

The State of Florida
Florida Housing Finance Corporation

FHFC Case No. 2004-019-UC

In Re: San Jose Mission Application
To Florida Housing Finance Corporation
Application #2004-026S

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Mason /DATE. 7/30/04
Application No
2004-026S

PETITION

Catholic Charities Housing, Inc., a Florida Corporation, hereby submits this Petition and requires an evidentiary proceeding and asserts as follows:

1. The name and address of the Agency affected and the Agency's file or identification number are as follows:

Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, FL 32301-1329
Universal Cycle Application Number: #2004-026S

2. Names, addresses and telephone numbers of Petitioner and Petitioner's representative and explanation of how interest will be affected:

a. Petitioner: Catholic Charities Housing, Inc.
Re: San Jose Mission

1213 16th Street North

St. Petersburg, FL 33705

Phone: (727) 893-1314 x210

Fax: (727) 550-4200

Contact: Arnold Andrews, Executive Director

- b. Petitioner's Representative: Not Applicable
- c. The Petitioner applied for a SAIL Loan from the Florida Housing Finance Corporation ("FHFC") from the 2004 Universal Cycle. FHFC found that the Petitioner's application did not meet the threshold requirements and did not award a SAIL Loan to the Petitioner.

3. Notification to Petitioner

The Petitioner received notification of FHFC's decision by fax and mail on or after July 9, 2004.

4. Statement of Disputed Facts and Specific Rules or Statutes Requiring Reversal

- a. **FHFC's position is "The Development does not meet the requirements of Rule 67-48.002(98). The permanent financing of the costs associated with construction or rehabilitation of the Development closed prior to the Application Deadline."**

Petitioner's Response: San Jose Mission differs greatly from developments typically receiving SAIL funding. Specifically the development is targeted to Farmworker households and serves only households at or below 50% of area median income. In order to finance the construction of San Jose Mission, it was

necessary for the Petitioner to access numerous funding sources including Pinellas County Industrial Development Authority Revenue Bonds. The aforementioned items were demonstrated within the Petitioner's Application. The Petitioner makes reference to Part III.E(1)(b).(3)(b) and Exhibit 35 of the Petitioner's original Application submission.

The Petitioner submitted a SAIL application within 2004 Universal Application cycle in order to receive SAIL funding which would allow for substantially lower debt service payments. The Petitioner asserts that the financing for San Jose Mission does not constitute permanent financing. Attached as Exhibit A is the Petitioner's CURE response addressing this issue. The Petitioner believes that substantial evidence was provided to support its position that the existing first mortgage financing was not permanent financing. As such it Petitioner requests that the issue be revisited, and that the finding be made that the Development does meet the requirements of Rule 67-48.002(98).

In addition to the foregoing, the Petitioner received Additional Application Comments within the Final Ranking 2004 MMRB, SAIL & HC Scoring Summary. FHFC's comments state "The Applicant attempted to cure Item 5T by providing only an Applicant Statement. The cure is deficient because there was no evidence provided to demonstrate that the Bonds had not closed prior to the Application Deadline."

Pursuant to Rule 67-48.004(9) which states in applicable part:

(9) Following the receipt and review by the Corporation's Staff of the documentation described in subsections (5), (6) and (7) above, the Corporation's Staff shall then prepare final scores. In determining such final scores, no Application shall be rejected or receive a point reduction as a result of any issues not previously identified in the notices described in subsections (3), (4) and (5) above.

This Additional Application Comment was not part of any information provided within the notices described in subsections (5), (6) or (7). Therefore the Application shall not be rejected as a result of a previously unidentified issue. Additionally the Petitioner would have no reason to demonstrate that the Bonds had not closed prior to the Application Deadline. It is the Petitioner's position that the Pinellas County Industrial Development Authority Revenue Bonds (the "Bonds") are not addressed with Rule 67-48.002(98). Specifically, the Bonds are not permanent financing, Multifamily Mortgage Revenue Bonds or Local Government-issued tax-exempt bonds. The Petitioner therefore meets the requirements of Rule 67-48.002(98) and should be deemed to have met threshold.

