

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

POLLYWOG CREEK, LLC

Petitioner,

v.

Case No. 2006-044VW

FLORIDA HOUSING FINANCE CORPORATION

Respondent.

**PETITION FOR WAIVER FROM RULE 67-48.004(14)(m)**

Petitioner, Pollywog Creek, LLC ("Petitioner"), by and through its undersigned counsel hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a waiver from Rule 67.48.004(14)(m), Florida Administrative Code (2005). This petition is filed pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code.

1. The address, telephone number and facsimile number of the Petitioner:

Pollywog Creek, LLC  
c/o Everglades Community Associates, Inc.  
19308 SW 380<sup>th</sup> Street  
Florida City, FL 33034  
Telephone number 305-242-2142  
Facsimile number 305-242-2143

2. For purposes of this proceeding, notices and pleadings directed to Petitioner should be sent to undersigned counsel for Petitioner as follows:

Gary J. Cohen, Esq.  
Shutts & Bowen LLP  
201 S. Biscayne Blvd., Ste. 1500  
Miami, Florida 33131  
305-358-6300 (telephone)  
305-381-9982 (telecopier)

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2006-04-11

3. The name and address of the agency from whom a waiver is sought:

Florida Housing Finance Corporation ("FHFC" or the "Corporation")  
227 N. Bronough Street  
City Centre Building, Room 5000  
Tallahassee, Florida 32399

4. On or about October 22, 2004 the Corporation published Request for Proposal #2004-11 ("RFP"), which, as reflected in the title, was designed to assist in "The Development and Rehabilitation of Farmworker Housing." As noted in the RFP's introductory paragraph, the Corporation "has determined that there is a need in Florida for farmworker housing and is seeking to most effectively utilize the SAIL program funds that are set-aside for this purpose." Accordingly, RFP loans were being funded through the State Apartment Incentive Loan (SAIL) Program. The SAIL program is administered by the Corporation pursuant to Section 420.507 and 420.5087, Florida Statutes. In addition, any proposal submitted in response to RFP #200-11, was further subject to some of the provisions contained in Rule 67-48, Florida Administrative Code which involves the allocation of SAIL funds.
5. On or about January 5, 2005 Petitioner submitted its proposal seeking an allocation of funding pursuant to the RFP. Petitioner applied for funds to assist in financing the development of a 40-unit farmworker housing project in Hendry County, Florida. Pursuant to the RFP, the maximum request amount could not exceed two million dollars. As its March 4, 2005 meeting, the Corporation's Board approved Petitioner's proposal. To this end, Petitioner obtained an allocation of funding from 2005 SAIL funds in the amount of two million dollars.

**RULE FROM WHICH WAIVER IS SOUGHT**

6. Petitioner requests a waiver from Rule 67-48.004(14)(m), Florida Administrative Code. More specifically, Petitioner is seeking a waiver which prohibits an applicant from changing its funding request.
7. Rule 67-48.004(14)(m) provides as follows: Notwithstanding any other provision of these rules, there are certain items that must be included in the [Proposal] and cannot be revised, corrected or supplemented after the [Proposal] Deadline . . . Any attempted charges to these items will not be accepted. Those items are as follows: . . . (m) Funding Request . . . (the "Rule").

**STATUTES IMPLEMENTED BY THE RULES**

8. The above cited Rule is implementing, among other actions of the Florida Housing Finance Corporation Act<sup>1</sup>, the statute that created the SAIL Program. (See Sections 420.507 and 420.5087, Florida Statutes).

**PETITIONER REQUESTS A WAIVER FROM THE RULE  
FOR THE FOLLOWING REASONS**

9. Petitioner requests a waiver of Rule 67-48.004(14)(m) which restricts its ability to request additional funding.
10. As previously noted, the RFP limited applicants to an allocation of SAIL funds in an amount not to exceed two million dollars. During the 2006 Universal Application Cycle, the Corporation permitted developers to increase their request for SAIL funds through a program known as "End-of-the-Line SAIL," which provided as follows:

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<sup>1</sup> The Florida Housing Finance Corporation Act is set forth in sections 420.501 through 420.516 of the Florida Statutes.

A proposed Development that was successful in receiving SAIL funding for the first time in the 2005 Universal Application cycle may receive additional SAIL funding for the same Development. The combined total of the 2005 request amount and the 2005 End-of-the-Line SAIL request amount cannot exceed the maximum request amount for the county group/designation stated on the SAIL request amount chart at Part V.A.2. of the 2006 Universal Application Instructions.

