



**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

Office of Community Planning and Development

Region IX Office

One Sansome Street, Suite 1200

San Francisco, CA 94104-4430

**CPD MONITORING REPORT**

October 28, 2021

City of Merced  
Steven S. Carrigan, City Manager  
678 W 18th Street Merced, CA 95340-4708

Dear Mr. Carrigan;

**SUBJECT:** On-Site Environmental Monitoring of the City of Merced's Community Development Block Grant and HOME Investment Partnerships programs for Plan Years 2014 to 2018.

From January 13<sup>th</sup> to January 16<sup>th</sup>, 2020, this Office conducted an on-site monitoring of the Community Development Block Grant and HOME Investment Partnerships programs in order to assess your organization's performance and compliance with applicable Federal requirements. Program performance was assessed through a review of operations, file documentation, interviews, and drive-by inspections of selected projects. The purpose of this letter is to transmit HUD's monitoring report, which provides the details of our review. HUD's review of these areas of program performance may result in the identification of Findings, Concerns, or exemplary practices.

A Finding is a deficiency in program performance based on a violation of a statutory or regulatory requirement. A Concern is a deficiency in program performance that is not based on a statutory or regulatory requirement but is brought to the grantee's attention. Corrective Actions to address the noncompliance are identified for all Findings. Recommended Corrective Actions are identified for Concerns.

The enclosed report contains two Findings and no Concerns. Within 30 days from the date of this letter, you have the opportunity to provide additional information demonstrating that you have met the requirements of each Finding. If you fail to respond within 30 days, or if the response is unsatisfactory to HUD, you must undertake corrective actions. Similarly, if you disagree with any of HUD's determinations or conclusions in this monitoring letter, please address these issues in writing to this Department within 30 days of the date of this letter. Your written communication should either provide supporting information to demonstrate the requirement has been met, or explain your reasons why you disagree, along with supporting evidence. While a response is not required for Concerns,

we would appreciate any information you would like to provide. Written responses should be sent to the address listed below.

I would like to thank you and your staff for your professionalism and cooperation during the review. The City of Merced is carrying out valuable programs that are successfully supporting housing and community development activities. Your HUD representative, Stanley W. Toal, Field Environmental Officer, is available to discuss the results of this monitoring report or provide technical assistance, if requested, and can be reached at [Stanley.W.Toal@HUD.gov](mailto:Stanley.W.Toal@HUD.gov) or 415-489-6668. All written communication should be sent to the Covid email address [CPD\\_COVID-19OEE-SFO@hud.gov](mailto:CPD_COVID-19OEE-SFO@hud.gov).

Sincerely,

**KIMBERL  
Y NASH**

Digitally signed by: KIMBERLY NASH  
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Kimberly Nash, CPD Director  
Office of Community Planning and Development

**City of Merced, California**

**U.S. Department of Housing & Urban Development  
Region IX San Francisco, CA**



**Environmental Monitoring Report**

**Community Development Block Grant Program (CDBG)  
HOME Investment Partnerships Program (HOME)  
City of Merced, CA**

**Monitoring Dates: January 13 to 16, 2020**  
**OGC Final Review Date: July 22, 2021**  
**Monitoring Report Date: October 28, 2021**

**City of Merced, California**

**OVERVIEW:**

Monitoring is the principal means by which the US Department of Housing and Urban Development (HUD) ensures that programs and technical areas are carried out efficiently, effectively, and that the programs comply with related regulations, laws, and authorities. It is an opportunity to provide technical assistance focused on improving the quality of the environmental review, to inform the Responsible Entity (RE) of new guidance regarding the substantive review for the related regulations, laws, and authorities, and/or to recommend strategies that may assist with making the environmental review process more efficient. It assists REs in improving their performance, developing or increasing capacity, and augmenting their management and technical skills. Monitoring provides HUD a method for staying abreast of the efficacy of the Office of Community Planning and Development (CPD) administered programs and technical areas within the communities HUD programs serve. Monitoring is not limited to a one-time review but is meant to be an ongoing process that assesses the quality of a RE's performance over a period involving continuous communication and evaluation.

Specifics relating to this review are as follows:

Date(s) Monitoring Conducted: January 13 to 16, 2020  
Type of Monitoring: On-Site  
Programs Reviewed: CDBG and HOME  
HUD Reviewer(s): Stanley Toal, Environmental Protection Specialist  
Entrance Conference Date: January 13, 2020  
Exit Conference Date: January 16, 2020  
City Management and Program Representatives:  
    Scott McBride, Director of Development Services  
    Kimberly Nutt, Housing Program Specialist I  
    Dawn Mendonca, Housing Finance Specialist  
    Stephanie Dietz, Assistant City Manager

**PROGRAM AREAS:**

The City of Merced (City) is the RE for the HUD entitlement program in Merced. The Housing Division is the agency responsible for preparing and implementing the Consolidated Plan and administering the City's CDBG and HOME programs. The City was not active in the NSP3 program during the program years of the environmental monitoring.

