

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. _____
Application Nos. 2006-358HR
2006A-226B

SILURIAN POND, LTD.,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

**PETITION FOR WAIVERS OF RULES 67ER06-27(14)(e) AND 67-21.003(14)(e) TO
CHANGE THE SITE OF THE SILURIAN POND DEVELOPMENT**

Petitioner Silurian Pond, Ltd, a Florida limited partnership ("Silurian"), petitions Respondent Florida Housing Finance Corporation ("Florida Housing") for waivers of restrictions on changing a development's site. *See* Rules 67ER06-27(14)(e) ("RRLP Rule"), and 67-21.003(14)(e) ("MMRB Rule").

1. Pursuant to Section 120.542, Fla. Stat. (2006), and Rules 28-104.001 through 28-104.006, F.A.C. (2006), Silurian requests waivers of the Rules to allow for a change of its development's site.

A. THE PETITIONER

2. The name, address, and telephone and facsimile numbers for Silurian and its qualified representative are:

Silurian Pond, Ltd.
Attention: Liz Wong
2937 S.W. 27th Avenue, Suite 200
Miami, Florida 33133
Telephone: 305-476-8118
Facsimile: 305-476-1557

3. The name, address, telephone and facsimile numbers, and e-mail addresses of Silurian's attorneys, for purposes of this Petition, are:

Brian J. McDonough, Esquire
STEARNS WEAVER MILLER
WEISSLER ALHADEFF & SITTERSON, P.A.
150 West Flagler Street, Suite 2200
Miami, Florida 33130
Telephone: 305-789-3200
Facsimile: 305-789-3395
E-mail: bmcdonough@swmwas.com

Mimi L. Sall, Esquire
STEARNS WEAVER MILLER
WEISSLER ALHADEFF &
SITTERSON, P.A.
200 East Las Olas Blvd., Suite 2100
Fort Lauderdale, Florida 33301
Telephone: 954-462-9575
Facsimile: 954-462-9524
E-mail: msall@swmwas.com

4. During the 2006 Rental Recovery Loan Program ("RRLP Program") cycle, Silurian was awarded a total commitment of up to \$9.240 million in RRLP and Supplemental Loan financing, subject to final approval by the credit underwriter.¹

5. Funding received through the RRLP Program will be used for the construction of Silurian Pond, a new 72-unit apartment development (the "Development") intended to serve very-low and low-income families in Pensacola, Escambia County, Florida.

6. Silurian received the 2006 RRLP financing because Escambia County was designated as one of the Florida counties impacted by the 2004 and 2005 hurricane seasons, and 2006 RRLP financing was made available to assist affordable housing developments in their hurricane recovery efforts.

7. During the 2006 Supplemental MMRB Application Cycle, Silurian applied for tax-exempt MMRBs and Housing Credits ("HC") (non-competitive 4% with Tax-Exempt Bonds), and received a preliminary reservation of a State Bond Allocation in the amount of up to

¹Rule 67ER06-27(1)(a) adopts and incorporates the RRLP Application Instructions as rules.

\$9 million, subject to final approval by the credit underwriter.² This financing also will be used for the Development's construction costs.

8. The requested RRLP Rule and MMRB Rule waivers will not adversely affect the Development. However, a denial of this Petition (a) would result in substantial economic hardship to Silurian; (b) could deprive Escambia County of essential, affordable housing units in a timely manner; and (c) would violate principles of fairness. § 120.542(2), Fla. Stat. (2006).

9. The requested waivers are permanent in nature.

B. Rules from Which Relief is Requested and Statute Implemented by the Rule

10. Silurian requests a waiver of the RRLP Rule that identifies non-curable matters and includes the following:

Notwithstanding any other provision of these rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application Deadline ... Those items are as follows:

(e) Site for the Development;

Rule 67ER06-27(14)(e).