Should FHFC's position be upheld upon the completion of this informal proceeding, the Petitioner requests relief pursuant to Florida Statutes, Section 120.542(1), which states in applicable part "Strict application of uniformly applicable rule requirements can lead to unreasonable, unfair and unintended results in particular instances. The Legislature finds that it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation."

The Petitioner requests similar remedy for Rule 67-48.002(98) SAIL Development requirements. FHFC has the ability to provide relief pursuant to Section 120.542(2), Florida Statutes, which states:

(2) Variances 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. For purposes of this section, “substantial hardship”, means a demonstrated economic technological, legal or other type of hardship to the person requesting the variance or waiver. For purposes of this section, “principles of fairness” are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

The Petitioner demonstrated within its Application that the underlying statute has been achieved by other means. Specifically San Jose Mission is a new construction multi-dwelling development serving Farmworker families at or below 50% of Area Median Income. The Petitioner will suffer substantial hardship if the requested waiver is not granted. The Petitioner is a not for profit Florida corporation which will suffer severe financial consequences should it be unable to receive the SAIL funding for San Jose Mission. Additionally the population served by the Development will not receive the benefit of the lower

rents that would be available to the residents if in fact the Development received the requested SAIL loan.

The granting of the Waiver or Variance and the resulting funding of the SAIL loan will serve the underlying purpose of the Statute by allowing the Petitioner to reduce its debt service expenses, thereby allowing for a significant reduction in the rents charged to the resident Farmworker individuals/families. The Petitioner has committed to rent 100% of the units to households at or below 50% of Area Median Income. The granting of the Waiver or Variance will further serve the underlying purpose of the Statute by directing funds to both lower income households and Farmworker housing. Additionally the granting of this waiver will allow for the distribution of FHFC funds to a demographic category specified within the Statute and NOFA that may not otherwise be funded at the levels specified within the foregoing documents without the inclusion of the Petitioner's Application.

- b. FHFC's position is "The Applicant attempted to cure threshold failure item 6T by submitting a revised Verification of Availability of Infrastructure – Sewer Form indicating the date the infrastructure is available to the site as being or before May 7, 2004. However, the cure is deficient because the Application Instructions state that infrastructure must be available on or before the Application Deadline which is March 31, 2004. Therefore, the Applicant failed to demonstrate the availability of sewer infrastructure to the sites as of the Application Deadline."**

Applicable Rule which is the subject of this Section 4.b of this Petition is Rule 67-48.002(9), herein the "Rule" which states,

(9)"Application" means, with respect to the SAIL, HOME and HC Programs, the completed forms from the Universal Application Package together with all exhibits submitted to the Corporation in accordance with this rule chapter and the Universal Application Package instruction in order to apply for the SAIL, HOME or HC Program(s).

As part of the Rule, page 25 of the Universal Application Instructions states in applicable part:

Verification of the availability of each type of infrastructure on or before the Application Deadline must be provided. Infrastructure is considered available if there are no impediments to obtaining service other than the conditions expressed in the Verification of Availability of Infrastructure forms as provided I this Application Package.

Petitioner's Response: The Petitioner acknowledges that Exhibit 30 Verification of Sewer Infrastructure reflected the information stated within FHFC's position. The Petitioner further contends that the date of May 7, 2004 was a scrivener's error and that sewer infrastructure was available to the site prior to the Application Date. Sewer Infrastructure was demonstrated within Part III, A.9.b. and Exhibit 24 of the Original Application submission. The Petitioner stated that the Development was complete and that certificates of occupancy were issued on 04/04/03. Additionally within Exhibit 24 the Petitioner listed each Building

Address, Building Permit Number and the Date Issued for the Certificate of Occupancy. Appropriate infrastructure is a requirement for a certificate of occupancy for a residential development. Since the Petitioner had received a certificate of occupancy it can be surmised that sewer infrastructure was available as of the date of April 4, 2003.