**SCOPE OF ENVIRONMENTAL MONITORING:**

This report is based on the Office of Environment and Energy's (OEE) interviews and discussions with program staff as well as post-monitoring communications, a review of records in the IDIS reporting system, a review of activities described in the Consolidated Plan, Consolidated Annual Performance and Evaluation Reports, Annual Action Plans, and an examination of the Environmental Review Records (ERR) for the projects listed at the end of this report.

CDBG and HOME programs administered by the Housing Division were under the supervision of Mark Hamilton, Housing Program Supervisor, who reported to Scott McBride, Director of Development Services. Prior to the monitoring, Mr. Hamilton left the City and Mr. McBride replaced Frank Quintero, Director of Economic Development. In addition to Mr. Hamilton, staff that conducted environmental reviews included Sam Kuykendall, Housing Division Specialist, who also left the City, and Kimberly Nutt, Housing Program Specialist I. Ms. Nutt attended the environmental review training (Foundations in Environmental Review: National Environmental Policy Act and 24 CFR Part 58 Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities) held June 18 to 20, 2019 at the San Francisco Region IX Office. During the monitoring, OEE worked closely with Mr. McBride, Ms. Nutt, and Dawn Mendonca, Housing Finance Specialist.

## City of Merced, California

Environmental consultants are secured to prepare and review environmental studies, including the California Environmental Quality Act (CEQA) documents and Environmental Assessments (EA), for private development projects processed by the City. Christina Alley of Central Valley Coalition for Affordable Housing (CVCAH) assisted OEE by providing background information on the Gateway Terrace and proposed Gateway Terrace II apartment projects. The CVCAH is a key development partner for the City. Sierra Saving Grace Homeless Project, Merced Rescue Mission, and Habitat for Humanity are main subrecipients. Stephanie Dietz, Assistant City Manager, and Mr. McBride met with OEE during the monitoring to discuss the Childs Court Apartments Environmental Assessment (EA) and departure of Mr. Hamilton.

The ERRs were evaluated to assess procedural and technical compliance with the provisions of the National Environmental Policy Act (NEPA);<sup>1</sup> the Council of Environmental Quality (CEQ) regulations implementing NEPA;<sup>2</sup> and, HUD's environmental regulations at 24 CFR Part 58 (Part 58) as well as other related regulations, laws, and authorities. NEPA and HUD's environmental regulations under Part 58 are crosscutting requirements that apply to many Department programs and its federally funded activities.

### **SUMMARY OF RESULTS AND CONCLUSIONS:**

The RE must ensure that activities that are HUD-assisted, in total or in part, are in compliance with NEPA and Part 58 regulations. This means creating a written ERR for every activity regardless of the level of review (§58.38). The RE is required to maintain technical and administrative capability to ensure compliance with NEPA and Part 58 is achieved (§58.12).

Regarding technical capability, the RE's staff needs to have sufficient knowledge of the related regulations, laws, and authorities, as well as a specific understanding of Part 58 requirements in order to make informed decisions about whether:

- Appropriate level of review has been completed;
- Compliance with NEPA and Federal regulations, laws, and authorities has been achieved;
- Public notification requirements have been met (if required);
- When Department approval is necessary; and,
- Mechanisms are in place to ensure project funds are not committed or spent prior to the environmental review process having been completed.

And, regarding administrative capability, the RE's staff needs to have sufficient knowledge about Part 58 procedures to understand:

- When funds may be committed and spent;
- Time periods for the public notification and release of funds process; and,
- Minimum content of the ERR.

HUD has determined that the City in its capacity as the RE has at the minimum ensured that the environmental effects of each activity carried out with CDBG and HOME funds complied with the provisions of HUD regulations implementing NEPA and the applicable environmental laws, Executive Orders, and other related requirements listed in HUD's implementing regulations at 24 CFR Part 58. The results of the review were summarized during an exit conference on January 16, 2020 attended by Mr. McBride, Ms. Nutt, and Ms. Mendonca. OEE has identified **two Findings** that require corrective action and **no Concerns**.

Throughout the monitoring, OEE discussed the initial monitoring observations, addressed the City's questions, and provided more specific technical assistance with regards to wetlands protection including Riverines and Merced irrigation canals, noise abatement and control guidelines and documentation requirements, guidance on options and conditional contracts for purchase of real estate for environmental reviews conducted under Part 58, best practices for reducing near-road air pollution exposure, project aggregation, historic preservation, threshold distances for evaluation of contamination and toxic substances, supportive documentation for the 20% threshold under §58.35(a)(1), and §58.6 *Other requirements* as they pertain to Exempt and Categorically Excluded Not Subject To levels of environmental review. Although deficiencies were noted by the Findings discussed below, the Childs & B Street TOD Affordable Housing Project EA prepared by the City's Environmental

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<sup>1</sup> 42 U.S.C. §4321 et seq.

<sup>2</sup> 40 CFR Parts 1500-1508 (2005)

## City of Merced, California

Consultant, is a good example of an exemplary ERR. The EA should be retained by the City for future reference and training. OEE also commends the City on maintaining well organized ERRs.