11. The RRLP Rule is implementing, among other things, Section 31, Chapter 2006-69, L.O.F., by establishing procedures under which Florida Housing shall:

Administer the Application process, determine loan amounts, make and service mortgage loans for the construction or Rehabilitation/Substantial Rehabilitation of affordable rental units utilizing [RRLP] funds.

67ER06-25(1), F.A.C. (2006).

²The Universal Application Package has been adopted and incorporated into Chapter 67-21 by Rule 67-21.003(1)(a), F.A.C. (2006).

12. The RRLP Rule is further implementing the enactment of Florida's response to housing disasters resulting from the 2004 and 2005 hurricane seasons. § 420.55, Fla. Stat. (2006).

13. Specifically, "[t]he Florida Housing Finance Corporation is authorized to provide funds to eligible entities for affordable housing recovery in those areas of the state which sustained housing damage due to hurricanes during 2004 and 2005." Florida Housing adopted emergency rules pursuant to § 120.54, Fla. Stat. (2006), and the Legislature found "that emergency rules adopted pursuant to this section meet the health, safety, and welfare requirement of s. 120.54(4)." In addition, the Legislature determined that:

such emergency rulemaking power is necessary for the preservation of the rights and welfare of the people in order to provide additional funds to assist those areas of the state that sustained housing damage due to hurricanes during 2004 and 2005.

§ 420.55, Fla. Stat. (2006).

14. Silurian also requests a waiver of Rule 67-21.003(14)(e). This MMRB Rule also identifies certain non-curable matters and includes the following:

Notwithstanding any other provision of these rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application Deadline. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempted changes to these items will not be accepted. Those items are as follows:

(e) Site for the Development;

15. The MMRB Rule implements sections 420.502, 420.507, 420.508, and 420.509, Florida Statutes, which empower Florida Housing to issue revenue bonds for the purpose of funding the development of affordable housing for low-income individuals and families.

C. Justification for Silurian's Request to Change Its Development's Site

16. When Silurian applied to the Corporation for financing, the Development was intended to be developed within a 19.41-acre parcel located in Pensacola, Escambia County, Florida. *See* RRLP Application at Part III.A.2., and the legal description appended to the RRLP Application as Exhibit 23A.

17. Based on subsequent circumstances, Silurian has determined that the Development can be constructed on approximately 14.91 acres within the original 19.41-acre parcel, and thereby save construction costs and expense, including those associated with additional site and infrastructure preparation, as well as operating expenses, including property taxes and insurance.

18. The location of the Development will not be changed, and its Tie-Breaker Measurement Point ("TBMP"), identified in Exhibit 21 to Silurian's RRLP Application and in Exhibit 25 to its MMRB Application, remains within the Development's modified legal description. *See* Amended Surveyor Certification and revised legal description attached hereto as Exhibits A and B, respectively.

19. Additionally, because the Development's TBMP remains the same, the 7.5 Proximity Tie-Breaker Points awarded to Silurian would not have changed.

20. The requested change to the Development's legal description would not have impacted the scoring of Silurian's RRLP and MMRB Applications, and would not have provided Silurian with an unfair advantage over other applicants.

21. The requested waiver will not prejudice the Development or the affordable housing market to be served by the Development, and may result in a savings of construction, development, and operating costs.

D. Conclusion

21. The requested waiver will not adversely impact the Development or Florida Housing, and will ensure that 72 affordable housing units will be available in Escambia County, Florida.

22. Controlling statutes and Florida Housing's Rules are designed to allow the flexibility necessary to provide relief for changed circumstances that arise through no fault of an applicant. Florida Housing generally approves such waivers when it would not affect the scoring of an application or otherwise allow an applicant to obtain a possible unfair competitive advantage. § 420.5099(2), Fla. Stat. (2006).

23. Finally, by granting the requested waiver, Florida Housing would recognize the economic realities and principles of fundamental fairness in the development of affordable rental housing. This recognition would promote participation by experienced developer entities in meeting the purpose of the Act through new construction in an economical and efficient manner.

