

**BEFORE THE STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

LA ESTANCIA, LTD.,

Petitioner,

vs.

**FLORIDA HOUSING FINANCE
CORPORATION,**

Respondent.

FHFC Case No. 2020-047BP
FHFC RFA No. 2020-104
Petitioner's Application No. 2020-493S

**FORMAL WRITTEN PROTEST AND
PETITION FOR ADMINISTRATIVE PROCEEDINGS**

Pursuant to Sections 120.569 and 120.57, Fla. Stat., and Florida Housing Finance Corporation Request for Application (“RFA”) No. 2020-104, at Section Six, and Rules 28-106.205 and 67-60.009, Fla. Admin. Code, Petitioner La Estancia, Ltd., (“Petitioner” or “La Estancia”), an applicant for funding in RFA No. 2020-104 for SAIL Funding for Farmworker and Commercial Fishing Worker Housing, hereby files its formal written protest to contest the proposed eligibility and scoring decisions and award of funding in RFA 2020-104. In support of this Protest and Petition, Petitioner states as follows:

Parties

1. The agency affected is the Florida Housing Finance Corporation (the “Corporation”, “Florida Housing,” or “FHFC”), whose address is 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329. The solicitation number assigned to this process for the award of State Apartment Incentive Loan (“SAIL”) funding is Request for Applications (“RFA”) 2020-104. Only two applicants submitted applications for funding in response to this RFA, both applying for Farmworker housing: La Estancia, and Partnership In Housing, Inc. for

the Pueblo Bonito development in Lee County, application number 2020-492S. By notice posted on its website, FHFC has given notice of its intent to award SAIL funding to Pueblo Bonito, but not to La Estancia. FHFC also posted notice at the same time of its determinations or eligibility and scoring of the two applications in this RFA.

2. Petitioner, La Estancia, Ltd., (“Petitioner” or “La Estancia”) is a Florida limited partnership, whose business address is 1631 E. Vine Street, Suite 300, Kissimmee, Florida 34744. For purposes of this proceeding, Petitioner’s address is that of its undersigned counsel, M. Christopher Bryant, Oertel, Fernandez, Bryant & Atkinson, P.A., P.O. Box 1110, Tallahassee, Florida 32302-1110, telephone number 850-521-0700, facsimile number 850-521-0720, email cbryant@ohfc.com.

3. Petitioner submitted an application, assigned Application No. 2020-493S, in RFA 2020-104 seeking an award of SAIL funding in the amount of \$4.2 million. Petitioner proposes to acquire and rehabilitate an existing 84-unit farmworker housing development in Hillsborough County. All 84 of the units would be set aside for tenants earning at or below 50% of Area Median Income (“AMI”) (including 10% of the units for tenants earning at or below 40% AMI, and an additional 11% for tenants earning at or below 35% AMI).

Notice

4. On Friday, July 17, 2020, at approximately 3:50 p.m., Petitioner and the other applicant in RFA 2020-104 received notice that FHFC’s Board of Directors had adopted FHFC staff’s scoring and eligibility determinations for the two applications submitted for funding; and selected Pueblo Bonito for the award of SAIL funding, subject to satisfactory completion of the credit underwriting process. Such notice was provided by the posting of two spreadsheets, one listing the eligible status and scoring of the two applications in RFA 2020-104 (copy attached as

Exhibit “A”) and one identifying the application which FHFC proposed to fund (copy attached as Exhibit “B”) on the Florida Housing website, www.floridahousing.org. Petitioner timely filed a Notice of Protest on Wednesday, July 22, 2020, copy attached to this Petition as Exhibit “C.” Petitioner’s Formal Written Protest and Petition for Formal Administrative Proceedings is being filed within 10 calendar days of that notice; the tenth day fell on Saturday, August 1, 2020, so by operation of Rule 28-106.103, Fla. Admin. Code, the filing deadline was extended to Monday, August 3, 2020.