**Finding No. 1: HUD program funds committed to a choice-limiting action prior to submission of the Request for Release of Funds and Certification, a statutory violation of Section 104(g)(2) of the Housing and Community Development Act of 1974 [42 U.S.C. 5304(g)(2)] and/or Section 288(b) [42 U.S.C. 12838] Title II of the Cranston-Gonzalez National Affordable Housing Act [“HOME Investment Partnerships Act”].**

**Finding No. 2: City failed to retain the written records of the broad-level review, Tier I of its Tiered environmental review approach.**

### **FINDINGS and CONCERNS:**

A Finding is identified as a deficiency in program performance based on a statutory, regulatory, or program requirement for which sanctions or other corrective actions are authorized. Required corrective actions are identified for all Findings. The type of sanctions applicable to Findings varies in spectrum from administrative corrections to a request for repayment of Federal funds. Findings must be responded to within **30** days of this report. A Concern is a deficiency in program performance not based on a statutory, regulatory, or other program requirement, for which sanctions and corrective actions are not authorized.

The Community Planning Department (CPD) Program Monitoring page, available at <https://www.hudexchange.info/programs/cpd-monitoring/#monitoring-overview>, provides information and resources to CPD grantees and CPD Field Office staff to assist in preparing for a Department monitoring review, conducting a self-review, or monitoring subrecipients and other partners. Exhibit 21-2 Environmental Monitoring of the *CPD Monitoring Handbook 6509.2*, was used to guide this specific review. It is available at [https://www.hud.gov/program\\_offices/administration/hudclips/handbooks/cpd/6509.2](https://www.hud.gov/program_offices/administration/hudclips/handbooks/cpd/6509.2).

Your OEE representative, Stanley Toal, Environmental Protection Specialist, is available to discuss the results of this monitoring report or provide technical assistance, if requested, and can be reached at: 415-489-6668 or by email at [Stanley.W.Toal@HUD.gov](mailto:Stanley.W.Toal@HUD.gov). If you disagree with any of the OEE’s determinations or conclusions in this monitoring report, please address these issues in writing to the San Francisco Region Office within **30** days of this report. Your written communication should explain the reasons why you disagree along with supporting evidence and documentation. All communication should be sent to the Department of Housing and Urban Development, Community Planning and Development Division, Office of Environment & Energy Attn: Stanley W. Toal, One Sansome Street, Suite 1200, San Francisco, CA 94104.

**Finding No. 1: HUD program funds committed to a choice-limiting action prior to submission of the Request for Release of Funds and Certification, a statutory violation of Section 104(g)(2) of the Housing and Community Development Act of 1974 [42 U.S.C. 5304(g)(2)] and/or Section 288(b) [42 U.S.C. 12838] Title II of the Cranston-Gonzalez National Affordable Housing Act [“HOME Investment Partnerships Act”]. In addition, these actions are regulatory violations of 24 CFR Part 58.**

The Office of General Counsel has determined that the City committed statutory and regulatory violations for the following activities:

1. IDIS Activity ID 1103 HOME | Gateway Terrace II – CVCAH (CHDO):
2. IDIS Activity ID 1102 CDBG and HOME | Gateway Terrace II – CVCAH (CHDO):
3. IDIS Activity ID 1063 HOME | CVCAH - 1820 I Street
4. IDIS Activity ID 1067 CDBG | South Merced ADA Ramp Project #116033
5. IDIS Activity ID 1094 CDBG | ADA Ramp and Sidewalk Modifications #117007

## City of Merced, California

### 6. IDIS Activity ID 1095 CDBG | Room at the Inn – Merced County Rescue Mission

#### Conditions 1&2:

- IDIS Activity ID 1103 | Gateway Terrace II – CVCAH (CHDO): 2017/14/PF - Gateway Terrace II Apartments – CVCAH (CHDO) 03C/LMC Program: HOME Rental  
Project Activity: Development of 50 units of affordable housing, Gateway Terrace II Apartments, located between W 12<sup>th</sup> St and W 13<sup>th</sup> St, along K St, Merced, CA  
IDIS Activity Funding: Total Funded: \$857,292 Payment Voucher: 6194065 09/27/18 \$205,101; 6201740 10/25/18 \$41,020.20; 6289393 07/26/19 \$122,060.29; and 6313592 10/12/19 \$24,412.06; total drawn \$392,593.55.
- IDIS Activity ID 1102 | Gateway Terrace II – CVCAH (CHDO): 2016/17/Gateway Terrace II Apartments – CVCAH (CHDO) Program: CDBG 03J – Water/Sewer Improvements and HOME – Rental  
Project Activity: Development of 50 units of quality affordable housing. Project will also replace sewer & water mains serving the project site and nearby residents located within a disadvantage census tract  
IDIS Activity Funding: Total Funded: \$624,708 increased to \$899,708 post-monitoring [\$719,708 CDBG and \$180,000 HOME] Payment Voucher: 6260687 04/30/19 \$38,656.62 and \$269,256.78, total drawn \$307,913.40. This activity includes \$370,590 CDBG funds encumbered by the City Loan Commitment Agreement and \$250,000 CDBG funds allocated to the water and sewer main replacement serving the Gateway Terrace II project site and nearby residents located within a disadvantage census tract.

