

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

In re: Cape Morris Cove, L.L.L.P

Case No. 2008-004VW

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**ORDER GRANTING PETITION FOR WAIVER OF RULE 67-48.004(14)(j),  
FLORIDA ADMINISTRATIVE CODE (2007)**

THIS CAUSE came on for consideration and final action before the Board of Directors of Florida Housing Finance Corporation ("Florida Housing") on March 14, 2008, pursuant to a "Petition for Waiver from Rule 67-48.004(14)(j), Florida Administrative Code (2007)" filed by Cape Morris Cove, L.L.L.P ("Petitioner") on February 4, 2008. Notice of the Petition was published in Volume 34, Number 07, 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. During the 2007 Universal Cycle, Cape Morris Cove, L.L.L.P, ("Petitioner") applied for and was awarded State Apartment Incentive Loan ("SAIL") funds to finance a portion of the costs to develop Cape Morris Cove – Phase I (the "Development") located in Volusia County, Florida.

FILED WITH THE CLERK OF THE FLORIDA  
HOUSING FINANCE CORPORATION

*Sherry Green* /DATE: 3-17-08

3. Rule 67-48.004(14)(j), Florida Administrative Code (2007), provides in pertinent part:

(14) 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:

...(j) Total number of units

4. 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.

5. In Petitioner's original Application, Petitioner indicated that the Development would consist of 128-unit apartment community consisting of 18 one bedroom, 12 two bedroom and 98 three bedroom units. Subsequent reports detailing engineering and design analysis, however, revealed that the Development could support an increase to 130 units consisting of 11 one bedroom, 5 two bedroom and 106 three bedroom units. Therefore, Petitioner requests a waiver of Rule 67-48.004(14)(j), F.A.C. (2007) to allow it to increase the number of units in the Development from 128 to 130.

6. Approving the requested waiver serves the underlying purpose of Section 420.5087, Florida Statute and the SAIL Program by facilitating and stimulating affordable multi-family rental housing. Since Petitioner's endeavor exceeds its current obligation, approving the unit increase furthers Respondent's purpose.

7. Petitioner has demonstrated that failure to grant this Petition will violate principles of fairness in that Petitioner will be precluded from providing additional set aside units without additional burden to Respondent's limited resources. Petitioner has demonstrated that strict application of the above Rules under these circumstances will violate the principles of fairness in that unless the petition is granted, Petitioner will underutilize available land.

8. Since approval will fail to affect application scoring, Petitioner derives no unfair advantage over its competitors in an application cycle. Ultimately, 67-48.004(14) is used to prevent an applicant from changing certain key elements in its application after reviewing its competitors' applications. Such preclusion circumvents the possibility of an applicant gaining a competitive advantage. Under these circumstances, however, approving Petitioner's request fails to provide any such advantage.

9. The Board finds that strict application of the above Rules under these circumstances will violate the principles of fairness. Thus, by strictly applying the above Rules, Petitioner will fail to meet Respondent's purpose of providing

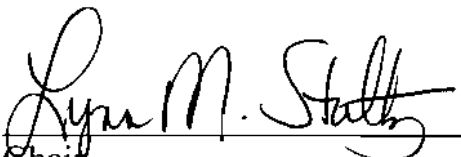
affordable housing, through new construction, in an economical and efficient manner.

**IT IS THEREFORE ORDERED:**

The Petition for a waiver of Rule 67-48.004(14)(j) Florida Administrative Code (2007) is hereby **GRANTED**, to allow Petitioner to increase the number of units in the Development from 128 to 130.

DONE and ORDERED this 14th day of March, 2008.

Florida Housing Finance Corporation

By:   
Chair

**Copies furnished to:**

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Joint Administrative Procedures Committee  
Attention: Ms. Yvonne Wood  
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## **NOTICE OF RIGHTS**

**A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL REVIEW 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.**