24. Should Florida Housing require additional information, Silurian is available to answer questions and to provide all information necessary for consideration of its Petition for Waivers of Rules 67ER06-27(14)(e) and 67-21.003(14)(e) to Change the Site of the Silurian Development.

WHEREFORE, Petitioner Silurian Pond, Ltd., respectfully requests that the Florida Housing Finance Corporation grant the Petition and provide the following relief:

- A. Waive the prohibitions on changing a development's site location after submission of the RRLP and Supplemental MMRB Applications;
- B. Allow the Development to be developed on the site identified in Exhibit B to this Petition; and

C. Award such further relief as may be deemed appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
Counsel for Silurian Pond, Ltd.
200 East Las Olas Boulevard, Suite 2100
Fort Lauderdale, Florida 33301
Tel: (954) 462-9575
Fax: (954) 462-9567
E-mail: msall@swmwas.com

By: 
MIMI L. SALL

CERTIFICATE OF SERVICE

The original Petition is being served by overnight delivery, with a copy served by electronic transmission for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Tallahassee, Florida 32301, with copies served by overnight delivery on the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300, this 7th day of November, 2007.

By: 
Mimi L. Sall

2006 RRLP - SURVEYOR CERTIFICATION

Name of Development: Situran Pond

Development Location*: 2800 Hollywood Avenue, Pensacola, FL 32505

(At a minimum, provide the address assigned by the United States Postal Service, including the address number, street name and city, or if the address has not yet been assigned, provide the street name, closest designated intersection and city)

* If the Development consists of Scattered Sites, the Development Location stated above must reflect the site where the Tie-Breaker Measurement Point is located.

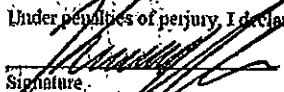
The undersigned Florida licensed surveyor confirms that the method used to determine the following latitude and longitude coordinates conforms to Rule 61G17-6, F.A.C.:

State the Tie-Breaker Measurement Point. Tie-Breaker Measurement Point means a single point selected by the Applicant on the proposed Development site that is located within 100 feet of a residential building existing or to be constructed as part of the proposed Development. For a Development which consists of Scattered Sites, this means a single point on one of the Scattered Sites which comprise the Development site that is located within 100 feet of a residential building existing or to be constructed as part of the proposed Development. In addition, the Tie-Breaker Measurement Point must be located on the site with the most units if any of the Scattered Sites has more than 4 units.	Latitude			Longitude		
		30 Degrees	26 Minutes	45.5 Seconds (truncated after 1 decimal place)	87 Degrees	15 Minutes
If the Development consists of Scattered Sites, is a part of the boundary of each parcel located within 1/2 mile of the Tie-Breaker Measurement Point? <input type="checkbox"/> Yes <input type="checkbox"/> No (check one) Scattered Sites for a single Development means a Development consisting of more than one parcel in the same county where two or more of the parcels (i) are not contiguous to one another or are divided by a street or easement and (ii) it is readily apparent from the proximity of the sites, chain of title, or other information available to the Corporation that the properties are part of a common or related scheme of development.						
Location of closest Public Bus Stop or Metro-Rail Stop	Degrees	Minutes	Seconds (truncated after 1 decimal place)	Degrees	Minutes	Seconds (truncated after 1 decimal place)
State the name, Address and latitude and longitude coordinates of the closest service(s) on the chart below. The latitude and longitude coordinates for each service must represent a point that is on the doorway threshold of an exterior entrance that provides direct public access to the building where the service is located. If there is no exterior public entrance to the service, then a point should be used that is at the exterior entrance doorway threshold that is the closest walking distance to the doorway threshold of the interior public entrance to the service.						
Grocery Store: Name - <u>Tin Cup Foods</u> Address - <u>3930 Hollywood Avenue</u> <u>Pensacola, FL 32505</u>	30 Degrees	26 Minutes	57.1 Seconds (truncated after 1 decimal place)	87 Degrees	15 Minutes	40.8 Seconds (truncated after 1 decimal place)
Public School: Name - <u>Montclair Elementary</u> Address - <u>820 Massachusetts Ave.</u> <u>Pensacola, FL 32505</u>	30 Degrees	27 Minutes	14.4 Seconds (truncated after 1 decimal place)	87 Degrees	15 Minutes	29.8 Seconds (truncated after 1 decimal place)
Medical Facility: Name - <u>Circle Community Clinic</u> Address - <u>704 Massachusetts Ave.</u> <u>Pensacola, FL 32505</u>	30 Degrees	27 Minutes	15.9 Seconds (truncated after 1 decimal place)	87 Degrees	15 Minutes	19.2 Seconds (truncated after 1 decimal place)
Pharmacy: Name - _____ Address - _____	Degrees	Minutes	Seconds (truncated after 1 decimal place)	Degrees	Minutes	Seconds (truncated after 1 decimal place)

