



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

OFFICE OF COMMUNITY PLANNING  
AND DEVELOPMENT

**MEMORANDUM FOR:** Marion M. McFadden, Principal Deputy Assistant Secretary for  
Community Planning and Development (CPD), D

**THROUGH:** Elizabeth S. Hendrix, Acting Deputy Assistant Secretary for  
Grant Programs, DG **ELIZABETH HENDRIX** Digitally signed by ELIZABETH HENDRIX  
DN: CN = ELIZABETH HENDRIX C = US O = U.S. Government  
OU = Department of Housing and Urban Development, Office of  
Community Planning and Development  
Date: 2022.12.12 09:54:27 -05'00'

**FROM:** Kristin L. Fontenot, Director, Office of Environment and Energy,  
(OEE), DGE **KRISTIN FONTENOT** Digitally signed by KRISTIN FONTENOT  
Date: 2022.12.09 15:30:24 -05'00'

**SUBJECT:** Request for Waiver - 24 CFR 58.22(a) Limitation on Activities  
Pending Clearance  
Section 8 Project-based Vouchers - City of Salinas Homekey project

Enclosed is a letter from the City of Salinas requesting HUD review the circumstances of the violation of 24 CFR 58.22(a) and approve the Request for a Waiver of 24 CFR Part 58<sup>1</sup> to use Project-Based Vouchers (PBVs) to support the Salinas Homekey project and Memoranda from HUD's Region IX Regional Environmental officer and the Director of Office of Public Housing (PIH), San Francisco regional office that recommend approving this waiver with conditions.

**ISSUE:**

The violation was discovered when the Housing Authority of the County of Monterey (HACM) discovered the City of Salinas (the City) initiated rehabilitation activities prior to completing the environmental assessment and receiving the Authority to Use Grant Funds (AUGF) and contacted PIH. The PIH office in consultation with the Office of Environment and Energy (OEE) issued a Notice of Regulatory Violation on July 23, 2021 (Attached). The City and HACM acknowledge that undertaking project activities prior to receipt of the AUGF is a regulatory violation of 24 CFR 58.22(a), Limitations on activities pending clearance.

**FACTS:**

**Description of Project**

Salinas Homekey Project (the "Project") consists of acquisition and conversion of a 103-room hotel located at 545 Work Street, Salinas, CA 93901 to 101 units of interim housing in the first year and permanent supportive housing thereafter for those experiencing chronic homelessness. The building will include two units designated for project managers.

The Project is part of the State of California (State) Homekey Program Initiative. The State Homekey Program provides grant funding to purchase and rehabilitate housing, hotels, motels, and other buildings for use as interim or permanent, longterm housing. The City partnered with

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<sup>1</sup> HUD's *Guidance for Obtaining Waiver of 24 CFR Part 58* (2004) describes the process for obtaining a waiver when a regulatory violation of 24 CFR Part 58 has occurred.

Shangri-La Industries, LLC (Shangri-La) and Step Up on Second, Inc. (Step Up) to apply for Homekey funding. The Project was awarded \$9.2 million in Homekey Program funds.

HACM awarded eighty-five (85) Section 8 PBVs with an approximate value of \$1,378,020 dollars annually to the housing developer Step Up on Second, Inc. (Step Up). The PBV funds will be provided to the Project for a period of twenty-five (25) years and will provide a grand total of \$34,450,500 towards the development of the Project.

### **Description of Violation**

On August 19, 2020, Shangri-La submitted an application for HUD PBV funding to HACM. After submitting the application for HUD funding and before completion of HUD's environmental review process, on November 2, 2020, Shangri La executed the purchase agreement for the Good Nite Inn property and in May 2021, Shangri-La and Step Up began rehabilitation activities at the site, using State Homekey funds. There was no premature commitment of HUD funds. On July 23, 2021, HUD notified HACM and the City of the regulatory violation and informed the City of the option to submit a request to HUD to review the circumstances of the violation and consider approving the project.

Section 26(b) of the U.S Housing Act of 1937 (USHA) (42 U.S.C. 1437x(b)) provides that the Secretary of HUD may not approve the release funds for a project unless the recipient has submitted a Request for Release of Funds and Certification (RROF/C) 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 no HUD funds were committed or expended in violation of the USHA there is no statutory violation.

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."

HUD finds that a regulatory violation occurred when Shangri-La and Step Up acquired the property at 545 Work Street and began rehabilitation activities prior to HUD approval of the RROF/C. This is a prohibited choice-limiting action that violates the second sentence of § 58.22(a).

### **Determination of Good Cause**

HUD may approve a Request for a Waiver of Part 58 when a regulatory violation has occurred, if there is good cause to grant the waiver and no unmitigated adverse environmental

impacts will result. The party requesting HUD's review must present evidence that there is good cause to approve the waiver (i.e., the violation was inadvertent, and the project furthers HUD program goals).

The City's request notes that Shangri-La and Step Up were not aware of the City's obligation to comply with HUD's environmental review regulations at 24 CFR Part 58 prior to acquiring the property and beginning rehabilitation activities. When notified that project activities must be halted until the City completed the environmental review process, all project activities that were not determined by the City to be essential life and safety repairs were immediately halted. Additionally, the City erroneously determined that the project met the exemption at 24 CFR 58.34(a)(10) for emergency activities and was exempt from complying with the National Environmental Policy Act requirements to complete an environmental assessment or environmental impact statement.