Substantial Interests Affected

5. Petitioner’s substantial interests are being determined in the instant proceeding because Petitioner is an applicant for SAIL funding. Petitioner was not preliminarily selected for an award of funding. Petitioner cannot proceed with the proposed acquisition and rehabilitation of the development for low income farmworkers without the award of the requested funding.

Factual Background

RFA 2020-104 Ranking and Selection Process

6. Through the RFA 2020-104 process, FHFC seeks to award up to an estimated \$5,131,050 in SAIL financing for the construction or rehabilitation of affordable housing developments for farmworkers and commercial fishing workers.

7. Applicants in this RFA were to be scored on a 100-point scale. Applicants submitting a Principal Disclosure Form that has been stamped “pre-approved” would receive five (5) points. The remainder of the points were to be awarded for narrative portions of the applications that were to be subjectively scored by Florida Housing staff, with the maximum points available as follows:

- Current and Future Need for Farmworker or Commercial Fishing Worker Housing in the Area (“Need”): 15 points

- Experience Operating and managing Farmworker or Commercial Fishing Worker Housing (“Operating Experience”): 20 points
- Outreach, Marketing, and Referral (“Outreach”): 30 points
- Resident Access to Onsite and Offsite Programs, Services, and Resources (“Access”): 30 points

The total possible points an applicant could receive for both the Principal Disclosure Form and the scored narrative sections was 100.

Application Submission and Processing

8. Florida Housing received two Applications seeking funding in RFA 2020-104. The applications were received, processed, deemed eligible or ineligible, scored, and ranked, presumably pursuant to the terms of RFA 2020-104; and FHFC Rule Chapters 67-48 and 67-60, Fla. Admin. Code. Applications are considered for funding only if they are deemed “eligible,” based on whether the Application complies with Florida Housing’s various application content requirements. Both applications were deemed eligible.

9. The points awarded by the review committee to the two applicants were as follows:

	492S, Pueblo Bonito	493S, La Estancia
Principal Disclosure Form (5)	5	5
“Need” (15)	12	12
“Experience” (20)	16	17
“Outreach” (30)	27	27
“Access” (30)	25	24
Total (100)	85	85

10. The RFA specifies an “Application Sorting Order” to rank applicants for potential funding. The first consideration in sorting eligible applications for potential funding is Application

scores. Both applicants received a score of 85 points.

11. In many RFAs, multiple applicants will achieve tie scores, and in anticipation of that occurrence FHFC designed the RFA and rules to incorporate a series of “tie-breakers.” (Tie scores are very rare in RFAs such as RFA 2020-104, where applicants are scored on the narrative content of the applications, although it did occur here.) The tie-breakers in this RFA, in order of applicability, are:

(a) First, by points received for the Need criterion, with a higher number of points preferred. Both applicants received 12 points for Need.

(b) Second, by SAIL Request Amount Per Unit, with lower SAIL funds per unit preferred. Both applicants requested \$50,000 in SAIL funds per unit.

(c) Third, by Total SAIL Request Amount as a percentage of Total Development Cost (“TDC”), with applicants whose SAIL request amount is 90% or less of TDC preferred. Both applicants’ Total SAIL Request Amount was 90% or less of their respective TDCs.

(d) Fourth, by a Florida Job Creation Preference. Both applicants satisfied this preference.

(e) Last, by lottery numbers randomly assigned to the applications when they are submitted to Florida Housing. Pueblo Bonito had lottery number 1; La Estancia had lottery number 2.

12. Based on the application of the Sorting Order instructions, including both scoring and tie-breakers, Pueblo Bonito was recommended for funding by the staff review committee. FHFC employs a “Funding Test” to be used in the selection of applications for funding in this RFA. The “Funding Test” requires that the amount of SAIL funding remaining (unawarded) when

a particular application is being considered for selection must be enough to fully fund that applicant's SAIL request amount. After selection of Pueblo Bonito for funding, there was only \$1,131,050 in SAIL funding remaining, which was not enough to fund La Estancia's \$4,200,000 SAIL request.