A City Loan Commitment Agreement was made and entered into on July 17, 2017 by and between the City of Merced and Merced Gateway Investors II, LP. A purpose of the agreement was to provide financial assistance to the CVCAH for the construction of a 50-unit affordable housing apartment (Gateway Terrace II Apartments) without acquisition. The funding sources provided were CDBG and HOME program funds and were as follows: \$370,590 from CDBG; \$514,410 from the Community Housing Development Organization (CHDO) requirement of the HOME program; and, \$500,000 from HOME. The amount of the three funding sources in the agreement totaled \$1,385,000 and, except for CHDO requirement of the HOME program, which is administered by the State, were commingled under IDIS activities 1103 and 1102. The combined City CDBG and HOME program funds totaled \$1,014,410.

The Loan Commitment Agreement required the subsequent preparation and execution of various loan agreements, regulatory agreements, subordination agreements, and related loan documents including notes and deeds of trust. The Loan Commitment Agreement was to be a part of the developer's application to the State to receive tax credits. The developer was to use these funds combined with development fees as leverage for the Federal Low-Income Housing Tax Credit application submitted to the California Debt Limit Allocation Committee and California Tax Credit Allocation Committee. The agreement was contingent on the funding allocation from the Department as outlined and anticipated in the agreement. The funding sources combined with Sewer and Water Enterprise funds *inject enough capital to allow Gateway Terrace Development to move forward*. In June 2018, the Council authorized the City Manager to execute the various loans, subordinations, notes, and deeds of trust necessary to complete the financing of the Gateway Terrace II Apartments (City file 16-555).

The City failed to conduct the environmental review and submit a Request for Release of Funds and Certification (RROF-C). Specifically, the City failed to comply with NEPA, and the related authorities listed in HUD's implementing regulations at 24 CFR Part 58, prior to site-specific commitment and disbursement of CDBG and HOME funds to the project. The City committed a statutory violation of Section 104(g)(2) of the Housing and Community Development Act of 1974 and Section 288(b) of the HOME Investment Partnerships Act. IDIS Activity 1102 has unexpended HOME and CDBG fund balances allocated to the project.

## City of Merced, California

### Condition 3:

- IDIS Activity ID 1063 | CVCAH - 1820 I Street: 2015/7/New Construction Multi-Family Residential - 1820 I Street Program: HOME Rental  
Project Activity: New construction without acquisition.  
IDIS Activity Funding: Total Funded \$269,639.99 Total Drawn \$269,639.99 with 17 Payment Vouchers submitted between 03/16 and 06/17 with draw amounts ranging from \$1,569 to \$69,224.

The City and subrecipient executed a loan agreement and related loan documents with the City disbursing HOME funds to the project between March 2016 and June 2017. The City failed to conduct the environmental review and submit a RROF-C. Specifically, the City failed to comply with NEPA, and the related authorities listed in HUD's implementing regulations at 24 CFR Part 58, prior to site-specific commitment and disbursement of HOME funds to the project. City committed a statutory violation of Section 288(b) of the HOME Investment Partnerships Act and a regulatory violation of 24 CFR Part 58.

### Condition 4:

- IDIS Activity ID 1067: 2015/14/South Merced ADA Ramp Project #116033 Program: CDBG  
Project Activity: Scope of the project in general included the removal of existing sidewalk, curb and gutter, cross gutter, related and necessary adjacent pavement, for the complete installation of 6 handicap access ramps and connecting sidewalk at the intersection of 9<sup>th</sup> and O St and the NEc / NWc of the intersection of 8<sup>th</sup> and O St. Restoration of landscape and irrigation facilities  
IDIS Activity Funding: Total Funded \$84,319.56 Payment Voucher: 5958504 08/27/17 \$6,350.05 08/27/17; 5988617 12/03/16 \$67,209.85; and 6004298 01/25/17 \$10,759.66, total drawn \$84,319.56.

The City disbursed CDBG funds to the project between December 2016 and August 2017. The City failed to conduct the environmental review and submit a RROF-C. Specifically, the City failed to comply with NEPA, and the related authorities listed in HUD's implementing regulations at 24 CFR Part 58, prior to site-specific commitment and disbursement of CDBG funds to the project. City committed a statutory violation of Section 104(g)(2) of the Housing and Community Development Act and a regulatory violation of 24 CFR Part 58.

### Condition 5:

- IDIS Activity ID 1094: 2016/5/ADA Ramp and Sidewalk Modifications - Merced Engineering Department | ADA Ramp and Sidewalk Modifications #117007 Program: CDBG  
Project Activity: Project consisted of removing the existing concrete sidewalk and curb/gutter at the four corners of Q St at 8<sup>th</sup> St and Q St at 9<sup>th</sup> St. Each corner was replaced with new sidewalk, curb/gutter, and wheelchair ramps with detectable warning strips. Total of 8 intersection corners improved. 2315sf of existing concrete sidewalk removed; 2801sf of existing curb/gutter removed; 830sf of new concrete sidewalk installed; 1151sf of new curb/gutter installed; 1800sf of new concrete handicap access ramp; and, 8 detectable warning devices installed. Notice of Complete: 02/12/18  
IDIS Activity Funding: Total Funded \$138,367.13 Total Drawn \$138,367.13 with 11 Payment Vouchers submitted between 09/17 and 10/18 with draw amounts ranging from \$6.21 to \$52,568.16.