OEE has reviewed the City's Revised Final Environmental Assessment (EA) executed June 10, 2022. A portion of the property appears to be occupied by a floodway. This is a new circumstance that was not previously identified because maps associated with previous iterations of the EA depicted the property as a pinpoint, whereas the FEMA flood map included with the Revised Final EA shows the property boundaries. In accordance with HUD's Floodplain Management regulations at 24 CFR 55.1(c), HUD may not approve a project if any area of the site is located in a floodway. There are two methods to avoid this environmental impact and bring the property into compliance with 24 CFR Part 55:

1. HUD recognizes that FEMA flood maps may not represent the legal geographic boundaries of the project site or floodway. The City may obtain the legal description of the property boundaries and the location of the floodway and locate those boundaries on an official map to determine if the floodway is on the property. A City or County flood official may be able to assist. If the floodway is not located on the property, submit the official location descriptions and map to HUD.
2. If option 1 confirms that the floodway is on the property, or the City chooses not to use option 1, the portion of the property that includes the floodway must be transferred to another owner, or the property must be subdivided and the floodway portion removed from the legal description of the property, and documentation of the revised property description must be provided to HUD.

## **RECOMMENDATION:**

The City asserts the regulatory violation was unintentional, HACM and the City have committed to receiving training and technical assistance, and the purpose of the Project to provide housing and supportive services to the homeless furthers HUD program goals.

Therefore, OEE recommends approving the waiver (after which HUD would approve the RROF/C) with the following conditions:

- (1) Within sixty days the City must submit documentation of compliance with HUD's Floodplain Management regulation above by submitting an official map from the City or County flood official that documents the floodway is not located on the property OR within ninety days submitting a copy of a deed or other document and map that documents the floodway area is removed from the property.
- (2) All current City and HACM staff that conduct or approve HUD environmental reviews shall complete all modules of HUD's Web-Based Instructional System for Environmental Review (WISER), excepting the module "Getting Started: Part 50", no later than 60 days from the date the waiver is approved. Staff that are hired to conduct or approve environmental reviews after the date the waiver is approved shall complete the WISER modules within 60 days after employment begins. Staff that do not meet the above criteria but are subsequently transferred into a role that involves conducting or approving environmental reviews shall complete the WISER modules within 60 days of the transfer. Upon completion of the WISER modules by current staff, the City and HACM shall provide HUD with a list of staff and dates of completion. The requirement to complete WISER modules does not apply to the City's Certifying Officer as defined by 24 CFR 58.2(a)(2) but does apply to potential delegates.
- (3) Prior to the Responsible Entity Agency Official finalizing any environmental review at the Exempt, Categorically Excluded Not Subject to 58.5 (CENST), or Categorically Excluded Subject to 58.5 (CEST) level, the City shall submit the draft environmental review to HUD for review and comment. Prior to the Certifying Officer finalizing any environmental review at the Environmental Assessment (EA) or Environmental Impact Statement level, the City shall submit the draft environmental review to HUD for review and comment. HUD's goal is to provide comments on draft environmental reviews within 2 weeks of receipt; however, HUD may require more time for complex CEST- or EA-level reviews. The City shall account for HUD's review time during its planning process. The requirements of this condition will be considered fulfilled when HUD has reviewed and determined there are no substantive errors or omissions on two Exempt- or CENST-level reviews, one CEST-level review, and one EA-level review.
- (4) If the City intends to apply the emergency/disaster exemption at 24 CFR 58.34(a)(10) to any project, the Preparer and the Responsible Entity Agency Official shall prepare signed statements attesting to reviewing HUD's memorandum of December 11, 2012, regarding "Environmental Review Processing During Emergencies and Following Disasters under 24 CFR Part 58" and determining that, per the memorandum, the exemption is applicable to the specific project. Copies of the signed statements shall be included in the environmental review record for the specific project. This requirement remains in place until the next environmental monitoring of the City's environmental review records.
- (5) The City and HACM shall each develop policies and procedures for conducting environmental review of all HUD-funded projects. At a minimum, the policies and procedures shall describe environmental training requirements for new staff or transfer of staff as described in condition 2 and the requirement to attest to use of the HUD

memorandum when applying the emergency/disaster exemption as described in condition 4. The policies and procedures shall also describe coordination with project sponsors, subrecipients, and other partners to ensure environmental reviews are completed prior to expending HUD or non-HUD funds or undertaking activities that could adversely affect the environment or limit the choice of alternative actions. The policies and procedures shall describe how the City and HACM intend to proactively notify potential sponsors, subrecipients, and other partners of the consequences of taking action or spending funds prior to completion of the environmental review. The City and HACM shall submit their policies and procedures to HUD no later than 90 days from the date the waiver is approved.

- (6) If the City and HACM do not currently have a Memorandum of Understanding (MOU) that outlines each agency's roles and responsibilities for HUD environmental reviews, the City and HACM shall execute an MOU based on the example in HUD Notice PIH 2013-07. If the City and HACM are currently operating under such an MOU, the City and HACM shall review the MOU with respect to changes to their policies and procedures described in condition 5 and, if appropriate, amend the MOU or execute a new MOU to reflect these changes. The City and HACM shall provide HUD with a copy of the MOU upon execution, amendment, or confirmation that it meets these requirements but no later than 120 days from the date the waiver is approved.
- (7) Delegation of the Certifying Officer's authority shall be suspended upon the date the waiver request is approved. The Certifying Officer's authority may be delegated upon receipt of HUD's acknowledgement that condition 2, 3, and 5 have been satisfactorily completed.

#### **CONTACT:**

For further information, contact Kristin Fontenot, Office of Environment and Energy, at 202-655-1412 or [Kristin.L.Fontenot@hud.gov](mailto:Kristin.L.Fontenot@hud.gov).

Attachments

#### **DECISION:**

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Approve

\_\_\_\_\_  
Disapprove

\_\_\_\_\_  
Date

cc:

Elizabeth S. Hendrix, Deputy Assistant Secretary for Grant Programs (Acting), DG  
Kristin Fontenot, Director, Office of Environment and Energy, DGE