

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In re: Osceola Palos Verdes, Ltd.

FHFC Case No.: 2018-050VW
FHFC File No: 2016-380S/2018-333V

Petitioner.

**PETITION FOR WAIVER OF RULE TO ALLOW ADDITIONAL
EXTENSION OF TIME FOR COMPLETION OF CREDIT UNDERWRITING**

Pursuant to Section 120.542, Fla. Stat., Petitioner, OSCEOLA PALOS VERDES, LTD., a Florida limited liability company (“Palos Verdes”), hereby submits this Petition to the Florida Housing Finance Corporation (“FHFC”) for a waiver of Rule 67-48.0072 (4)(c), Fla. Admin. Code, which requires the credit underwriting process to be completed within the time specified in Rule 67-48.0072(21); and for a waiver of FHFC Rule 67-48.0072(21), Fla. Admin. Code, to allow only one six month extension of the deadline to complete credit underwriting. Palos Verdes, whose credit underwriting deadline is currently July 6, 2018, seeks an extension of that deadline by 6 months, to January 6, 2019.

In support of this petition, Petitioner states as follows:

A. NATURE OF REQUEST

1. Pursuant to Section 120.542, Fla. Stat. (2016), and Rules 28-104.001 through 28-104.006, Fla. Admin. Code, Petitioner requests a waiver of Rule 67-48.0072 (4)(c), Fla. Admin. Code, which requires a SAIL loan that is not in conjunction with Competitive Housing Credits to complete credit underwriting within the timeframe stated in Rule 67-48.0072(21), Fla. Admin. Code. Rule 67-48.0072(21)(b) requires an Applicant receiving SAIL financing that is not in conjunction with Competitive Housing Credits to complete credit underwriting within 9 months of invitation. The rule allows for one six month extension, which Palos Verdes has previously requested and received. The requested waiver would allow Petitioner to obtain a second extension,

and extend its credit underwriting deadline by 6 months to January 6, 2019, in an abundance of caution. Assuming Palos Verdes receives an award of Development Viability Loan financing in the pending Request for Application 2018-109, Palos Verdes expects to be able to have a credit underwriting report presented to the Board as early as its July 27, 2018 meeting, if the award is achieved through settlement; or as early as the September 14, 2018 meeting, if an award is obtained through litigation.

B. THE PETITIONER

2. As explained in this Petition, Petitioner was the recipient of a SAIL loan from FHFC for a development in Osceola County. For purposes of this petition, Petitioner's address is that of its undersigned attorney, M. Christopher Bryant, Oertel, Fernandez, Bryant & Atkinson, P.A., 2060 Delta Way, Tallahassee, Florida 32303 (telephone (850) 521-0700, fax (850) 521-0720, E-mail: cbryant@ohfc.com)

C. FACTUAL BACKGROUND

3. Through Request for Applications (RFA) number 2016-109, FHFC sought to allocate SAIL funding, tax-exempt bonds, and non-competitive housing credits to applicants for the development of affordable housing. Awards of SAIL funding are subject to FHFC Rule Chapter 67-48, Fla. Admin. Code.

4. Palos Verdes applied in RFA 2016-109 for tax-exempt bond financing and a SAIL loan (plus an Extremely Low Income loan) for the construction of a 120 unit development for Elderly tenants in Osceola County. Palos Verdes sought a SAIL loan of \$5.2 million (plus an Extremely Low Income of \$552,300), and Florida Housing Multifamily Mortgage Revenue Bonds ("MMRB") of \$10.0 million.

5. The Applicant entity is Osceola Palos Verdes, Ltd., a Florida limited partnership. The General Partner of the Applicant entity is DSRG Palos Verdes GP, LLC, whose Managing Member is DSRG Holdings, LLC; and the sole managers and members of DSRG Holdings are its two managing members, Domingo Sanchez and Robert Godwin. The current Investor Limited Partner for the Applicant is SG ILP, LLC.

6. There are three co-developers for Palos Verdes: DSRG Development, LLC; Banyan Development Group, LLC; and Judd Roth Real Estate Development, Inc. (“Judd Roth RE”). DSRG Development consists of its two Managing Members, Domingo Sanchez and Robert Godwin. Banyan Development Group consists of two Managing Members (Alexander Kiss and Scott Zimmerman) and two Non-managing Members (Jeffrey Kiss and Louis Vogt). At the time of the initial Palos Verdes application, Judd Roth RE consisted of Judd K. Roth (Director), Penny Roth (Officer), and Selma B. Roth (Shareholder); now, Judd K. Roth is the sole Director, Officer, and Shareholder. The Developer Principal whose prior general development experience was relied upon for the original Palos Verdes application was Judd K. Roth.