If the Corporation discovers that there are any false statements made in this certification, the Corporation will forward a copy to the State of Florida Department of Business and Professional Regulation for investigation.

CERTIFICATION

Under penalties of perjury, I declare that the foregoing statement is true and correct.

Signature: 
Date (mm/dd/yyyy) 11/06/2007
Print or Type Name of Signatory KENNETH C. JACKSON
Print or Type Title of Signatory VICE PRESIDENT
Florida License Number 4549

SEA DIVERSIFIED INC.
Name of Surveyor
1200 NW 17th AVE., SUITE 3
Address
DELRAY BEACH, FL 33445
561-243-4920
Telephone Number (including area code)

This certification may not be signed by the Applicant, by any related parties of the Applicant, or by any Principals or Financial Beneficiaries of the Applicant. If the certification is inappropriately signed, the Application will not receive proximity tie-breaker points. If this certification contains corrections or "white-out", or if it is scanned, imaged, altered, or retyped, the Application will not receive proximity tie-breaker points and will fail to meet threshold and will be rejected. The certification may be photocopied.



LEGAL DESCRIPTION PARCEL 2:

A PARCEL OF LAND BEING ENTIRELY IN SECTION 4, TOWNSHIP 2 SOUTH, RANGE 30 WEST BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCE AT THE NORTHWEST CORNER OF LOT 3, SECTION 3, TOWNSHIP 2 SOUTH, RANGE 30 WEST; THENCE NORTH 72°35'05" EAST ALONG THE NORTH LINE OF THE SAID LOT 3 FOR A DISTANCE OF 35.00 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF HOLLYWOOD AVENUE (66' R/W); THENCE SOUTHEAST DEFLECTING TO THE RIGHT AT AN ANGLE OF 90°55'42" (SOUTH 17°20'32" EAST) ALONG THE SAID EASTERLY RIGHT-OF-WAY LINE FOR A DISTANCE OF 227.32 FEET FOR THE POINT OF BEGINNING; THENCE DEPARTING SAID EAST RIGHT-OF-WAY LINE NORTH 72°30'25" EAST FOR 200.00 FEET; THENCE NORTH 17°20'32" WEST FOR 127.69 FEET; THENCE NORTH 72°35'05" EAST FOR 535.00 FEET; THENCE SOUTH 17°20'42" EAST FOR 815.80 FEET; THENCE SOUTH 72°35'45" WEST FOR 606.85 FEET; THENCE NORTH 17°24'12" WEST FOR 391.85 FEET; THENCE SOUTH 72°39'28" WEST FOR 231.43 FEET; THENCE NORTH 17°20'32" WEST FOR 306.67 FEET; THENCE SOUTH 72°34'28" WEST FOR 200.00 FEET TO THE AFORESAID EASTERLY RIGHT-OF-WAY LINE OF HOLLYWOOD AVENUE (66' R/W); THENCE NORTH 17°20'32" WEST ALONG SAID RIGHT-OF-WAY LINE FOR 80.00 FEET TO THE POINT OF BEGINNING, CONTAINS 14.41 ACRES MORE OR LESS

