

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: POLLYWOG CREEK, LLC

FHFC Case No.: 2006-044VW
Application No.: RFP 2004-011

**ORDER GRANTING WAIVER OF RULE 67-48.004(14)(m),
FLORIDA ADMINISTRATIVE CODE (2006)**

THIS CAUSE came for consideration and final action before the Board of Directors of Florida Housing Finance Corporation on December 15, 2006, pursuant to a "Petition for Waiver From Rule 67-14.004(14)(m)" (the "Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on August 5, 2006, from Pollywog Creek, LLC ("Petitioner"). On August 18, 2006, Florida Housing published the Notice of the Petitions in Volume 32, Number 33, of the Florida Administrative Weekly. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board of Directors (the "Board") of Florida Housing hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.
2. In March, 2005, Pollywog Creek, LLC (the "Petitioner") received an allocation of \$2,000,000 in State Apartment Incentive Loan (SAIL) funds via RFP #2004-011, titled "The Development and Rehabilitation of Farmworker Housing" (the "RFP").
3. SAIL funds awarded via this RFP are subject to the SAIL rules effective at the time, as found in Chapter 67-48, Fla. Admin. Code (2004).
4. Rule 67-48.004(14)(m), Fla. Admin. Code (2004) (the "Rule") provides, in pertinent part:

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

 /DATE: 12-18-06

Notwithstanding any other provision of these rules, there are certain items that must be included in the [RFP proposal] and cannot be revised, corrected or supplemented after the [RFP proposal] Deadline... Any attempted changes to these items will not be accepted. Those items are as follows:

(m) Funding Request.

5. Specifically, Petitioner requests a waiver of the above Rule to permit an increase of their request amount from \$2,000,000 to \$4,000,000. As grounds for this request, Petitioner asserts that strict application of the above Rule will cause Petitioner to suffer substantial hardship and would violate principles of fairness. Petitioner reports recent increases in impact fees imposed by Hendry County as well as increases in construction costs, which together exceed \$2 million.

6. On the issue of fairness, Petitioner cites to a provision of the 2006 Universal Cycle through which developers could increase their request for SAIL funds through a program known as 'End-of-the-Line SAIL.'" This program permits developments in Hendry County to increase allocated funding up to \$4 million in SAIL funds, but no provision was made for those developments whose initial allocation of SAIL funds was obtained via an RFP.

7. Moreover, Petitioner asserts that the granting of this waiver request would serve the underlying purposes of Chapter 420, Part V, Fla. Stat., by enabling them to increase the supply of affordable housing to the farmworker demographic category.

8. On September 7, 2006, Florida Housing issued a request for additional information from Petitioner, pursuant to Section 120.542(7), Fla. Stat., asking for documentation of the increased development costs and Hendry County impact fees. Petitioner provided documentation demonstrating these increased costs and fees on October 6, 2006, and a copy of this documentation was provided to the Board for its consideration.

9. Section 120.542(2), Florida Statutes provides in pertinent part:

Variations and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.

10. The granting of a waiver of the aforementioned rule would serve the purpose of the underlying statute, Chapter 420, Part V, Fla. Stat., in that it would further the goal of facilitating the availability of decent, safe and sanitary housing in the State of Florida.

IT IS THEREFORE ORDERED:

The relief requested in the Petition is hereby **GRANTED**, in that Petitioner shall be permitted to increase the request amount for SAIL funds obtained under RFP 2004-011 from \$2,000,000 to \$4,000,000.

DONE and ORDERED this 15th day of December, 2006.

Florida Housing Finance Corporation

By: 
Chairperson



Copies furnished to:

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NOTICE OF RIGHTS

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO PROCEEDINGS PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.