



U.S. Department of Housing and Urban Development
San Francisco Regional Office - Region IX
One Sansome, Suite 1200
San Francisco, California 94104-4430

Sally Stang, Certifying Officer
Housing & Community Development Department
City of Tucson
310 N. Commerce Park Loop
Tucson, AZ 85726

SEP 23 2015

Dear Ms. Stang,

SUBJECT: Downtown Motor Lodge Objections to Release of Funds – Response Requested

HUD is in receipt of objections to the City's *Request for Release of Funds and Certification* for the Downtown Motor Apartments construction proposal, submitted to the U.S. Department of Housing and Urban Development, San Francisco Regional Office, (the Department) on August 20, 2015. Regional Environmental Officer Ernest Molins and Field Environmental Officer Zach Carter have reviewed the objection letters and advised me on the permissibility of the timely objections received.

Under the applicable set of environmental regulations, 24 C.F.R. Part 58, the unit of local government is responsible for the environmental review, decision-making and action responsibilities pertaining to the subject proposal. In this case, the City is responsible for the quality of the content of the environmental document. HUD notes that the City published a "Notice of Finding of No Significant Impact and Notice of Intent to Request Release of Funds" on July 20, 2015, with a public comment period ending August 19, 2015.

The City's *Request for Release of Funds and Certification* (RROF/C – HUD 7015.15) appropriately certifies:

As the duly designated certifying official of the responsible entity, I also certify that:

8. I am authorized to and do consent to assume the status of Federal official under the National Environmental Policy Act of 1969 and each provision of law designated in the 24 CFR 58.5 list of NEPA-related authorities insofar as the provisions of these laws apply the HUD responsibilities for environmental review, decision-making and action that have been assumed by the responsible entity.
9. I am authorized to and do accept, on behalf of the recipient personally, the jurisdiction of the Federal courts for the enforcement of all these responsibilities, in my capacity as certifying officer of the responsible entity.

This document was signed by Ms. Sally Stang, Director, City of Tucson Housing & Community Development Department, on August 20, 2015.

The environmental regulation, 24 C.F.R. § 58.75, prescribes the process for making objections and states the following:

Sec. 58.75 Permissible bases for objections

HUD (or the State), will consider objections claiming a responsible entity's noncompliance with this part based **only** on any of the following grounds:

- (a) The certification was not in fact executed by the responsible entity's Certifying Officer

- (b) The responsible entity has failed to make one of the two findings pursuant to Sec. 58.40 or to make the written determination required by Secs. 58.35, 58.47 or 58.53 for the project, as applicable
- (c) The responsible entity has omitted one or more of the steps set forth in subpart E of this part for the preparation, publication and completion of an EA
- (d) The responsible entity has omitted one or more of the steps set forth at subparts F and G of this part for the conduct, preparation, publication and completion of an EIS
- (e) The recipient or other participants in the development process have committed funds, incurred costs or undertaken activities not authorized by this part before release of funds and approval of the environmental certification by HUD (or the state)
- (f) Another Federal agency acting pursuant to 40 CFR Part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality.

These regulatory criteria place the responsibility for substantive analysis in the hands of the responsible entity – the City – and limit the possibility of independent analysis by the Department. Whether based on HUD’s knowledge of the project, objections received from persons or agencies, or both, HUD may refuse a Request for Release of Funds and Certification only on grounds set forth in 24 CFR 58.75.

HUD has applied the regulatory criteria found in 24 C.F.R 58.75 to the objections submitted to HUD to determine which ones are permissible. In order to fulfill its oversight responsibilities for the environmental review process and ensure that citizen concerns are adequately addressed, HUD interprets objections to release of funds as permissible whenever possible. All objections received by HUD relate to the permissible basis listed at 24 CFR 58.75(c): “The responsible entity has omitted one or more of the steps set forth in subpart E of this part for the preparation, publication and completion of an EA.” Accordingly, objections HUD has received, which are attached to this letter, can be interpreted as permissible under 58.75(c) in alleging that the Responsible Entity has “omitted” the following “steps”:

1. documenting compliance with 24 CFR 58.5(a), Section 106 of the National Historic Preservation Act, including but not limited to steps taken to mitigate adverse effects on historic properties;
2. considering the impact of the architectural quality and size of the proposed development on the existing neighborhood, including duly considering local zoning and preservation requirements, per HUD’s Environmental Assessment review requirements (Conformance with Plans / Compatible Land Use and Zoning / Scale and Urban Design);
3. providing appropriate notification of the opportunity for public comment, and considering public comment as part of the environmental review process, including for Spanish-only and English as a Second Language residents; and
4. adequately addressing 24 CFR 58.5(j), environmental justice, in the review.

During recent onsite environmental monitoring conducted August 25-28, 2015, HUD has completed discussions with City staff, review of City records, and a visit to the proposed project site, which provide background and context for HUD’s consideration of these citizen objections.

Nevertheless, it is HUD policy that after receiving objections to release of funds during the regulatory objection period, HUD will refer these objections to the Responsible Entity for a formal reply responding to the objections and documenting sufficiency of the City's environmental review process.

Attached please find the referenced objections. *Note that the attached objections begin with those received during the formal objection period, which the City may not have reviewed previously and which we encourage you to review in full prior to replying.* Next in the attachment are objections received prior to the formal objection period, which may be out of date but which HUD still considers timely during the Request for Release of Funds process, in order to provide for full public involvement and oversight, as noted above.

Again, we request a reply by the Certifying Officer especially addressing the four items listed above in reference to the correspondence attached. Although HUD has received information on the project previously, the City's reply must take each permissible objection (1-4) above in turn, and clearly state the manner in which the step has been addressed. For item 3, public participation, please be particularly clear in identifying any consultation meetings (including date, subject, and attendees present) that are not described on the City website. For items 3 and 4, please be sure to explain clearly the manner in which project information was made available to interested parties with limited English language proficiency.

This reply should cite specifically ERR information the City has posted on its website, or other electronic or paper files as part of the Environmental Review Record (ERR). For any other ERR documents referenced, if the City is not certain whether HUD has received a copy of those items, such copy should be included as an enclosure or as a link in the City's reply to this letter.

Please direct your reply to Ernest Molins, Regional Environmental Officer, Office of Environment & Energy, One Sansome Street, Suite 1200, San Francisco, CA 94104-4430, and electronically at Ernest.Molins@hud.gov. Thank you for your continued cooperation.

Sincerely,



Maria Cremer
Director
Office of Community Planning
and Development

enclosures

bcc: Objecting parties