The City disbursed CDBG funds to the project between September 2017 and October 2018. The City failed to conduct the environmental review and submit a RROF-C. Specifically, the City failed to comply with NEPA, and the related authorities listed in HUD's implementing regulations at 24 CFR Part 58, prior to site-specific commitment and disbursement of CDBG funds to the project. City committed a statutory violation of Section 104(g)(2) of the Housing and Community Development Act and regulatory violation of 24 CFR Part 58.



## City of Merced, California

### Condition 6:

- IDIS Activity ID 1095: 2016/7/Room at the Inn - Merced County Rescue Mission Program: CDBG  
Project Activity: Acquisition for repair/rehabilitation of a single-family residence to provide housing assistance to individuals or families meeting low- and moderate-income housing eligibility requirements.  
IDIS Activity Funding: Total Funded \$188,000 Payment Voucher: 6040627 05/13/17 \$18,001.29 and \$169,998.71; total drawn \$188,000.

The City and subrecipient executed a loan agreement and related loan documents with the City disbursing CDBG funds to the project on 05/13/17. The City failed to conduct the environmental review and submit the RROF-C. Specifically, the City failed to comply with NEPA, and the related authorities listed in HUD's implementing regulations at 24 CFR Part 58, prior to site-specific commitment and disbursement of CDBG funds to the project. City committed a statutory violation of Section 104(g)(2) of the Housing and Community Development Act and a regulatory violation of 24 CFR Part 58.

### Criteria:

- Section 104(g)(2) of the Housing and Community Development Act of 1974 [42 U.S.C. 5304(g)(2)]: (g.) *Environmental protection measures applicable for release of funds to applicants for projects; issuance of regulations by Secretary subsequent to consultation with Council on Environmental Quality; request and certification to Secretary for approval of release of funds; form, contents and effect of certification.* (2) *The Secretary shall approve the release of funds for projects subject to the procedures authorized by this subsection only if, at least fifteen days prior to such approval and prior to any commitment of funds to such projects other than for purposes authorized by section 5305(a)(12) of this title or for environmental studies, the recipient of assistance under this chapter has submitted to the Secretary a request for such release accompanied by a certification which meets the requirements of paragraph (3). The Secretary's approval of any such certification shall be deemed to satisfy his responsibilities under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and such other provisions of law as the regulations of the Secretary specify insofar as those responsibilities relate to the releases of funds for projects to be carried out pursuant thereto which are covered by such certification.*
- Section 288(b) [42 U.S.C. 12838] ENVIRONMENTAL REVIEW Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended ["HOME Investment Partnership Act"]: 288(b) PROCEDURE. *-The Secretary shall approve the release of funds subject to the procedures authorized by this section only if, at least 15 days prior to such approval and prior to any commitment of funds to such projects the jurisdiction or insular area has submitted to the Secretary a request for \*such release accompanied b a certification which meets the requirements of subsection (c). The Secretary's approval of any such certification shall be deemed to satisfy his responsibilities under the National Environmental Policy Act of 1969 and such other provisions of law as the regulations of the Secretary specify insofar as those responsibilities relate to the releases of funds for projects to be carried out pursuant thereto which are covered by such certification.*
- 24 CFR §58.22 Limitations on activities pending clearance. §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 RE. HUD's approval of the recipient's RROF and related certification is the issuance of the AUGF. 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.*

## City of Merced, California

### Cause:

- The City has no formal policies and procedures for the environmental review process. Further, although the City acknowledges in its subrecipient agreements that it is responsible for ensuring all required environmental documents are completed prior to disbursement of federal funds into a project, while useful, there is no established management oversight and internal controls to ensure the City and subrecipients do not obligate or disburse HUD and non-HUD funds before the completion of the environmental review process. The stated violations are illustrations of the importance of establishing oversight and controls to ensure the City properly implements mandated environmental requirements before commitment, expenditure, and/or release of HUD program and/or non-HUD funds.
- The City failed to resolve a prior finding ascribed to the City's HUD funded programs which proceeded from OEE's April 2014 monitoring of the programs' environmental compliance. The 2014 Monitoring, Finding No. 1 states ... *The City sometimes failed to complete the environmental review process prior to site-specific commitment of HUD funds.* The 2014 monitoring report describes several projects where this occurred.