Pursuant to Florida Statutes, Section 120.542(1), Strict application of uniformly applicable rule requirements can lead to unreasonable, unfair and unintended results in particular instances. The Legislature finds that it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation. Additionally FHFC routinely provides such relief. As evidence of the foregoing, the Petitioner, notes that three such items were included within the Consent Agenda for the FHFC June 2004 Board of Directors meeting. All three items were approved.

Of particular note from the June 2004 Board Meeting Information is Legal Consent Agenda Item C. In Re: HH03-026 Leon South HOME "Petitioner II". In this instance relief was granted to Petitioner II who had stated within Exhibit 21 of its Application that paved roads would be constructed as part of the proposed development. Subsequent to that assertion, Petitioner II requested and received a variance allowing for the use of lots for new home construction in areas where un-paved roads exist. The waiver allowed Petitioner II to receive funding for a Development even though the infrastructure, pursuant to the Application Instructions would not have been considered available. Documentation from the Agenda Package is attached as Exhibit B.

The Petitioner requests similar remedies for its Exhibit 30 Infrastructure Form – Sewer. FHFC has the ability to provide relief pursuant to Section 120.542(2), Florida Statutes, which states:

(2) Variances 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. For purposes of this section, “substantial hardship”, means a demonstrated economic technological, legal or other type of hardship to the person requesting the variance or waiver. For purposes of this section, “principles of fairness” are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

The Petitioner has demonstrated that the underlying statute has been achieved by other means. Specifically the property has been constructed and certificates of occupancy for the residential buildings have been issued. Certificates of Occupancy cannot be issued without having appropriate sewer capacity. The Petitioner will suffer substantial hardship if the requested waiver is not granted. The Petitioner is a not for profit Florida corporation which will suffer severe financial consequences should it be unable to receive the SAIL funding for San Jose Mission.

The grant of the Waiver or Variance and the resulting funding of the SAIL loan will serve the underlying purpose of the Statute by allowing the Petitioner to reduce its debt service expenses, thereby allowing for a significant reduction in the rents charged to the resident Farmworker individuals/families. The Petitioner has committed to rent to Farmworker households at or below 50% of Area Median Income. Current debt service requirements do not allow the Petitioner to reduce rents to levels necessary to serve the targeted Farmworker population. The result is the development has not been able to reach stabilized occupancy levels and units that could be occupied by lower income residents are remaining vacant.

- c. FHFC's position is "The Applicant attempted to cure Item 2P, but the cure was deficient because the Applicant failed to provide the required sketch."

Petitioner's Response: The Applicant did include a sketch for Item 2P. The sketch was inadvertently placed out of sequence within the Application. As two sketches were provided within the CURE submission, the Petitioner requests that proximity points be awarded accordingly.

5. The rules of Florida Housing Finance Corporation and Florida Statutes provide the Applicant and FHFC with the means to reverse FHFC's position. Such means and applicable Rules and Statutes are referenced within this Petition.
6. The Petitioner requests that the Petitioner's Application be treated as meeting threshold and that the Applicant be eligible to participate in the FHFC 2004 Universal Cycle for a SAIL Loan and the Petitioner be awarded the appropriate points that are associated with

the reversal of the items set for ion this Petition. If this request is denied, the Petitioner requests a hearing.

Respectfully Submitted:

A handwritten signature in black ink, appearing to read 'Ken Burke', written over a horizontal line.

Ken Burke

President

Catholic Charities Housing, Inc.

