing Revenue Bonds as eligible match for the HOME loan requested for Brittany Bay . . .. The Authority is pleased to support this community . . . without an allocation of Region Eight Private Activity Bond Allocation or other Collier County resources.

27. This Cure drew several NOADs. One NOAD notes that the Brittany Bay project is self-funded and was not using any tax-exempt bonds, but the claimed match was from tax-exempt bonds. This NOAD contended that bonds from unrelated developments do not qualify for match. Another NOAD asserts that the Brittany Bay developer does not claim to be receiving any funds from the Collier County tax-exempt bond proceeds, which are instead going to two other developments. This NOAD states that bond proceeds qualify as match only if the proceeds are made available to the

development seeking the match. A third NOAD stresses that "match contributions must be attributed directly to the proposed HOME financed development and used to reduce the cost of the affordable housing development." A fourth NOAD notes that a non-participating jurisdiction is not authorized to commit match without providing bonds to the development purporting to receive the match. This NOAD states that HUD officials agreed that Brittany Bay would not qualify for match under these circumstances. The factual contentions of these NOADs are true.

28. Unmoved by the Cure materials seeking match, Respondent's staff declined to award the Brittany Bay developer any points for match. The reason for declining to award points for the match was: "Per HUD, the Bond match which applicant requests in the cure can be considered as match is not eligible match. Funds from a HOME-like development which is not under control of [Respondent] is [sic] not eligible."

29. Upon the request of the Brittany Bay developer and, due to the absence of disputed issues of fact, an informal hearing took place on, among other things, the accuracy of Respondent's refusal to assign Brittany Bay any points for the claimed match, as described above. The transcript of the hearing reveals that the parties addressed the issue addressed in DOAH Case No. 02-4726--whether the Brittany Bay application

should be awarded points for match--but they focused on largely different arguments.

30. In defending the decision not to recognize Brittany Bay's claimed match, Respondent raised questions concerning the technical sufficiency of the Cure materials. Respondent challenged the general counsel's letter. Respondent argued that the letter inadequately described the source of the funds and thus failed to preclude the possibility of a source that was a Section 501(c)(3) organization, from which a match cannot be derived for the HOME Rental program. Respondent also contended that the Brittany Bay developer was relying on information not contained in the Cure or other application materials to obtain the points for match.

31. Respondent's proposed recommended order in the Brittany Bay case does not explicitly rely on the points raised by Petitioner in this case. Brittany Bay's proposed recommended order incorrectly asserts that the sole federal regulation governing match, as suggested by the portion of the Instructions covering match, is 24 CFR Section 92.220. Addressing directly the severance of the recipient of the match from the recipient of the funds used to generate the match, Brittany Bay's proposed recommended order contends that 24 CFR Section 92.220 does not so limit match and that Respondent agrees that this severance

may take place, even when the recipients of the funds are not HOME-assisted.

32. The recommended order succinctly addresses the complicated match issue by reciting the three elements of the Cure pertaining to "nonfederal match sources" and concluding: "Petitioner properly documented well in excess of $1,562,500 in non-federal match funds issued by the Collier County Housing Finance Authority for affordable housing." The final order adopted the recommended order without elaboration.

33. It would have been a reasonable inference for the hearing officer to determined that Respondent's argument concerning a possible Section 501(c)(3) source of the funds was too improbable. But that inference, alone, would probably not account for the decision. If, as seems likely, the hearing officer also relied on the assurances of the general counsel, a problem would arise because the general counsel's assurance was expressly conditioned on "our understanding" that the match would qualify under HUD regulations--which is exactly the issue in question.

34. As implied by the Cure and stated by the NOADs, Collier County attempted to provide Brittany Bay match out of bond proceeds that were allocated to two unrelated projects, Saddlebrook Village and Sawgrass Pines. In other words, Collier County attempted to sever the match, by sending it to Brittany

Bay, from the funds, which were going to two projects that are not HOME-assisted. Neither Collier County nor the Collier County Housing Finance Authority was a participating jurisdiction, as designated by HUD, at the time of the allocation of the match to the Brittany Bay developer.