(See page 93 of the 2006 Universal Application Instructions). As previously noted, Petitioner's development is located in Hendry County, Florida. The 2006 Universal Application Instructions allows developments located in Hendry County, Florida to obtain SAIL funding in an amount not to exceed four million dollars. (See SAIL request amount chart located at Part V.A.2. of the Universal Application Instructions). The End-of-the-Line SAIL funding program permits developers to obtain additional SAIL funds, provided that the initial allocation of SAIL funds occurred through the 2005 Universal Application Cycle. No provision was made for those developments whose initial allocation of SAIL funds was obtained through an RFP.

11. The funds are needed to assist in paying for (a) increases in construction and development costs which have occurred since submission by Petitioner of its original application, and (b) impact fees that Hendry County has recently begun assessing. These cost increases and impact fees exceed \$2,000,000. As a result, the development will suffer a substantial hardship if it cannot obtain funding to help defray these costs.
12. The Corporation has the authority pursuant to Section 120.542(1), Florida Statutes, to provide relief from its rules, if strict application of its rules will lead to unreasonable, unfair and unintended consequences in particular instances. Unless

the Rule is waived to allow an increase in funding, certain unreasonable, and unfair and unintended consequences will result. Specifically, Petitioner will be precluded from obtaining additional SAIL funding for its development when other developers who obtained an allocation of SAIL funds in 2005 were afforded the opportunity to obtain additional funding from the 2006 Universal Application Cycle.

**WAIVER WILL SERVE THE UNDERLYING  
PURPOSE OF THE STATUTE**

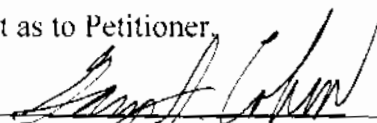
13. Petitioner believes that waiver of the above cited Rule will serve the purpose of the statute which is implemented by the Rule. The Florida Housing Finance Corporation Act (section 420.501, et seq.) was passed in order to encourage private and public investment in persons of low income. The creation of the SAIL program was to stimulate private sector initiatives to increase the supply of affordable housing. By granting this waiver for additional funding through the SAIL program, the Corporation would recognize the goal of increasing the supply of affordable housing through private investment and providing housing for persons of low income.

**TYPE OF WAIVER**

14. The waiver being sought is permanent in nature.
15. Should the Corporation have questions or require any additional information, Petitioner is available to provide any additional information necessary for consideration of the petition.


**ACTION REQUESTED**

16. Petitioner is requesting that the Corporation grant Petitioner a waiver from Rule 67-48.004(14)(m) and allow Petitioner to increase its funding request from two million dollars to four million dollars.
17. This waiver would be permanent as to Petitioner.

  
\_\_\_\_\_  
GARY J. COHEN  
Shutts & Bowen LLP  
201 S. Biscayne Blvd., Suite 1500  
Miami, Florida 33131  
(305) 358-6300  
ATTORNEYS FOR PETITIONER

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that an original of the foregoing has been filed with the Corporation Clerk of the Florida Housing Finance Corporation, 227 North Bronough Street, City Centre Building, Room 5000, Tallahassee, Florida 32399, and a copy provided by hand deliver to the Joint Administrative Procedures Committee, Room 120, Holland Building, Tallahassee, Florida 32399-1300 this 7<sup>th</sup> day of August, 2006.

  
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GARY J. COHEN

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SHUTTS  
&  
BOWEN  
LLP

ATTORNEYS AND COUNSELLORS AT LAW

GARY J. COHEN  
(305) 347-7308 Direct Telephone  
(305) 347-7808 Direct Facsimile

E-MAIL ADDRESS:  
gcohen@shutts-law.com

August 7, 2006

**VIA FEDERAL EXPRESS**

Corporation Clerk  
Florida Housing Finance Corporation  
227 North Bronough Street  
Suite 5000  
Tallahassee, FL 32301-1329

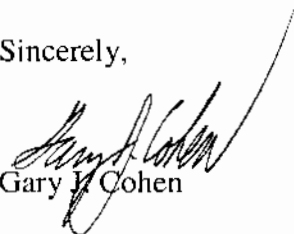
Joint Administrative Procedures Committee  
Room 120  
600 Calhoun Street  
The Holland Building  
Tallahassee, FL 32399-1300

**Re: Petition for Rule Waiver; Pollywog Creek**

Ladies and Gentlemen:

Enclosed please find a Petition for Rule Waiver for Pollywog Creek, LLC. Thank you for your attention to this matter.

Sincerely,



Gary J. Cohen

GJC/kad  
Enclosure  
cc: Derek Helms

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