EXHIBIT A

2004 CURE FORM

(Submit a SEPARATE form for EACH reason relative to
EACH Application Part, Section, Subsection and Exhibit)

This Cure Form is being submitted with regard to **Application No. 2004- 026S** and pertains to:

Part _____ Section _____ Subsection _____ Exhibit No _____ (if applicable)

The attached information is submitted in response to the 2004 Universal Scoring Summary Report because:

- I. Preliminary Scoring and/or NOPSE scoring resulted in the imposition of a failure to achieve maximum points, a failure to achieve threshold, and/or a failure to achieve maximum proximity points relative to the Part, Section, Subsection, and/or Exhibit stated above. Check applicable item(s) below:

	2004 Universal Scoring Summary Report	Created by:	
		Preliminary Scoring	NOPSE Scoring
<input type="checkbox"/> Reason Score Not Maxed	Item No. _____ S	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/> Reason Failed Threshold	Item No. <u>5</u> T	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Reason Proximity Points Not Maxed (MMRB/SAIL/HC Applications Only)	Item No. _____ P	<input type="checkbox"/>	<input type="checkbox"/>

OR

- II. Other changes are necessary to keep the Application consistent:

This revision or additional documentation is submitted to address an issue resulting from a Cure to Part _____ Section _____ Subsection _____ Exhibit _____ (if applicable).

Brief Statement of Explanation regarding
Application 2004 – 026S

Provide a separate brief statement for each Cure or NOAD

FHFC Position: SAIL Eligibility - This Development does not meet the requirements for Rule 67-48.002(98). The permanent financing of the costs associated with construction or rehabilitation of the Development closed prior to the Application Deadline.

Rule 67-48.002(98) - Applicable Portion Referencing Permanent Financing:

"(b) Permanent financing of the costs associated with construction or rehabilitation of the Development, including tax-exempt bonds with conversion clauses has not closed as of the Application Deadline, or if financed with Multifamily Mortgage Revenue Bonds or Local Government-issued tax-exempt bonds, the bonds did not close prior to January 1, 2003, or if the Development received an allocation of Housing Credits, the IRS Forms 8609 have not been issued, unless otherwise specified in the Universal Application Package; and".

Applicant's Statement: Pursuant to the reason supplied by FHFC, the Applicant did meet the requirements of Rule 67-48.002(98) because the permanent financing or the costs associated with construction or rehabilitation of the Development did NOT close prior to the Application Deadline.

Neither the Universal Application nor the Universal Application Instructions provide a definition of permanent financing.

It is the Applicant's position that the permanent financing of the costs associated with construction of the Development have not closed. The Applicant acknowledges that a construction/interim financing facility was received and provided funding for various projects via one Industrial Development Authority Revenue Bond Issue (the "Bonds"). The construction of San Jose Mission was one of several projects funded with the Bond Proceeds. The Bond Proceeds were for the benefit of the Company, which collectively includes Catholic Charities Housing, Inc. and Catholic Charities, Diocese of St. Petersburg, Inc. Bond Proceeds were not solely for the benefit of the Development.

It is the Applicant's position that the Bonds should not be consider permanent financing for San Jose Mission for the following reasons: 1) The Bonds are a financing facility for the Company not the Development, 2) Bonds are not restricted to the San Jose Mission Development and specifically allow the Company to finance and refinance buildings and facilities on various parcels in Hillsborough and Pinellas Counties, 3) Documents allow for the issuance of additional parity obligations, 4) Bonds are subject to optional redemption in whole or in part at the request of the Company at any time, prior to maturity, 5) The ability to issue additional parity obligations combined with the right to optionally redeem Bonds at any time; further evidences that the Bonds are a flexible financing facility for the Company not permanent financing for the Development and 6) the Development is still in its initial lease-up phase. (Note if the Development did have

construction/permanent financing, conversion to permanent generally does not occur until the property has stabilized. As San Jose Mission is still in lease-up the property is not stabilized.)

Based on the foregoing, the Applicant did not close on the permanent financing of the costs associated with construction or rehabilitation of the Development prior to the Application Deadline. Therefore the Applicant does meet the requirements of Rule 67-48.002(98) and threshold requirements have been met.