7. For purposes of Section 42 of the Internal Revenue Code, Palos Verdes proposed to set aside 40% of the units for residents earning 60% or less of Area Median Income. In the Total Set-Aside Breakdown Chart included in the Palos Verdes application, Palos Verdes committed to set aside 10% of the units for tenants at or below 40% of AMI (the Extremely Low Income level for Osceola County in RFA 2016-109) and the remaining 90% of the units for tenants at or below 60% of AMI, for purposes of both SAIL and non-competitive Housing Credits.

History of Funding Selection

8. On December 9, 2016, Florida Housing’s Board of Directors approved funding selections in RFA 2016-109, including the selection of Osceola Palos Verdes. Three formal

written protests were filed by applicants. One of the protesting applicants, Oasis at Renaissance Preserve (“Oasis”), had been deemed ineligible; and if deemed eligible it would have displaced Palos Verdes from funding. The Oasis challenge proceeded to hearing at the Division of Administrative Hearings; and ultimately, the determination of ineligibility of Oasis was upheld by Final Order entered March 24, 2017.

9. Palos Verdes was subsequently invited into credit underwriting on April 6, 2017. By operation of Rule 67-48.0072(21)(b), Palos Verdes was to complete credit underwriting and receive a firm loan commitment by January 6, 2018. In November 2017, Palos Verdes requested a six month extension of its firm commitment due date until July 6, 2018. Florida Housing’s Board approved that extension at its December 8, 2017 Board meeting. Palos Verdes paid the required extension fee of \$57,523.

10. Palos Verdes is in need of an additional extension of time to complete credit underwriting and receive its firm loan commitment. Because of construction cost increases that were exacerbated by the 2017 hurricane season, Palos Verdes applied for a Development Viability Loan in the amount of \$975,000 in the recently conducted RFA 2018-109. Palos Verdes was preliminarily deemed ineligible for funding in RFA 2018-109, and has timely challenged that determination with a formal written protest.

11. Without the certainty of the requested Development Viability Loan funding, Palos Verdes cannot complete credit underwriting. Further, because of the pendency of Palos Verdes’ timely formal protest, it will not be possible for the Board to consider a credit underwriting report in time for a July 6, 2018 firm commitment issuance.

12. Palos Verdes believes that there is a significant possibility that its formal protest will be resolved without litigation. However, even a settlement of that formal protest would not

be final unless and until approved by the Board, and the earliest that could occur is June 15, 2018. That does not leave sufficient time to complete credit underwriting, have the CUR approved, and obtain a firm loan commitment by July 6, 2018. If, alternatively, the matter must proceed to hearing, it is not expected that a recommended order would be issued in time for consideration by the Board until its September 14 meeting.

D. RULE PROVISIONS

13. The SAIL program is governed in part by portions of Rule Chapter 67-48, Fla. Admin. Code. Of relevance to this request are Rules 67-48.0072(4)(c) and (27), Fla. Admin. Code. Rule 67-48.0072(4)(c) reads, in pertinent part:

For SAIL, EHCL, and HOME that it is not in conjunction with Competitive HC, the credit underwriting process must be completed within the timeframes outlined in subsection 67-48.0072(21), F.A.C. below.

Rule 67-48.0072(21)(b), in turn, reads:

For SAIL, EHCL and HOME that is not in conjunction with Competitive HC, ... the firm loan commitment must be issued within 9 (nine) months of the Applicant's acceptance into credit underwriting. ... Applicants may request one (1) extension of up to six (6) months to secure a firm loan commitment. ... If, by the end of the extension period, the Applicant has not received a firm loan commitment, then the preliminary commitment shall be withdrawn.

14. This rule provision requires a non-refundable 1 percent extension fee if the preliminary loan commitment is extended beyond the initial 9 month commitment deadline. Palos Verdes has already been assessed (and paid) the 1 percent extension fee. The Rule does not require a fee for any subsequent extensions, and Palos Verdes specifically requests that it not be assessed a further extension fee for extending the firm loan commitment date.

E. JUSTIFICATION FOR REQUESTED WAIVER

15. As explained in paragraph 9 above, the deadline for Palos Verdes' firm loan commitment is July 6, 2018. It will not be possible to obtain Board approval of a credit underwriting report in time for a July 6 firm loan commitment, especially given the pendency of Development Viability Loan funding (RFA 2018-109).

Relief Requested

16. Palos Verdes seeks to have the firm commitment date for its SAIL loan be extended by six months: to January 6, 2019. Palos Verdes fully expects to obtain credit underwriting approval as early as the July 2018 Board meeting, but requests the extension to January 6, 2019 in an abundance of caution.