13. FHFC also applies a "County Award Tally" to prevent a disproportionate concentration of funded developments in any one county. That preference was inapplicable here since only two applications were submitted, and they were from different counties (Lee and Hillsborough).

14. The review committee's scoring determinations and recommendation to select Pueblo Bonito for funding were presented to the Florida Housing Board of Directors at its July 17, 2020 meeting. The Board adopted the review committee's scoring and award recommendations.

Scoring Issue

15. La Estancia challenges the scores awarded to the two applications on the issue of Current and Future Need for Farmworker Housing. Both applicants received a score of 12 out of 15 points for this review criterion. La Estancia should have received a higher score than Pueblo Bonito for Need, for several reasons.

16. La Estancia is located in Hillsborough County; Pueblo Bonito is located in Lee County. According to the 2019 Rental Market Study prepared for Florida Housing by the Shimberg Center for Housing Studies at the University of Florida, 14.2% of the state's farmworkers are employed in Hillsborough County; only 2.55% are employed in Lee. Pueblo Bonito makes a point of noting that its development is located only three miles from the Collier County line; Collier agricultural operations employ another 5.63% of the state's farmworkers. But La Estancia is about a similar distance from Manatee County, which employs another 6.88% of

farmworkers. So, if one were to combine the two adjacent counties for each applicant, Hillsborough/Manatee account for over 21% of the state's farmworkers; Lee/Collier account for slightly over 8%.

17. More importantly, though, the Shimberg study calculated need for farmworker housing type by County. Hillsborough County was determined to have a need for 3,813 Multifamily units; Lee County was determined to have a need for only 741 units. Hillsborough County's need was second highest in the state, behind only Miami-Dade County (4,014 units). Figure 7.3 from the Shimberg study is a map of the state of Florida showing need for multifamily farmworker housing; a copy is attached to this Petition as Exhibit "D."

18. Again, looking at the adjacent counties, Collier County was found to have a need for 1,546 multifamily units and Manatee County was found to have a need for 2,337 multifamily units. Collier County currently has 626 USDA-RD and Florida Housing Multifamily units set aside for farmworkers, which is more than Hillsborough currently has (453). Manatee County, which is adjacent to La Estancia's location in extreme southern Hillsborough County, currently has fifty (50) FHFC and USDA-RD farmworker units, and, again, needs 2,337 more.

19. Given the current low inventory of multifamily units for farmworkers in Hillsborough County, and the large need, it is difficult to imagine how applicants in Hillsborough and Lee received the same score for Need in the scoring of these applications.

20. In addition, Florida Housing's current RFA development process has expressly designated Lee County as a Limited Development Area (LDA) for farmworker housing. Several other counties were designated as LDA for farmworker housing, but Hillsborough was not. See, 2020 Limited Development Area Chart from the Florida Housing website, copy attached as Exhibit E. Notably, this posting was labeled as "effective July 10, 2020," which was before Florida

Housing's Board preliminarily approved the funding of Pueblo Bonito, a Lee County farmworker development.

21. Florida Housing's LDA methodology is designed to avoid funding rental developments in areas in which existing supply or new affordable housing starts outpace increases in demand. Funding developments in LDA areas results in reduced occupancy levels or downward pressure on rents due to oversupply, and threatens the economic viability of existing housing developments, and of newly constructed or recently approved developments that do not yet have an existing tenant base. Thus, Florida Housing itself recognizes that the need for farmworker housing is less in Lee County and other counties designated as LDA's, and Florida Housing rightly did not include Hillsborough as an LDA. Florida Housing should have awarded La Estancia a higher score for need in this RFA.

22. If La Estancia was awarded more "Need" points, without any other scoring change, La Estancia would be selected for funding instead of Pueblo Bonito due to a higher score. If other scores were adjusted and the applications remained tied, La Estancia would be selected as satisfying the Need scoring preference.