Applicable Documentation: Documentation supporting the Applicant's CURE position was included within the original submission of the Application. The original submission included the following: Mortgage and Security Agreement, Financing Agreement and Trust Indenture. These documents address the matters highlighted within this CURE therefore additional documentation is not required to support the Applicant's position.

EXHIBIT B

FLORIDA HOUSING FINANCE CORPORATION
Board Meeting
June 18, 2004
Consent Items



we make housing affordable

LEGAL

Consent

C. In Re: HHH03-026 Leon South HOME

Development Name: ("Development"):	Leon South HOME
Developer/Principal: ("Developer"):	Three Rivers Housing Foundation, Inc.
Number of Units: 30	Location: Leon County
Type: single family detached	Set Aside: 100%
Demographics: family	Allocated Amount: \$720,000
MMRB: n/a	Housing Credits: n/a

1. Background

- a) The Development, a 30 single-family detached homes development, is being funded with \$720,000 in HOME Purchase Assistance Only loan funds awarded by Florida Housing in the 2003 HOME application cycle. On May 4, 2004, a Petition for Waiver of Rule 67-50.005(6), Florida Administrative Code, was received by Florida Housing. Specifically, Petitioner is seeking a waiver of the requirement that all the roads within the Leon South HOME Application be paved.
- b) A copy of the Petition is attached as Exhibit C.
- c) On May 14, 2004, the Notice of the Petition was published in Volume 30, Number 20, of the Florida Administrative Weekly. Florida Housing did not receive any comments regarding the Petition.

2. Present Situation

- a) Section 120.542(2), Florida Statutes, provides in pertinent part:

Variances 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.
- b) Rule 67-50.005(6), Florida Administrative Code provides in pertinent part:

"Application" means the completed forms from the Application Package together with all exhibits submitted to the Corporation in order to apply for either HAP or HOME Loan funds, in accordance with this rule chapter and the Application Package instructions, which is adopted and incorporated herein by reference.
- c) Exhibit 21 of the Application Package, Verification of Availability of Infrastructure Roads, states in pertinent part:

The undersigned local government representative confirms that the existing paved roads provide access to the proposed Development or paved roads will be constructed as part of the proposed Development.

**The State of Florida
Florida Housing Finance Corporation**

**IN RE: HH03-026
Leon South HOME**

**PETITION FOR VARIANCE FROM OR WAIVER OF RULE 67-50.001(6)
FLORIDA ADMINISTRATIVE CODE**

Petitioner, Three Rivers Housing Foundation, Inc., (Three Rivers) by and through its undersigned President and pursuant to Section 120.542 Florida Statutes and Rule Chapter 28-104 Florida Administrative Code (F.A.C.) hereby files its Petition for Variance from or Waiver of Rule 67-50.001 (6), for Leon South HOME (HH03-026).

IN SUPPORT OF ITS PETITION, Three Rivers states as follows:

1. The name and address, telephone number of Petitioner is as follows: Three Rivers Housing Foundation, Inc., 2858 Remington Green Circle, Tallahassee, Florida 32308, telephone number (850) 656 5669, cellular phone (850) 933 0008, facsimile number (850) 656 9226.
2. The name address and facsimile number of the Petitioner's authorized representative is as follows: Forrest F. Boone, President, Three Rivers Housing Foundation, Inc., 2858 Remington Green Circle, Tallahassee, Florida 32308. Telephone number (850) 656 5669, cellular number (850) 933 0008, facsimile number (850) 656 9226.
3. Petitioner is the Applicant/ Developer of HH03-026 Leon South HOME.
4. The applicable Rule which is the subject of this Petition is Rule 67-50.001(6), herein, "the Rule" which states, "Application", "means the completed forms from the

RECEIVED

Application Package together with all exhibits submitted to the Corporation in order to apply for either HAP or HOME Loan funds, in accordance with the Rule Chapter 67 and Application Package instructions which is adopted and incorporated herein by reference.”

