

CHAPTER 62-821  
Stan Mayfield working Waterfronts Land Acquisition Procedures

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**62-821.001 Purpose.**

This rule chapter sets forth the procedures that must be followed for land acquisitions for the Stan Mayfield Working Waterfronts Program using Florida Forever funds awarded by Florida Communities Trust.

Rulemaking Authority 380.507(11), 380.5105(2) FS. Law Implemented 259.105, 380.501-.515 FS. History—New 11-25-08, Formerly 9K-10.001.

**62-821.002 Definitions.**

The definitions set forth in Rule 62-820.002, F.A.C., shall apply as used in this rule chapter and are incorporated herein by reference. Additionally, the following definitions shall apply as used in this rule chapter:

(1) “Appraisal” or “Appraisal Services” means the services provided by Florida certified or licensed Appraisers pursuant to Section 475.611(1), F.S.

(2) “Appraisal Report” means the written analyses, opinions, and conclusions issued by an Approved Appraiser in connection with the Acquisition of any interest in real property under this rule chapter or Chapter 62-820, F.A.C.

(3) “Appraiser” means any person who is certified or licensed by the State pursuant to Chapter 475, Part II, F.S., and whose certification or license is current, valid and active.

(4) “Approved Appraisal” means an Appraisal that has been reviewed and approved by the Trust for use in determining the Maximum Approved Purchase Price.

(5) “Approved Appraiser” means an Appraiser who has the necessary background, qualifications and experience to appraise the interest in real estate being acquired under this Chapter and whose name is on the current list of approved appraisers on file with the Division of State Lands, Department of Environmental Protection.

(6) “Approved Survey” means a Certified Survey that has been reviewed and approved by the Trust.

(7) “Certified Survey” means a survey that is certified, signed and sealed by a registered land surveyor authorized to practice surveying in the State pursuant to Chapter 472, F.S.

(8) “Confidential” refers to information that shall not be available for public disclosure or inspection and is exempt from the provisions of Section 119.07, F.S.

(9) “Hazardous Materials Contamination” means radon, PCBs, oil or other petroleum based products, chemicals, any noxious, hazardous, offensive, explosive or toxic substances or waste, or any hazardous materials or toxic substances as such terms are defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §9601 et seq. (CERCLA), the Hazardous Materials Transportation Act, 49 U.S.C. § 5102 et seq. (HMTA), the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6903 et seq. (RCRA), and the regulations adopted pursuant thereto.

(10) “Market Value”, as defined in the Uniform Standards of Professional Appraisal Practice (as promulgated by the Appraisal Standards Board of The Appraisal

Foundation), means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming that the price is not affected by undue stimulus.

(11) "Maximum Approved Purchase Price" means the maximum purchase price that the Trust can participate in as determined by Appraisals performed on a Project Site that have been reviewed and approved by the Trust.

(12) "Minimum Technical Standards" means the Minimum Technical Standards for Surveyors as set forth by the Florida Board of Professional Surveyors and Mappers pursuant to Chapter 472, F.S.

(13) "Option Agreement" or "Option Contract" means a proposed written agreement between the Recipient and the Trust to purchase all or a portion of the property lying within the Project Site, subject to the approval of the Recipient's governing body and the Trust after appropriate notice and hearing (as may be required).

(14) "Owner(s)" or "Seller(s)" means the fee simple title owner(s) of the Project Site.

(15) "Purchase Agreement" means the various types of written contracts to purchase real property, including purchase agreements, Option Agreements, exchange agreements and other forms of such agreements, that become binding on all parties to the contract at the time the Purchase Agreement is duly executed.

(16) "Title Insurance Commitment" means a written agreement issued by a Florida licensed title insurer agreeing to issue to the Recipient, the Trust, or the Board of Trustees, individually or as co-insureds, upon the recording of the deed, an owner's policy of title insurance in the amount of the Project Site's purchase price insuring marketability of title to the Project Site, subject only to liens, encumbrances, exceptions or qualifications that are acceptable to the Trust and the Recipient, and those which will be discharged by the Owner(s) at closing.