Disputed Issues

23. Petitioner has initially identified the following disputed issues of material fact, which it reserves the right to supplement as additional facts become known to it:

- a. Whether La Estancia is entitled to a higher score for need than Pueblo Bonito. Petitioner contends that it is.
- b. Whether it would be contrary to the terms of the RFA, and arbitrary, capricious, and clearly erroneous, to not award La Estancia a higher need score than Pueblo Bonito. Petitioner contends that it would be.

c. Whether, La Estancia's application should have been selected for funding, either instead of or in addition to the application of Pueblo Bonito. Petitioner contends that it should be, and that the failure to do so would be contrary to the RFA provisions in a manner that is arbitrary and capricious.

Concise Statement of Ultimate Facts, Relief Sought, and Entitlement to Relief

24. As its concise statement of ultimate fact, Petitioner asserts that its application should receive a higher score for need than Pueblo Bonito's application in this RFA; and that the La Estancia application should be selected for funding as the highest scoring applicant in this RFA, either instead of or in addition to Pueblo Bonito.

25. Petitioner seeks entry of recommended and final orders finding Petitioner's application as the highest scoring application in this RFA, and selecting it for funding. Petitioner is entitled to this relief by the terms and conditions of the FHFC's RFA; by FHFC Rule Chapters 67-48 and 67-60, Fla. Admin. Code; and by Chapters 120 and 420, Florida Statutes, including but not limited to Sections 120.569 and 120.57, Florida Statutes.

Request for Settlement Meeting

26. Pursuant to Section 120.57(3)(d), Fla. Stat., Petitioner requests an opportunity to meet with Florida Housing to resolve this matter by mutual agreement within seven business days after filing. Petitioner reserves the right to agree to extend the time for such a settlement meeting.

FILED AND SERVED this 3rd day of August, 2020.

/s/ M. Christopher Bryant

M. CHRISTOPHER BRYANT
Florida Bar No. 434450
OERTEL, FERNANDEZ, BRYANT
& ATKINSON, P.A.
P.O. Box 1110
Tallahassee, Florida 32302-1110

Telephone: 850-521-0700
Telecopier: 850-521-0720
Primary: cbryant@ohfc.com
Secondary: bpetty@ohfc.com

Attorney for Petitioner La Estancia, Ltd.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that the original of the foregoing Formal Written Protest and Petition for Administrative Proceedings has been filed by e-mail with the Corporation Clerk, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329 (CorporationClerk@floridahousing.org), and a copy via e-mail to the following this 3rd day of August, 2020:

Hugh Brown, General Counsel
Betty Zachem, Assistant General Counsel
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329
Hugh.brown@floridahousing.org
Betty.zachem@floridahousing.org

/s/ M. Christopher Bryant

ATTORNEY

Exhibits to La Estancia, Ltd.'s Petition

- A. Board-adopted spreadsheet of Eligibility and Scoring, posted Friday, July 17, 2020, at 3:50 p.m.
- B. Board-adopted spreadsheet of funding selections, posted Friday, July 17, 2020, at 3:50 p.m.
- C. La Estancia, Ltd.'s Notice of Protest submitted Wednesday, July 22, 2020 date stamped 9:32 a.m.
- D. Figure 7.3 from May 2019 Rental Market Study, prepared for Florida Housing by Shimberg Center for Housing Studies
- E. 2020 Limited Development Area (LDA) Chart, effective July 10, 2020, from FHFC Website

RFA 2020-104 Board Approved Scoring Results

Application Number	Name of Development	County	Name of Authorized Principal Representative	Name of Developers	Number of Units	SAIL Request Amount	Eligible For Funding?	Total Points	Current and Future Need for Farmworker or Commercial Fishing Worker Housing in the Area points	SAIL Request Per Set-Aside Unit	SAIL Request as % of TDC Preference	Florida Job Creation Preference	Lottery Number
2020-492S*	Pueblo Bonito	Lee	David Hanson	National Development of America, Inc.	80	\$ 4,000,000.00	Y	85	12	\$ 50,000.00	Y	Y	1
2020-493S	La Estancia Apartments	Hillsborough	Domingo Sanchez	DDER Development, LLC; EMW La Estancia LLC	84	\$ 4,200,000.00	Y	85	12	\$ 50,000.00	Y	Y	2

*Total number of units was determined during scoring.