35. HUD imposes upon Florida and other states certain match requirements. However, Florida currently maintains a large surplus in match, surpassing all HUD match requirements through a multifamily rental bond program unassociated with the HOME Rental program. As one of Respondent's witnesses testified, Florida could go years without any new match and continue to meet HUD match requirements. Based on these facts, Respondent does not now object to Brittany Bay acquiring more points by using the match that arises out of revenue bonds, whose proceeds are allocated to two developments having nothing to do with Brittany Bay.

36. On the other hand, regardless whether Florida needs match, the purpose of awarding points to an applicant demonstrating qualifying match is to recognize some superior quality in its proposed development in terms of meeting the goals of the HOME Rental program. It is questionable whether qualities suitable for recognition include the mere fact that a development would be located within the jurisdiction of a funding entity or that the developer somehow succeeds in

obtaining from the funding entity a designation that does not carry with it the expenditure of any of the entity's funds, but confers competitive advantage to that developer in seeking limited HOME Rental funding from Respondent. If match is untethered from funding, there may be sufficient available match for local governments to provide the maximum match points to all applicants for HOME Rental funding, so that the match criterion would become meaningless.

CONCLUSIONS OF LAW

37. The Division of Administrative Hearings has jurisdiction over the subject matter. Section 120.57(1), Florida Statutes. (Unless otherwise indicated, all references to Sections are to Florida Statutes. All references to Rules are to the Florida Administrative Code.)

38. Petitioner bears the burden of proving the material allegations. Department of Transportation v. J. W. C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981).

39. Petitioner has failed to prove that its prior developer experience is of similar magnitude to the type of development represented by Magic Lake Villas. Single-family development does not approach in magnitude and complexity multifamily development, even that represented by garden apartments.

40. Rule 67-48.002(82) states: "'Match' means non-federal contributions to a HOME Development eligible pursuant to the HUD Regulations. Rule 67-48.015(1) provides: "[Respondent] is required by HUD to match non-federal funds to the HOME allocation as specified in the HUD Regulations. One of the criteria for selecting HOME Developments will be its ability to obtain a non-federal local match source pursuant to HUD Regulations."

41. Recognizing that the match issue is not governed exclusively by 24 CFR Section 92.220, Respondent states in its proposed recommended order, "24 CFR 92.118 through 24 CFR 92.220 govern the two match contribution issues." (The two match issues are the issue that this recommended order addresses and the issue that this recommended order rejects as irrelevant due to the lack of sufficient points to change the outcome.) The above-quoted language at the beginning of the Instructions and the two rules require the consideration of all relevant HUD regulations.

42. Several HUD regulations emphasize the connection between an actual contribution and a match. For example, 24 CFR 92.219(a), which applies to match contributions to HOME-assisted housing, states that a "contribution is recognized as a matching contribution if it is made with respect to" various qualifying recipients or portions of a development. The regulation cited

in the portion of the Instructions is 24 CFR 92.220(a), which identifies 11 eligible forms of contribution with the following introductory language: "Matching contributions must be made from nonfederal resources and may be in the form of one or more of the following . . .." The fifth eligible form of contribution is "[p]roceeds from multifamily and single family affordable housing project bond financing validly issued by a State or local government . . .." Like the fifth eligible form of contribution, each of the other ten eligible forms of contributions identifies a real contribution with economic substance--namely, cash, forebearance of fees, donated real property, the reasonable value of in-kind donations, and the direct cost of services.

43. For each of the 11 eligible forms of contribution, 24 CFR Section 92.221 governs when the credit for the match is given for a matching contribution, carrying forward excess match, and which participating jurisdiction will receive HUD credit for the match, as follows:

> (a) When credit is given. Contributions are credited on a fiscal year basis at the time the contribution is made, as follows:
> (1) A cash contribution is credited when the funds are expended.
> (2) The grant equivalent of a below-market interest rate loan is credited at the time of the loan closing.
> (3) The value of state or local taxes, fees, or other charges that are normally and customarily imposed but are waived,

foregone, or deferred is credited at the time the state or local government or other public or private entity officially waives, forgoes, or defers the taxes, fees, or other charges and notifies the project owner.

(4) The value of donated land or other real property is credited at the time ownership of the property is transferred to the HOME project (or affordable housing) owner.

(5) The cost of investment in infrastructure directly required for HOME-assisted projects is credited at the time funds are expended for the infrastructure or at the time the HOME funds are committed to the project if the infrastructure was completed before the commitment of HOME funds.

