



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

OFFICE OF COMMUNITY PLANNING
AND DEVELOPMENT

JUL 12 2017

MEMORANDUM FOR: Ralph Gaines, Principal Deputy Assistant Secretary, D

THROUGH: Stan Gimont, Acting Deputy Assistant Secretary for Grant Programs, DG

FROM: Danielle Schopp, Director, Office of Environment and Energy, DGE *For Memo*

SUBJECT: Request for Waiver - 24 CFR 58.22(a) Limitation on Activities Pending Clearance HOME and Section 8 Project-based Vouchers - LaGrave on First - City of Grand Forks, North Dakota

ISSUE:

On June 7, 2017, Office of Environment and Energy (OEE) staff in headquarters received a memorandum from Mr. Aaron Gagné, Director, Office of Community Planning and Development, HUD Denver Regional Office. The memorandum recommends that HUD approve a request from the City of Grand Forks, North Dakota to waive HUD's regulations at 24 CFR 58.22(a), Limitations on activities pending clearance, for the LaGrave on First project. On December 30, 2016, the City of Grand Forks (the City) expended Community Development Block Grant (CDBG) funds on land acquisition for the project, prior to the completion of an environmental review. The violation was discovered when the City submitted a Request for Release of Funds (RROF) after HUD staff had observed the use of CDBG funds through the Integrated Disbursement and Information System (IDIS).

The City acknowledges that CDBG funds were erroneously expended for land acquisition prior to certification and completion of an environmental review. This is a violation of Section 104(g) of the Housing and Community Development Act of 1974 and 24 CFR 58.22(a), Limitations on activities pending clearance. The City is already undertaking steps to ensure that these CDBG funds are repaid in full. While the use of CDBG funds resulted in a statutory violation which cannot be waived, Grand Forks intends to use HOME funds and Section 8 Project-based Vouchers to complete the project, which necessitates this waiver.

FACTS:

Description of Project

LaGrave on First is a new construction project with forty-two (42) one-bedroom, one-bathroom units on the upper floors and non-residential activities on the first floor. The first floor will contain meeting space and offices for administrative staff and service providers as well as a health exam room and tenant amenities, including a commercial kitchen, community and dining rooms, and laundry facilities. Each residential floor will have 14 furnished apartments, 3 of which will be

accessible units (9 total) that feature wider doorways, roll-in showers, accessible cabinetry and appliances. All units are income-based, with 15 set aside for households earning less than 30% of area median income (AMI), 11 for households earning less than 50% of AMI, and 16 for households earning less than 60% AMI. The total project cost is \$8,900,000, of which \$3,714,072 is HUD funding.

Description of Violation

In September 2015, the City received a request for CDBG funds from the Grand Forks Housing Authority (GFHA) for unspecified site acquisition for a proposed Housing First project. Subsequently, but prior to acquisition of the site, GFHA submitted applications for HOME, Section 8 Project-based Vouchers, and Housing Trust Funds (HTF) for construction of the project. On December 30, 2016, CDBG funds were expended on acquisition of the site. On March 16, 2017, the City submitted their RROF to the HUD Denver Regional Office. HUD staff identified that CDBG funds had been expended on the project in IDIS, and notified the City of the violation.

Section 104(g) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(g)) provides that the Secretary of HUD (or, for the state CDBG program, the state) may not release funds for a project unless the recipient has submitted an RROF and related certification prior to any commitment of funds to the project. HUD's Office of General Counsel has interpreted the word "funds" in the Act to mean HUD funds. Due to the fact that CDBG funding was expended, there is a statutory violation of Section 104(g) of the Housing and Community Development Act of 1974, and, as such, CDBG funding may not be used on this project in the future. HUD cannot waive statutory violations or regulatory provisions that reflect statutory requirements; however, a statutory violation does not prevent a recipient from obtaining a waiver of other regulatory provisions in § 58.22(a) and applying and using HUD funds that are subject to a different statute's environmental review requirements.

Pursuant to 24 CFR 58.22(a) "Neither a recipient nor any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance under a program listed in § 58.1(b) on an activity or project until HUD or the state has approved the recipient's RROF and the related certification from the responsible entity. In addition, until the RROF and the related certification have been approved, neither a recipient nor any participant in the development process may commit non-HUD funds on or undertake an activity or project under a program listed in § 58.1(b) if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives."

The first sentence of § 58.22(a) implements the statutory provisions of Section 104(g) and cannot be waived. Even though the City is undertaking steps to ensure that the CDBG funds are repaid in full, removing HUD funds from this transaction, a separate regulatory violation still exists. A regulatory violation occurred when GFHA acquired property prior to HUD approval of the RROF and related certification. This is a prohibited choice-limiting action that violates the second sentence of § 58.22(a). The City is requesting a waiver of § 58.22(a) in order to use HUD funding sources that are not under the Housing and Community Development Act of 1974.

Determination of Good Cause

The site was visited by the Fargo Field Office Director Joel Manske on June 8, 2017, and this site visit confirms that no physical alterations or activities have occurred on the site. The site visit supports the Environmental Assessment findings that no adverse environmental impacts will result from granting the waiver. OEE has reviewed the Environmental Assessment and has no reason to believe that adverse environmental impacts will result from granting a waiver of the second sentence of § 58.22(a) provided that the mitigation measures identified in the Environmental Assessment are met: (1) Noise – noise attenuation measures to ensure the interior noise level will be at or below 45dB; (2) Radon Resistant New Construction Practices are required; and (3) Contamination – the soil management plan must be used during excavation.

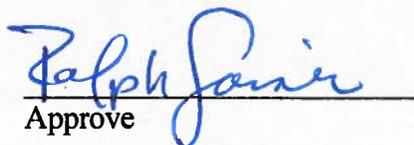
In accordance with 24 CFR 58.1(d), OEE suggests that there is good cause for you to waive the second sentence of 24 CFR 58.22(a) in that: (1) The project will provide needed supportive housing in fulfillment of HUD program goals; (2) The City is committed to receiving additional training and technical assistance; and (3) Based on the environmental assessment and the HUD field inspection, we conclude that granting a waiver for this project will not result in any unmitigated, adverse environmental impact. The Denver Regional Office also supports this waiver request.

RECOMMENDATION:

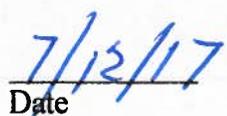
The Office of Environment and Energy recommends a determination, in accordance with 24 CFR 58.1(d), that good cause exists to waive the second sentence of 24 CFR 58.22(a) requiring advance approval of an RROF and the related certification before non-HUD funds may be expended for a choice-limiting action and before a choice-limiting action may be undertaken.

Please indicate by signing below that you find that there is good cause for this waiver as particularly set out above under “Determination of Good Cause,” and that you waive the portions of 24 CFR Part 58 cited above with respect to the acquisition of property and expenditure of non-HUD funding, provided that the mitigation measures identified in the Environmental Assessment are met: (1) Noise – noise attenuation measures to ensure the interior noise level will be at or below 45dB; (2) Radon Resistant New Construction Practices are required; and (3) Contamination – the soil management plan must be used during excavation.

DECISION:


 Approve

Disapprove


 Date