On July 17, 2020, the Board of Directors of Florida Housing Finance Corporation approved the Review Committee's motion to adopt the scoring results above.

Any unsuccessful Applicant may file a notice of protest and a formal written protest in accordance with Section 120.57(3), Fla. Stat., Rule Chapter 28-110, F.A.C., and Rule 67-60.009, F.A.C. Failure to file a protest within the time prescribed in Section 120.57(3), Fla. Stat., shall constitute a waiver of proceedings under Chapter 120, Fla. Stat.

RFA 2020-104 – Board Approved Preliminary Awards

Total SAIL Funding Available for	5,131,050
Total SAIL Funding Allocated	4,000,000
Total SAIL Funding Remaining	1,131,050

Application Number	Name of Development	County	Name of Authorized Principal Representative	Name of Developers	Number of Units	SAIL Request Amount	Eligible For Funding?	Total Points	Operating and Managing Farmworker or Commercial Fishing Worker Housing	SAIL Request Per Set-Aside Unit	SAIL Request as % of TDC Preference	Florida Job Creation Preference	Lottery Number
2020-492S*	Pueblo Bonito	Lee	David Hanson	National Development of America, Inc.	80	\$ 4,000,000.00	Y	85	12	\$ 50,000.00	Y	Y	1

On July 17, 2020, the Board of Directors of Florida Housing Finance Corporation approved the Review Committee’s motion and staff recommendation to select the above Application for funding and invite the Applicants to enter credit underwriting.

Any unsuccessful Applicant may file a notice of protest and a formal written protest in accordance with Section 120.57(3), Fla. Stat., Rule Chapter 28-110, F.A.C., and Rule 67-60.009, F.A.C. Failure to file a protest within the time prescribed in Section 120.57(3), Fla. Stat., shall constitute a waiver of proceedings under Chapter 120, Fla. Stat.



MAILING ADDRESS: POST OFFICE BOX 1110 | TALLAHASSEE, FLORIDA 32302-1110

OFFICES: 2060 DELTA WAY | TALLAHASSEE, FLORIDA 32303
PHONE: 850-521-0700 | FAX: 850-521-0720 | WWW.OHFC.COM

ATTORNEYS:

TIMOTHY P. ATKINSON
SIDNEY C. BIGHAM III
M. CHRISTOPHER BRYANT
SEGUNDO J. FERNANDEZ
KENNETH G. OERTEL
TIMOTHY J. PERRY

OF COUNSEL:
C. ANTHONY CLEVELAND

July 22, 2020

Via E-mail

Corporation Clerk
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329
CorporationClerk@floridahousing.org


Re: RFA 2020-104 SAIL Funding for Farmworker and Commercial Fishing Worker
Housing
Notice of Protest by La Estancia, Ltd.
Applicant for Application No. 2020-493S, La Estancia

Dear Corporation Clerk:

Pursuant to Section 120.57(3) Fla. Stat., and Rules 67-60.009(2) and 28-110.003, Fla. Admin. Code, La Estancia, Ltd. ("La Estancia"), Applicant for Application No. 2020-493S in RFA 2020-104, hereby gives notice of its intent to protest the determinations contained on the attached spreadsheets reflecting proposed awards of funding (Attachment A) and proposed scoring, eligibility, and ineligibility determinations (Attachment B) in RFA 2020-104, as approved by the Corporation's Board of Directors on Friday, July 17, 2020. These spreadsheets were posted on the Corporation's website on Friday, July 17, 2020, at 3:50 p.m.; this Notice of Protest is being filed within 72 hours of such posting (excluding Saturdays and Sundays).

La Estancia will file its formal written protest within the time required by Section 120.57(3), Fla. Stat.