(17) "Uniform Standards of Professional Appraisal Practice" means the "Uniform Title Standards" in effect as of the effective date of this rule approved and adopted by the Appraisals Standards Board of The Appraisal Foundation. Rulemaking Authority 380.507(11), 380.5105(2) FS. Law Implemented 259.105, 380.501-.515 FS. History—New 11-25-08, Formerly 9K-10.002.

### **62-821.003 General Information.**

(1) This rule chapter shall govern the activities for Acquisition of real property for the Stan Mayfield Working Waterfronts program using proceeds from the Florida Forever Trust Fund, when title to such real property vests in the Recipient.

(2) The disbursement of Florida Forever Funds from the Trust shall be subject to the following conditions: The administration and use of any funds received by the Trust from the Florida Forever Trust Fund shall be subject to such terms and conditions imposed thereon by the agency of the state responsible for the revenue bonds, the proceeds of which are deposited in the Florida Forever Trust Fund, including restrictions imposed to ensure that the interest on any such revenue bonds issued by the state as

tax-exempt revenue bonds will not be included in the gross income of the holders of such bonds for federal income tax purposes.

(3) The Recipient shall designate an employee or officer who shall serve as the key contact for the exchange of information regarding the Acquisition activities and who shall be responsible for ensuring compliance with the provisions of all applicable statutes, the Grant Contract, rules of the Trust and any local land acquisition ordinances that may apply.

(4) Funds awarded through any program of the Trust that derive from the Florida Forever Trust Fund may only be used to pay the eligible Project Costs associated with Voluntarily Negotiated Transactions.

(5) The Project Site will be a Joint Acquisition and all acquisition activities will be completed by the Trust.

(6) Prior to release of Florida Forever Funds for a project, the Recipient shall submit a signed statement by the Recipient that the Recipient is not aware of any pending criminal, civil or regulatory violations imposed on the Project Site by any governmental agency or body.

(7) If requested by the Trust, the Recipient shall provide additional documentation to provide Reasonable Assurance that the Recipient will be able to fulfill its obligations under the Grant Contract, the Declaration of Restrictive Covenants, and Chapter 62-820, F.A.C.

Rulemaking Authority 380.507(11), 380.5105(2) FS. Law Implemented 259.105, 380.501-.515 FS. History—New 11-25-08, Formerly 9K-10.003.

#### **62-821.004 Appraisal Procedures, Appraisal Report Requirements and Determination of Maximum Approved Purchase Price.**

(1) The Trust shall contract with the Approved Appraiser(s) according to contract requirements of the Trust.

(2) Techniques and methods used by the Appraiser shall substantially conform to the Uniform Standards of Professional Appraisal Practice (USPAP), as defined in Chapter 475, Part II, F.S., as well as Trust appraisal instructions and format.

(3) The Trust shall provide to the Appraiser all pertinent title information developed in the title report, a specification of the rights to be acquired, a list of items, if any, considered to be noncompensable, required appraisal forms or formats, and the most recent survey, if available.

(4) The Trust shall obtain at least one Appraisal by an Approved Appraiser for each ownership in a Project Site estimated to be valued less than \$500,000. For each ownership in a Project Site estimated to be valued at or greater than \$500,000, the Trust shall obtain at least two Appraisals by Approved Appraisers.

(5) Determination of Maximum Approved Purchase Price.

(a) For purposes of calculating the Trust and the Recipient shares of the purchase price paid for real property, a Maximum Approved Purchase Price shall be determined. The Grant Contract will describe financial participation by the Trust and the Recipient on a percentage basis. The Trust considers that the maximum purchase price in which it will participate shall be the Maximum Approved Purchase Price or purchase

price, whichever is less. If the Recipient decides to pay a purchase price higher than the Maximum Approved Purchase Price, the Recipient shall pay all the purchase price amount over the Maximum Approved Purchase Price, in addition to the Match percentage share of the Maximum Approved Purchase Price.

(b) Appraisals shall be reviewed by a review Appraiser who is employed by or under contract to the Trust. The review Appraiser must certify to the Trust that the Appraisals have been conducted substantially in accordance with this rule chapter and with correct Appraisal standards and methods, and must certify the appraised value(s) of the subject real property. This certified value shall also be referred to as “the Maximum Approved Purchase Price.”