5. As part of the Rule, Exhibit 21 Verification of Availability of Infrastructure for Roads, states the following:

“Existing paved roads provide access to the proposed development or paved roads will be constructed as part of the proposed development.”

6. Petitioner requests that a Variance or Waiver be granted to allow the eligibility and use of lots for new home construction which are located on a publicly maintained road, as there are lots within the scope of the application which are located on public roads which are not paved

7. Petitioner asserts that application of the Rule would result in a violation of the principles of fairness in that in many rural neighborhoods throughout the State there are developed subdivisions in which unpaved roads are owned and maintained by local government. Local conditions and customs make unpaved roads acceptable for HUD, VA, USDA-Rural Development and local bank financing.

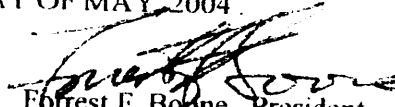
8. Petitioner would suffer substantial hardship in that Petitioner is a not for profit Florida corporation which would suffer severe financial consequences should it be unable to proceed with the development of the Leon South HOME project

9. The grant of Waiver or Variance would serve the underlying purpose of the

Statute by facilitating the construction and purchase of thirty new homes which will be made affordable to low income home buyers.

10 This Waiver or Variance would be permanent in nature.

RESPECTFULLY SUBMITTED THIS 4th DAY OF MAY, 2004.


Forrest F. Boone, President
Three Rivers Housing Foundation, Inc.
2858 Remington Green Circle
Tallahassee, Florida 32308

ELECTION OF RIGHTS

Application Number: 2004- 026S Development Name: San Jose Mission

1. I do not desire a proceeding.
2. I elect an informal proceeding to be conducted in accordance with Sections 120.569 and 120.57(2), Florida Statutes. In this regard I desire to (Choose one):
- submit a written statement and documentary evidence; or
- attend an informal hearing to be held in Tallahassee.

Note: Rule 28-106.301, Florida Administrative Code, requires Applicant to submit a petition in a prescribed format. (attached)

3. I elect a formal proceeding at the Division of Administrative Hearings. This option is available only if there are disputed issues of material fact.

Note: Applicant must submit an appropriate petition in accordance with Rule 28-106.201, Florida Administrative Code. (attached)

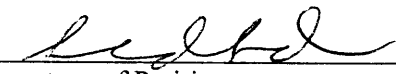
Following are my top eight preferences, in order from 1-8 (with 1 being my first choice, etc.) for scheduling my informal hearing. All formal hearings will be scheduled by the Division of Administrative Hearings.

Hearing Dates:	A.M.	P.M.	Hearing Dates:	A.M.	P.M.
August 18, 2004	1		August 25, 2004	8	
August 20, 2004	2	3	August 26, 2004		
August 23, 2004	4	5	August 27, 2004		
August 24, 2004	6	7	August 31, 2004		

*Matters heard after these dates will likely not be funded in the current Application Cycle.

Please fax a Hearing Schedule to me at this number: _____
(include Area Code)

DATE: 07/22/2004



Signature of Petitioner

Name: Arnold Andrews

Address: 1213 16th Street North

St. Petersburg, Florida 33705

Phone: (727) 893-1315
(include Area Code)

TO PRESERVE YOUR RIGHT TO A PROCEEDING, YOU MUST RETURN THIS FORM WITHIN TWENTY-ONE (21) DAYS OF RECEIPT OF THIS NOTICE TO THE FLORIDA HOUSING FINANCE CORPORATION AT THE ADDRESS INDICATED IN THE NOTICE OF RIGHTS. TO FACILITATE THE SCHEDULING OF HEARINGS, THIS FORM MAY BE SUBMITTED PRIOR TO FILING A PETITION.