Sincerely,



M. Christopher Bryant
Telephone: (850) 521-0700
Mobile: (850) 544-5302
Email: cbryant@ohfc.com
Counsel for La Estancia, Ltd.
Applicant for Application No. 2020-493S

cc: Hugh Brown, General Counsel (by e-mail only - Hugh.Brown@floridahousing.org)

RFA 2020-104 – Board Approved Preliminary Awards

Total SAIL Funding Available for	5,131,050
Total SAIL Funding Allocated	4,000,000
Total SAIL Funding Remaining	1,131,050

Application Number	Name of Development	County	Name of Authorized Principal Representative	Name of Developers	Number of Units	SAIL Request Amount	Eligible For Funding?	Total Points	Operating and Managing Farmworker or Commercial Fishing Worker Housing	SAIL Request Per Set-Aside Unit	SAIL Request as % of TDC Preference	Florida Job Creation Preference	Lottery Number
2020-4925*	Pueblo Bonito	Lee	David Hanson	National Development of America, Inc.	80	\$ 4,000,000.00	Y	85	12	\$ 50,000.00	Y	Y	1

On July 17, 2020, the Board of Directors of Florida Housing Finance Corporation approved the Review Committee's motion and staff recommendation to select the above Application for funding and invite the Applicants to enter credit underwriting.

Any unsuccessful Applicant may file a notice of protest and a formal written protest in accordance with Section 120.57(3), Fla. Stat., Rule Chapter 28-110, F.A.C., and Rule 67-60.009, F.A.C. Failure to file a protest within the time prescribed in Section 120.57(3), Fla. Stat., shall constitute a waiver of proceedings under Chapter 120, Fla. Stat.