(c) The Maximum Approved Purchase Price shall be the value indicated in a single reviewed and approved Appraisal if only one Appraisal is required. If two Appraisals are obtained and approved when only one is required by this rule chapter, the Maximum Approved Purchase Price shall be the higher of the two values indicated in the Appraisals.

(d) If two Appraisals are required and their values do not differ significantly, the Maximum Approved Purchase Price shall be the higher value indicated in the two Appraisals. The two Appraisals shall be considered to differ significantly if the higher of the two values exceeds 120 percent of the lower value.

(e) When two Appraisals required under subsection (4) above differ significantly, the following steps shall be taken:

1. The review Appraiser shall request that the two Appraisers review the differences in their respective reports to attempt to rectify their value conclusions so that the two value conclusions are not significantly different;

2. A third Appraisal shall be obtained if the two Appraisals differ significantly and cannot be rectified as in the above paragraph unless a decision is made by the Trust to negotiate an Acquisition price of no more than 120 percent of the lower of the two reviewed and approved Appraisals; and

3. If a third Appraisal is obtained and reviewed and approved, the Maximum Approved Purchase Price shall be the value contained in the higher of the two closest Appraisals, so long as the two closest Appraisals do not differ significantly. If the two closest Appraisals differ significantly, 120 percent of the lower of the two Appraisals shall be the Maximum Approved Purchase Price.

(6) The Trust shall compare the Maximum Approved Purchase Price with the cost to purchase the land as estimated in the Application. If that estimated cost is greater than the Maximum Approved Purchase Price, the Trust shall reduce the amount of the Award by a letter of notice to the Recipient.

Rulemaking Authority 380.507(11), 380.5105(2) FS. Law Implemented 259.105, 380.501-.515 FS. History—New 11-25-08, Formerly 9K-10.004.

#### **62-821.005 Confidentiality of Appraisals, Other Reports Relating to Value, Offers and Counteroffers.**

(1) The Trust and the Recipient shall maintain confidentiality of all Appraisals, and any other reports relating to value, offers and counter-offers. Appraisals, and any

other reports relating to value, offers and counteroffers are not available for public disclosure or inspection and are exempt from the provisions of Section 119.07(1), F.S., until a Purchase Agreement is executed by the Owner(s) and Recipient and conditionally accepted by the Trust, or if no Purchase Agreement is executed, then as provided for in Sections 125.355(1)(a) and 166.045(1)(a), F.S.

(2) If a Purchase Agreement is not submitted to the Trust for approval, the exemption from Section 119.07(1), F.S., will expire 30 days after the termination of negotiations. The date of termination of negotiations may be based on a written statement from a party to the negotiations that good faith efforts at negotiating a Purchase Agreement have failed and that the party desires to cease negotiations. Reinitiation of negotiations shall require approval of the Trust.

(3) The Trust and the Recipient shall execute an agreement to maintain confidentiality of all Appraisals, reports relating to value, written offers and written counteroffers until such time as the information is no longer exempt from Section 119.07(1), F.S. This agreement of confidentiality shall expressly name the individuals to whom the information may be disclosed during the period that the information is exempt from the requirements of Section 119.07(1), F.S. The exemptions from Section 119.07(1), F.S., that are provided in this paragraph are subject to the Open Government Sunset Review Act in accordance with Section 119.15, F.S. Rulemaking Authority 380.507(11), 380.5105(2) FS. Law Implemented 259.105, 380.501-.515 FS. History—New 11-25-08, Formerly 9K-10.005.

#### **62-821.006 Negotiation of Offers and Counteroffers.**

(1) It shall be the goal of the Trust and the Recipient that the Acquisition of the real property be negotiated at the best price and terms that can be negotiated in the interest of the project's public purpose, with preference given to a purchase price at or below the Maximum Approved Purchase Price. The objective of all purchase negotiations shall be to obtain, at the lowest possible price, the appropriate interest in real property free of encumbrances, conditions, restrictions and reservations that would impede the purposes or management of the Project Site. In the course of negotiations the Trust may discuss the advantages of a Donation and bargain sale. If the real property to be acquired is not already surveyed and the acreage of the site is not known, the Owner shall be advised of the benefits of obtaining a safe upland line survey, as opposed to a mean high water or ordinary high water survey, for calculating the acreage of the site.