17. Granting the requested waiver would not adversely affect any required set-asides or points considered by Florida Housing in the original scoring of the Palos Verdes application, and would not alter the scoring by Florida Housing that qualified Palos Verdes for SAIL and MMRB funding. The change would also not provide Palos Verdes with an unfair competitive advantage over other applicants. All scoring would have been the same.

18. The requested Rule waiver or variance will not adversely impact the Palos Verdes development, the public, or the Florida Housing funding processes, and will serve the statutory purposes of the Florida Housing process. A denial of this Petition, however, would result in substantial economic hardship to Palos Verdes, as its SAIL funding award would be withdrawn and it could not be constructed.

Statutory Purpose Served

19. Section 420.5087, Fla. Stat., created the State Apartment Incentive Loan program to provide loans to provide affordable housing to very low income persons.

20. Section 420.5099, Fla. Stat., designates Florida Housing as the housing credit agency, pursuant to the Internal Revenue Code, and assigns Florida Housing the responsibility to allocate and distribute low-income housing tax credits. The statute also instructs Florida Housing to adopt procedures to ensure the maximum use of housing credits to encourage the development of low-income housing.

21. In furtherance of these statutory purposes, Florida Housing established the competitive Request for Application process to allocate various forms of funding to satisfy various geographic and demographic affordable housing goals.

22. Florida Housing recognizes that on occasion the original Development schedule proves to be unattainable, and allows for deadline extensions under certain circumstances. Florida Housing's statutory purpose of financing the development of affordable housing for low income and very low income persons, including persons who are homeless, will still be served by providing a short extension of the loan closing for the SAIL financing.

Substantial Hardship and Principles of Fairness

23. Palos Verdes would suffer substantial economic hardship if it could not extend its SAIL loan firm commitment date. Specifically, Rule 67-48.0072(21)(b) states that an Applicant who does not receive a SAIL firm loan commitment by the end of its extension period will have its preliminary commitment withdrawn.

24. Further, because Palos Verdes is in need of additional Development Viability Loan funding through RFA 2018-109, which was not preliminarily awarded to it, having to proceed with credit underwriting before such an award has been determined treats Palos Verdes differently than applicants who were not in need of such financing, or who were given preliminary awards.

Principles of fairness are violated when the literal application of a rule affects one person in a manner specifically different from other similarly situated persons. Section 120.542(2), Fla. Stat.

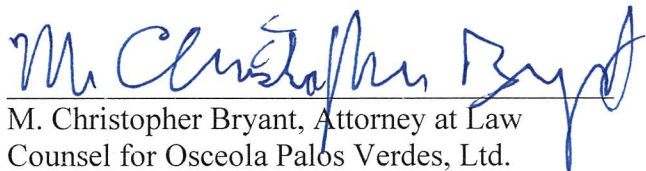
25. The waiver being sought is temporary in nature, to the extent that, once the SAIL firm commitment deadline is extended to January 6, 2019, and a commitment is received by that date, the extension periods are irrelevant.

26. If Florida Housing has questions or requires additional information, Petitioner is available to provide any information necessary for consideration of this Petition.

WHEREFORE, Petitioner Osceola Palos Verdes, Ltd. respectfully requests that the Florida Housing Finance Corporation provide the following relief:

- A. Grant the Petition for Waiver and all the relief requested herein;
- B. Enter an order granting a waiver of the provisions of Rules 67-48.0072(4)(c) and (21)(b), Fla. Admin. Code limiting an applicant to one SAIL loan firm commitment extension request, so as to allow Palos Verdes to extend its SAIL loan commitment date to January 6, 2019;
- C. Acknowledge that no further SAIL loan commitment extension fee is due, or, alternatively, waive such extension fee; and
- D. Grant such further relief as may be deemed appropriate.

RESPECTFULLY SUBMITTED this 31st day of May, 2018.



M. Christopher Bryant, Attorney at Law
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& ATKINSON, P.A.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition for Waiver is being filed by electronic filing (with a copy to be ~~hand delivered~~ ^{mailed} within 5 days) with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Fifth Floor, Tallahassee, Florida 32301, CorporationClerk@floridahousing.org, with copies served by U.S. Mail on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, and by electronic transmission to Hugh Brown, General Counsel, Florida Housing Finance Corporation, 227 North Bronough Street, Fifth Floor, Tallahassee, Florida 32301, hugh.brown@floridahousing.org, this 31st day of May, 2018.


M. Christopher Bryant