The Department requested in its June 2014 environmental monitoring report that the *City submit assurances that this systematic deficiency will not reoccur and to document the practical steps taken to prevent this reoccurrence.* The City's July 11, 2014 response states ... *The staff will be implementing the recommended corrective action identified by HUD staff. This finding has been addressed through the realization there was a deficiency in how the environmental program was being overseen. The City plans to correct the deficiency by creating an environmental checklist for projects being developed in the community that are funded with federal assistance. The checklist will require the developer to identify the City as the Responsible Entity for the development and would clearly identify that no federal assistance will be committed until the City has had the opportunity to review and take action on the environmental documents prepared for the project.*

The City staff were unfamiliar with the checklist as described in its July 2014 response and none could be provided to the Department. The City was also unfamiliar with the June 2014 monitoring findings and the City's responses

Similar to the 2014 environmental monitoring response, the City again noted oversight as a potential cause of the premature commitment of funds and non-compliance with §58.22(a), (c), & (d). Specifically, the City noted lack of oversight by the former Housing Program Supervisor, who last reported to Scott McBride, Director of Development Services, as well as staff turnover where Mr. McBride replaced Frank Quintero, Director of Economic Development who formerly managed the Housing Division. The position of Housing Program Supervisor became vacant prior to the January 2020 monitoring. This is of issue as the former Housing Program Supervisor was directly involved in preparing and submitting the Administrative Reports to the Council for adoption of Loan Commitment Agreements and various loans, subordinations, notes and deeds of trust necessary to complete financing of projects.

- City was unaware of the use of conditional language, or similar language, as provided in the August 26, 2011 memorandum from HUD Assistant Secretary for Community Planning and Development Mercedes Marquez titled *HUD Memo Guidance on Options and Conditional Contracts for Purchase of Real Property for Environmental Reviews Conducted by a Responsible-Entity under 24 CFR Part 58.* Further, the City failed to document that the conditions described in the Assistant Secretary's memo have been met.
- Staff recommended actions and the adopting Resolutions by the City Council, which under Part 58 constitute commitments to implement any of the projects identified in the Action Plan, failed to include a declaration by the Certifying Officer that the City has fully carried out its responsibilities for environmental review under the requirements of NEPA and per HUD regulations prior to any such commitment or expenditure of federal funds.

### Effect:

Commitment of HUD funds must not be made until the Part 58 environmental review process is completed. HUD regulations at §58.22 place limitations on activities pending environmental clearance. Neither a recipient nor any

## City of Merced, California

participant, including public or private nonprofit or for-profit entities, or any of their contractors, can commit HUD funds on an activity or project until HUD or the state has approved the recipient's certified RROF. This ensures that actions are not taken that would have an adverse environmental impact or limit the choice of reasonable alternatives. Remedies and sanctions can be imposed when §58.22 is violated and when the environmental review process is not properly completed. This can mean the recipient may be required to repay HUD funds or finance mitigation measures from their own funds.

Undertaking physical activities, committing to a project, expending funds, and/or releasing HUD program funds prior to properly completing and documenting an environmental review as well as prior to submission of the RROF-C or receipt of an Authority to Use Grant Funds (AUGF) are serious deficiencies. They may cause the project to become ineligible for federal assistance for the life of the project, occupants may be exposed to human health and safety hazards, and/or there may be environmental degradation. Binding agreements that include loan commitment agreements, purchase agreements, construction contracts, and execution of various loan agreements, regulatory agreements, subordination agreements, and related loan documents including notes and deeds of trust necessary to complete the financing of a particular project potentially forecloses the opportunity for the City to reject the project, choose an alternative or implement mitigation, should the environmental review reveal issues that could affect the health and safety of people or cause the property to be unusable for the proposed intended purpose, or result in significant adverse impacts to the environment.

### Corrective Action:

- Section 104(g)(2) of the Housing and Community Development Act of 1974 (42 USC 5304(g)(2)) and Section 288(b) of Title II of the Cranston-Gonzalez National Affordable Housing Act [HOME Investment Partnerships Act] both provide that the Secretary of HUD may not release funds for a project unless the recipient has submitted a 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 the City obligated CDBG and HOME program funds and/or disbursed CDBG and HOME program funds prior to submission of a RROF-C, a statutory violation has occurred of Section 104(g)(2) of the Housing and Community Development Act of 1974 and/or Section 288(b) of the HOME Investment Partnerships Act and neither the City nor any participant in the development process can use any HUD funding subject to the environmental review requirements of the statute that was violated for the same project. Therefore, IDIS Activity IDs 1102, 1103, and 1063 are prohibited from using HUD program funds associated with Section 288 of Title II of the Cranston-Gonzalez National Affordable Housing Act. IDIS Activity IDs 1102, 1064, 1067, 1094, and 1095 are prohibited from using HUD program funds associated with Section 104(g) of the Housing and Community Development Act of 1974. As such, both CDBG and HOME funding may not be used on these projects in the future, and any commitments must be de-obligated and the unexpended CDBG and HOME fund balances for the projects must be reprogrammed.
- Repayment to the line of credit: City must repay the funds disbursed from non-Federal funds to the CDBG and HOME program accounts for the above projects which had the statutory violations of the environmental requirements under the Housing and Community Development Act, the HOME Investment Partnerships Act, and 24 CFR §58.22. The City must provide OEE an assurance that it will not provide additional CDBG and HOME program funds to any of the projects identified in this Finding.
- It is possible for the City or any participant in the development process to use HUD funding that is subject to a different statute's environmental review requirements, but only if the recipient first obtains a waiver of §58.22(a) for the regulatory violation. If the City determines that any of the projects listed above might be eligible for HUD funding under a different statute, the City will notify HUD so that it may share guidance for requesting a waiver of the regulatory violation. HUD will only grant such a waiver where there is good cause, the violation was inadvertent, and no unmitigated adverse environmental impact resulted or will result. Note that approving HUD assistance to a project that incurred a §58.22(a) violation is an extraordinary action; there is no guarantee that HUD will approve the request to provide assistance to the project.