(6) The value of donated material is credited as match at the time it is used for affordable housing.

(7) The value of the donated use of site preparation or construction equipment is credited as match at the time the equipment is used for affordable housing.

(8) The value of donated or voluntary labor or professional services is credited at the time the work is performed.

(9) A loan made from bond proceeds under §92.220(a)(5) is credited at the time of the loan closing.

(10) The direct cost of social services provided to residents of HOME-assisted units is credited at the time that the social services are provided during the period of affordability.

(11) The direct cost of homebuyer counseling services provided to families that purchase HOME-assisted units is credited at the time that the homebuyer purchases the unit or for post-purchase counseling services, at the time the counseling services are provided.

(b) Excess match. Contributions made in a fiscal year that exceed the participating jurisdiction's match liability for the

fiscal year in which they were made may be carried over and applied to future fiscal years' match liability. Loans made from bond proceeds in excess of 25 percent of a participating jurisdiction's total annual match contribution may be carried over to subsequent fiscal years as excess match, subject to the annual 25 percent limitation.

(c) Credit for match contributions shall be assigned as follows:

(1) For HOME-assisted projects involving more than one participating jurisdiction, the participating jurisdiction that makes the match contribution may decide to retain the match credit or permit the other participating jurisdiction to claim the credit.

(2) For HOME match contributions to affordable housing that is not HOME-assisted (match pursuant to § 92.219(b)) involving more than one participating jurisdiction, the participating jurisdiction that makes the match contribution receives the match credit.

(3) A State that provides non-Federal funds to a local participating jurisdiction to be used for a contribution to affordable housing, whether or not HOME-assisted, may take the match credit for itself or may permit the local participating jurisdiction to receive the match credit.

44. In these regulations, HUD consistently requires, in its dealings with states, that match, or, more accurately, matching contributions must have economic substance to be recognized. Participating jurisdictions have certain flexibility in carrying forward excess match, in 24 CFR Section 92.211(2), and exchanging match among themselves, in 24 CFR Section 92.221(3), but neither Collier County nor the Collier

County Housing Finance Authority was a participating jurisdiction at the relevant time.

45. Respondent's use of "match" to evaluate applications and HUD's requirement of "matching contributions" seem to have taken separate paths. However, the HUD regulations, which continue to govern match in the scoring process, offer no support for untethering the concept of match from an actual contribution of something of real value. Respondent erroneously awarded Brittany Bay 4.45 points for matching contributions that did not exist.

46. Rule 67-48.005(4) provides:

> Following the entry of final orders in all petitions filed pursuant to Section 120.57(2), F.S., and in accordance with the prioritization of the QAP and Rule Chapter 67-48, F.A.C., the Corporation shall issue final rankings. For an Applicant that filed a petition pursuant to Section 120.57(1), F.S., which challenged the scoring of its own Application but has not had a final order entered as of the date the final rankings are approved by the Board, the Corporation shall, if any such Applicant ultimately obtains a final order that modifies the score so that its Application would have been in the funding range of the applicable final ranking had it been entered prior to the date the final rankings were presented to the Board, provide the requested funding and/or allocation (as applicable) from the next available funding and/or allocation, whether in the current year or a subsequent year. Funding refers to SAIL or HOME and allocation refers to HC. Nothing contained herein shall affect any applicable credit underwriting requirements.

47. Pursuant to this rule, Respondent should provide Petitioner the funding that it requested in the Magnolia Village development described in its application from the next available funding cycle, subject to credit underwriting requirements.

RECOMMENDATION

It is

RECOMMENDED that the Florida Housing Finance Corporation enter a final order:

1. Dismissing Petitioner's challenge in DOAH Case Nos. 02-4137 and 02-4594; and

2. In DOAH Case No. 02-4726, determining that Petitioner's Magnolia Village application should have been included in the funding range for the 2002 funding cycle of the HOME Rental program and funding the application in the next funding cycle, subject to the requirements of credit underwriting.

DONE AND ENTERED this 14th day of May, 2003, in Tallahassee, Leon County, Florida.

ROBERT E. MEALE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
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this 14th day of May, 2003.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order must be filed with the agency that will issue the final order in this case.