(2) All offers and counteroffers shall be in writing.

(3) The Trust may negotiate and enter into a Purchase Agreement prior to or after the receipt and approval of Appraisals. However, such negotiations and agreements are subject to the conditions established in this rule chapter. The Trust shall maintain appropriate records regarding any and all contact(s) with the Owner.

(4) Initial contact with the Owner may be established prior to negotiations. When initiated, such contact should be limited to the following:

(a) To inform the Owner about the Stan Mayfield Working Waterfronts land Acquisition program;

(b) To explain in general terms the possible tax advantages of land Donations and bargain sales;

(c) To request permission from the Owner in order to have his property appraised and surveyed;

(d) To discuss the timing of the Acquisition, and the competition for funds under the Stan Mayfield Working Waterfronts program;

(e) To discuss the matter of representation of the Owner by an Agent in any future negotiations, and the necessary confirmation by the Owner of the Agent's status;

(f) To request available title data;

(g) To advise of disclosure requirements;

(h) To request available property survey data; and

(i) To discuss other information pertinent to the Acquisition process in general.

(5) Upon the initiation of negotiations, the Owner shall be notified in writing that the terms of the final Purchase Agreement are subject to affirmative action by the Recipient and the Trust.

(6) The Trust shall maintain complete and accurate records of every such offer and counteroffer.

(7) When the Owner is represented by an Agent, negotiations may not be initiated or continued with the Agent until a written statement signed by the Owner verifying the Agent's legal or fiduciary relationship with the Owner has been received by the party responsible for negotiations and a copy has been provided to the Trust. Rulemaking Authority 380.507(11), 380.5105(2) FS. Law Implemented 259.105, 380.501-.515 FS. History—New 11-25-08, Formerly 9K-10.006.

#### **62-821.007 Purchase Agreements.**

(1) The form of the final negotiated purchase shall be a written Purchase Agreement that is signed by the Owner(s), the Recipient and the Trust.

(2) The Trust will prepare and use any form of Purchase Agreement as meeting the intent of all applicable laws and this rule chapter.

(3) The Trust shall develop a model standard Purchase Agreement.

(4) The Trust shall obtain all disclosures of beneficial interest required in Section 286.23, F.S., before entering into a Purchase Agreement.

Rulemaking Authority 380.507(11), 380.5105(2) FS. Law Implemented 259.105, 380.501-.515 FS. History—New 11-25-08, Formerly 9K-10.007.

#### **62-821.008 Title Report and Evidence of Marketable Title.**

(1) To obtain Appraisals, the Trust may obtain a title report or title commitment which shall include a legal description of the Project Site to be acquired that is sufficient to inform the Trust, the Recipient and the Appraisers of the status of ownership, encumbrances, exceptions, reservations, and previous ownership history.

(2) Evidence of Owner's marketable title shall be provided to the Recipient(s) and the Trust prior to the conveyance of title. The Trust shall further be provided a Title

Insurance Commitment in accordance with the Purchase Agreement. The Title Insurance Commitment shall be followed after conveyance by an owner's marketable title insurance policy (ALTA Form B) in favor of the Recipient or the Board of Trustees in accordance with the Recipient's election under Rule 62-819.004, F.A.C. The Trust shall be listed as a co-insured on the Title Insurance Commitment and title insurance policy.

(3) The standard for examination of condition of title shall be The Uniform Title Standards of the Real Property, Probate & Trust Law Section of The Florida Bar, 1981 edition together with all updates.

Rulemaking Authority 380.507(11), 380.5105(2) FS. Law Implemented 259.105, 380.501-.515 FS. History—New 11-25-08, Formerly 9K-10.008.

#### **62-821.009 Certified Survey.**

(1) At least 30 days prior to closing, a Certified Survey must be submitted to the Trust for final approval to rectify acreage and title issues against the title commitment, the negotiated Purchase Agreement and the Appraisal(s) used to determine the Maximum Approved Purchase Price.