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- As stated above under Cause, the City failed to resolve a prior finding ascribed to the City's HUD funded programs which proceeded from OEE's April 2014 monitoring of the programs' environmental compliance. The 2014 Monitoring, Finding No. 1 states ... *The City sometimes failed to complete the environmental review process prior to site-specific commitment of HUD funds.* HUD requested in its June 2014 environmental monitoring report and again request under the current environmental monitoring that the City must submit to OEE assurances that this systematic deficiency will not reoccur and to document the practical steps taken to prevent this reoccurrence. Further, the City must submit to OEE a final approved comprehensive environmental review policy and procedure for all HUD-funded projects. At a minimum, the policy and procedures must identify the city department/staff responsible for conducting reviews; coordination efforts with other city departments to identify projects; coordination and tracking efforts with project sponsors, CHDOs, CBDOs, subrecipients, and other entities that receive HUD program funds to ensure reviews are completed prior to obligating and disbursing funds; documentation requirements; retention and location of documents; on-going staff training; and management review/approval of environmental reviews. The submission must include an organizational chart and an environmental review process flow chart.
- City must submit to OEE contract language that complies with §58.22(d) and consistent with HUD Assistant Secretary for Community Planning and Development Mercedes Marquez's HUD memo guidance. The environmental review procedures described above shall specify that this language is incorporated into contracts and other agreement documents, when appropriate.
- City must electronically submit the complete environmental review record and AUGF to OEE for the next two environmental reviews conducted as either environmental assessment per §58.36 or categorically excluded per §58.35(a) subject to laws and authorities listed at §58.5 and not capable of converting to Exempt per §58.34(a)(12).

**Finding No. 2: The City failed to retain the written records of the broad-level review, Tier I of its Tiered environmental review approach.**

- IDIS ID 1076: 2015/2/Homeowner Rehabilitation - Brush with Kindness Program CDBG 14A – Rehab; Single-Unit Residential - 3168 Nottingham Avenue
- IDIS ID 1080: 2015/2/Homeowner Rehabilitation - Brush with Kindness Program CDBG 14A – Rehab; Single-Unit Residential – 950 W 8<sup>th</sup> Street
- IDIS ID 1086: 2015/2/Homeowner Rehabilitation - Brush with Kindness Program CDBG 14A – Rehab; Single-Unit Residential - 1710 Union Avenue
- IDIS ID 1087: 2015/2/Homeowner Rehabilitation - Brush with Kindness Program CDBG 14A – Rehab; Single-Unit Residential – 204 W 14<sup>th</sup> Street

**Condition:**

The tiered environmental review approach [see §58.15] is designed to be used for activities that are Categorically Excluded per §58.35(a) subject to the laws and authorities at §58.5 (CEST). Activities in this category generally include rehabilitation / repair of single-family, owner-occupied housing units on scattered sites. As such, the City used the Rehabilitation Environmental Review (RER) / Appendix A tiered format for its various housing repair activities including those generally referred to as Homeowner Rehabilitation - Brush with Kindness Program. Each of the respective ERRs did not include the RER form that addressed the factors evaluated for the entire area of consideration (Tier I or broad-level review) and did not include the associated public notice (Notice of Intent to Request Release of Funds or NOI/RROF), the RROF or form HUD-7015.15, and receipt of the AUGF or form HUD-7015.16.

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### Criteria:

- 24 CFR §58.38 - Environmental review record ... *The responsible entity must maintain a written record of the environmental review undertaken under this part for each project. This document will be designated the "Environmental Review Record" (ERR), and shall be available for public review. 24 CFR §58.38(a) - ERR documents ... The ERR shall contain all the environmental review documents, public notices and written determinations or environmental findings required by this part as evidence of review, decision making and actions pertaining to a particular project of a recipient.*
- Tiered ERR is outlined in 24 CFR §58.15 - Tiering. It contains a broad review (Tier I), a written strategy, and a site-specific review (Tier II). All parts of the Tiered Environmental Review must be completed before committing funds on any one site (24 CFR §58.22 – Limitations on activities pending clearance).

### Cause:

The City staff did not understand that all Tiered environmental review records must be retained by the City. This deficiency has been corrected for another and more recent group of Tiered environmental reviews which have been entered to HEROS under the system's Tier Environmental Review application.