RFA 2020-104 Board Approved Scoring Results

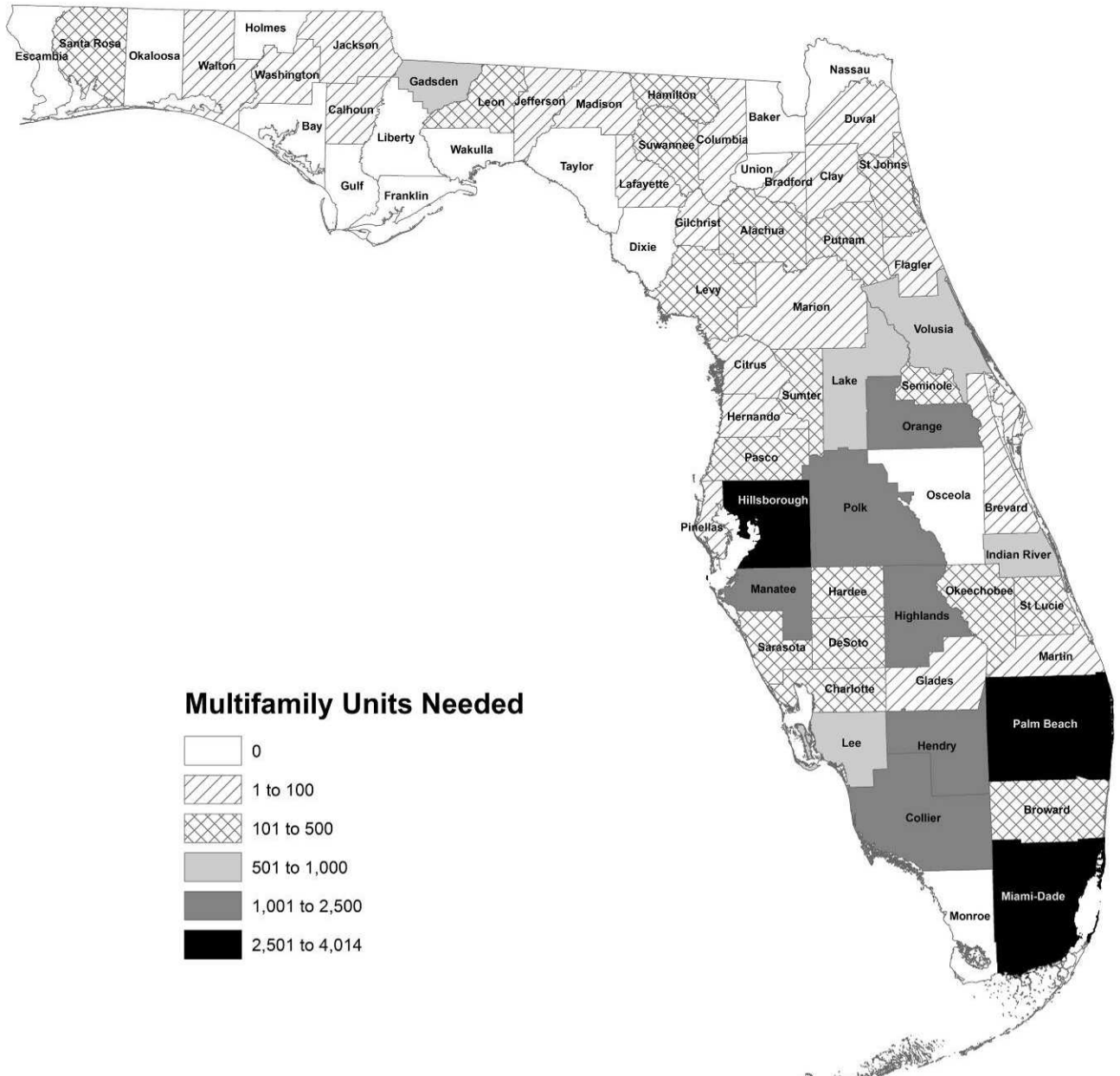
Application Number	Name of Development	County	Name of Authorized Principal Representative	Name of Developers	Number of Units	SAIL Request Amount	Eligible For Funding?	Total Points	Current and Future Need for Farmworker or Commercial Fishing Worker Housing in the Area points	SAIL Request Per Set-Aside Unit	SAIL Request as % of TDC Preference	Florida Job Creation Preference	Lottery Number
2020-4925*	Pueblo Bonito	Lee	David Hanson	National Development of America, Inc.	80	\$ 4,000,000.00	Y	85	12	\$ 50,000.00	Y	Y	1
2020-4935	La Estancia Apartments	Hillsborough	Domingo Sanchez	DDER Development, LLC; EMW La Estancia LLC	84	\$ 4,200,000.00	Y	85	12	\$ 50,000.00	Y	Y	2

*Total number of units was determined during scoring.

On July 17, 2020, the Board of Directors of Florida Housing Finance Corporation approved the Review Committee's motion to adopt the scoring results above.

Any unsuccessful Applicant may file a notice of protest and a formal written protest in accordance with Section 120.57(3), Fla. Stat., Rule Chapter 28-110, F.A.C., and Rule 67-60.009, F.A.C. Failure to file a protest within the time prescribed in Section 120.57(3), Fla. Stat., shall constitute a waiver of proceedings under Chapter 120, Fla. Stat.

Figure 7.3. Need for Farmworker Multifamily Units by County



Source: U.S. Bureau of Labor Statistics, 2017 Quarterly Census of Employment and Wages; U.S. Department of Labor, National Agricultural Workers Survey (multiple years); U.S. Department of Labor, Office of Foreign Labor Certification, 2018 H-2A Disclosure Data; Florida Department of Health; Shimberg Center for Housing Studies, Assisted Housing Inventory

2020 Limited Development Area (LDA) Chart

County	Demographic Category	Area
Glades	Family and Elderly	Entire County
Hendry	Farmworker	Entire County
Highlands	Farmworker	Entire County
Indian River	Farmworker	Entire County
Lee	Farmworker	Entire County
Madison	Family and Elderly	Entire County
Sumter	Family and Elderly	Entire County
Volusia	Farmworker	Entire County