(2) In cases where a Certified Survey cannot be practically completed or where the cost of the Certified Survey would be prohibited relative to the expected value of the real property, the requirement for such Certified Survey may, in whole or in part, be waived by the Recipient and the Trust. Such a waiver shall be requested by the Recipient at the time of submitting the Application.

(3) The Certified Survey shall be prepared according to the Minimum Technical Standards for Land Surveying and such additional requirements as may be determined by the Trust and the Recipient to be necessary to meet the intent of the statute and this rule chapter. The Certified Survey shall accurately portray to the greatest extent practicable the condition of the real property as it currently exists. The survey must have been certified within 90 days of the closing on the property unless this requirement is waived by the title insurer for the purpose of deleting the standard survey exception from the owner's title insurance policy.

(4) The Certified Survey shall be approved by the Trust as being in compliance with the requirements of this rule chapter.  
Rulemaking Authority 380.507(11), 380.5105(2) FS. Law Implemented 259.105, 380.501-.515 FS. History—New 11-25-08, Formerly 9K-10.009.

#### **62-821.010 Examination for Hazardous Materials Contamination.**

(1) All sites acquired with funds from the Florida Forever Trust Fund shall be examined for hazardous materials contamination within 90 days before closing.

(2) The examination for hazardous materials contamination shall be performed by an individual who is experienced in performing such an environmental site assessment and shall be documented in writing to the Trust and the Recipient.

(3) The examination for hazardous materials contamination shall be performed to the standard of practice of the American Society of Testing Materials (ASTM). For Phase I environmental site assessment, such standard of practice shall be

the ASTM Practice E 1527. If the findings and conclusions section of the assessment reports evidence of recognized environmental conditions, then a Phase II Environmental Site Assessment may be performed to address any suspicions raised in the Phase I environmental site assessment and to confirm the presence of contaminants on site.

(4) Prior to closing the Recipient shall examine the written assessment and advise the Trust in writing of its understanding that by accepting title, it may be assuming liability for future adverse action or cleanup associated with the lands covered by the assessment.

(5) In the event an adverse environmental assessment is reported on a site, the Trust may confer with the appropriate staff of the Department for assistance in assessing the risk to the State. Because the Board of Trustees will have an executory interest in the Project Site, the Trust shall have the right to refuse to deliver funds for closing if the Trust and the Department determine the hazardous materials contamination presents a liability to the State that outweighs the benefits to be derived from the Acquisition of the Project Site. If it is determined by the Trust and the Department that a delay in, or termination of the Acquisition is necessary, the Trust shall immediately notify the Recipient. The Trust shall immediately notify all other parties to the Purchase Agreement of the action taken and the basis for the action.

Rulemaking Authority 380.507(11), 380.5105(2) FS. Law Implemented 259.105, 380.501-.515 FS. History—New 11-25-08, Formerly 9K-10.010.

#### **62-821.011 Closing.**

(1) Prior to closing the Trust shall prepare a grant reconciliation statement which shall evidence expenditures for all eligible Project Costs for the Project Site. The reconciliation statement shall be based on the prepared Buyer and Seller closing statements, the prepaid Project Costs of the Recipient and the Trust evidenced by paid receipts, any reimbursements to the Seller or others to be made after closing, the Award amount and any revisions to the Award. The reconciliation statement shall evidence the amount of funds needed from the Trust and Recipient in order that the closing may occur.

(2) The Trust shall have the authority to modify the Purchase Agreement to extend the time for option exercise, closing date, submittal deadlines or any other time limit relating to such agreement. The Trust shall also have the authority to execute or modify all documents necessary for the implementation of Trust action, such as the Purchase Agreement, letter of notification of exercise of option, leases, easements, legal descriptions, deeds, assignments, and other miscellaneous agreements and affidavits, provided the modification does not change the substance nor the scope of Trust approval, and provided the document executed or modified was either approved by the Trust or contemplated by Trust approval. Any changes in the purchase price to be paid to the Seller(s) not contemplated by the terms of the Purchase Agreement must be approved by the Trust. An extension or modification may only be made under the terms of the Purchase Agreement, or with the Seller's agreement.

Rulemaking Authority 380.507(11), 380.5105(2) FS. Law Implemented 259.105, 380.501-.515 FS. History—New 11-25-08, Formerly 9K-10.011.