### Effect:

The ERR must contain a well-organized written record of the process and determinations made under Part 58. Maintaining an organized ERR is especially important with respects to Tiered Environmental Reviews, as Tiered ERRs are not complete without both the broad-level and site-specific tiered reviews. All site-specific reviews must identify the corresponding broad-level review and should be filed together. The ERR is the City's administrative record for environmental compliance and is subject to review by the public, the courts, and HUD. In the absence of properly documented and readily reviewable records, the adequacy of the City's environmental review determinations and decision-making process is exposed to potential legal challenges and HUD penalties and sanctions, including repayment of funds.

### Corrective Action:

- As stated under Finding No. 1, the City must submit to OEE a final approved comprehensive environmental review policy and procedure for the projects funded under the City's entitlement programs. The policy and procedures must identify the steps to ensure compliance with §58.38 requirements applicable to retention of location of documents.
- City may not perform any additional site-specific, Tier II reviews for the Brush with Kindness Homeowner Rehabilitation project while the broad-level, Tier I review (RER) and the associated public notice, RROF-C, and AUGF remain unlocated. If the city proposes additional Brush with Kindness projects moving forward, it must conduct a new broad-level, Tier I environmental review (with associated RROF- C and AUGF) and then site-specific, Tier II reviews for the specific sites.

\*\*\* END \*\*\*

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IDIS Activity	Program Year/IDIS Project ID/Project Title	Activity Name
2019	Combined Public Notice of the Availability of the Environmental Assessment and Notice of FONSI, Final Notice and Public Explanation of Proposed Activities in a 100-year Floodplain, and Notice of Intent to Request Release of Funds. February 7, 2019	Childs Court Apartments, Merced – transfer, construction 119-unit apartment, construction multi-modal transit stop, and construction of street improvements. NWc @ B Street and East Childs Avenue, City of Merced.
2018	1132 2018/20/Continuum of Care - Collaborative Applicant - Merced County	Continuum of Care - Merced County
	1131 2018/6/PS -Neighborhood Clean-up - Restore Merced -05V/LMA	Restore Merced / Neighborhood Clean-up
	1126 2018/14/Acquisition of Property	Sierra Saving Grace Homeless Project
	1125 2018/11/Acquisition of Property - Merced Rescue Mission	Merced Rescue Mission - Hope for Families
2017	1118 2017/15/INF-West 25th & 26th Streets (John Muir School) ADA Ramp & Sidewalk Improvements-03L/LMA	ADA Ramps & Sidewalk Improvements #118028
	1117 2017/6/INF-Buena Vista & G Street (Rivera School) ADA Sidewalk/Ramp Improvements-03L/LMA	ADA Sidewalk/Ramp Improvements #118027
	1114 2017/16/Habitat for Humanity - Homeowner Rehabilitation and New Construction Program	Habitat for Humanity - Homeowner Rehabilitation and New Construction Program
	1113 2017/18/Acquisition of Property for Permanent Supportive Housing	Sierra Saving Grace Homeless Project
	1106 2017/1/Administrative Costs FY 2017/18	Direct Administration Expenses
	1103 2017/14/PF - Gateway Terrace II Apartments - Central Valley Coalition for Affordable Housing (CHDO) 03C/LMC	GATEWAY TERRACE II - CVCAH (CHDO)
2016	1102 2016/17/Gateway Terrace II Apartments - Central Valley Coalition for Affordable Housing (CHDO)	GATEWAY TERRACE II - CVCAH (CHDO)
	1100 2016/9/Brush with Kindness - Habitat for Humanity Stanislaus County	Brush with Kindness - Habitat for Humanity Stanislaus County
	1097 2016/8/Homeless Project - Sierra Saving Grace	Homeless Project - Sierra Saving Grace
	1095 2016/7/Room at the Inn - Merced County Rescue Mission	Room at the Inn - Merced County Rescue Mission

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	1094	2016/5/ADA Ramp and Sidewalk Modifications - City of Merced Engineering Department	ADA Ramp and Sidewalk Modifications #117007
	1084	2016/2/Rehabilitation of Foreclosed Property	241 E. Main Street / Rehab
	1079	2016/22/Administration FY 2016/17	Direct Administration Expenses
	1078	2016/1/HUD 108 Loan Payment	HUD 108 Loan Payment
<b>2015</b>	1101	2015/21/CVCAH (CHDO) - GATEWAY TERRACE II	GATEWAY TERRACE II - CVCAH (CHDO)
	1087	2015/2/Home Owner Rehabilitation - Brush with Kindness Program	205 W. 14th Street / Rehab
	1080	2015/2/Home Owner Rehabilitation - Brush with Kindness Program	950 W. 8th Street - Rehab
	1067	2015/14/South Merced ADA Ramp Project #116033	SOUTH MERCED ADA RAMP PROJECT #116033
	1063	2015/7/New Construction Multi-Family Residential - 1820 I Street	CVCAH-1820 I STREET
	1061	2015/6/Administration FY 2015/16	Direct Program Administration
<b>2014</b>	1054	2014/17/Water Main Replacement T & 7th Street	Water Main Replacement T & 7th Street