



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

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Loveland, CO 80537-5773

Mr. Stanley Matsunaka  
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Dear Mr. Duval and Mr. Matsunaka:

On behalf of Secretary Donovan, thank you for your letters of May 3, and May 21, 2012, regarding your request to reconsider and reverse the HUD Denver Regional Office's findings of noncompliance concerning the city's Community Development Block Grant (CDBG) program and the HOME Investment Partnership (HOME) program. This issue also includes the Housing Authority of the city of Loveland (Authority) and its use of the Housing Choice Voucher (HCV) program. The noncompliance relates to the city of Loveland's use of HUD funds for the development of the Mirasol Senior Living Community (Mirasol), a multi-unit housing project located in Loveland, Colorado. In all cases, documentation shows that the Authority charged excessive tenant rents for income-qualified families residing at Mirasol. Therefore, the Department concurs with the findings made by the Denver Regional Office.

In letters dated March 14, March 29, and April 13, 2012, the Denver Regional Office of Community Planning and Development (CPD) and Office of Public Housing (OPH) advised the city that the Mirasol project was not in compliance with applicable HUD program requirements. Specifically, the Authority has historically charged Mirasol tenants rents that exceed allowable affordable rents for moderate-income, low-income, and very-low-income households under the CDBG and HOME programs, and rents that were in violation of HCV program lease requirements.

As part of the review process, a conference call between the city and HUD was held on October 4, 2012. Representing the city was Mr. Duval and Ms. Alison Hade, Administrator for the Community Partnership Office. Representing HUD Headquarters was staff from CPD, OPH, and the Office of General Counsel. Also represented were the Denver CPD, OPH, and the Denver regional counsel staff. The city agreed to provide documentation in the form of a one-year rent roll in order for the Department to ascertain whether the city's assistance to the Mirasol project was compliant with HUD program requirements. The subsequent documentation provided by the city showed that most rents exceeded the affordable rent requirements with regard to each subject program.

As referenced in HUD's letters of March 14 and April 13, 2012, in order for tenants to occupy a unit at Mirasol they were required by the Authority's "Lease Agreement" to pay a gross rent amount that included a mandatory community fee of \$113. The mandatory fee paid for tenant access to the Event Center, a facility adjacent to Mirasol. HUD finds that the Event Center fee must necessarily be viewed as a component of the total unit rent; the cost of which may have prohibited or denied income-qualified families from leasing a unit at Mirasol. Moreover, the city's May 21, 2012, letter acknowledged that potential tenants, who were not willing to pay the Event Center fee, would be directed to other properties that did not provide for enhanced services. This policy is not in compliance with CDBG and the HOME programs. Similarly, because the Mirasol HCV program participants were also charged the mandatory \$113 fee, the Denver OPH issued a letter dated March 29, 2012, wherein it was determined that the Authority was not in compliance with HCV program.

To be an eligible CDBG-assisted housing activity, housing activities must meet the national objective set forth at 24 CFR 570.208(a)(3). The regulation requires that for multi-unit housing structures to qualify as meeting the low- and moderate-income (LMI) housing national objective, at least 51 percent of the units, upon completion, must be occupied by LMI households at affordable rents. The regulation requires a CDBG recipient to adopt and make public its standard for affordable rents. The city has indicated that it uses HUD's Fair Market Rents as its affordable rents standard. Subsequently, the additional documentation submitted by the city shows that Mirasol rents have exceeded the fair market rents over several years. As a result, the Mirasol activity is deemed ineligible as it has not met the CDBG housing national objective.

Separately, the city's letter dated September 29, 2011, acknowledged that CDBG funds in the amount of \$17,936 were provided to the Authority to secure water rights for the development of the Event Center facility located adjacent to the Mirasol project. However, the Event Center does not qualify as a CDBG-eligible "public facility" under 24 CFR 570.201(c) and 570.200(b)(2), as suggested by the city. To qualify as a public facility, the facility must be made available to the general public and open for use during normal hours of operation. The Department finds that this is not the case, as the Event Center is for the exclusive use of Mirasol residents – and now only for those residents who agree to pay the additional \$113 fee. HUD has determined that the use of CDBG funds for securing water rights for the Event Center does not qualify as an eligible activity nor does it meet a national objective. Therefore, the city must repay its CDBG program account with non-Federal funds in the amount of \$17,936.00.


In addition to the CDBG and HCV program violations above, the Department has determined that the Mirasol project has violated the HOME regulations at 24 CFR Part 92. The HOME regulations at 92.252(a) and (b) establish maximum rents that may be charged in units that are designated as HOME-assisted. HUD publishes the HOME rent limits annually. These rents must be established in the lease between the project owner and the HOME tenant. Because Mirasol tenants have been charged a mandatory community fee in addition to the HOME rent, the project has not complied with the HOME affordability requirements at any time during its HOME compliance period. The HOME funds were provided to the Authority by the state of Colorado, and did not involve the city of Loveland. Consequently, the Denver Regional Office will identify and impose an appropriate corrective action which may require additional actions by the Authority to remediate past noncompliance or ensure future compliance with HOME requirements.

The Denver Regional Office has required the city and the Authority to take corrective actions to remove the causes of the findings under 24 CFR 570.910(a) and (b) of the CDBG program, and at 24 CFR 982.510(a) and (b) of the Housing Assistance Payment Contract, Part B, Section 8d, Form HUD-52641. In establishing a corrective action, HUD seeks to prevent a continuation or recurrence of the noncompliance, as well as mitigate any adverse effect created by the noncompliance. In this case, the noncompliance affected almost all Mirasol tenants. Accordingly, HUD has determined that the appropriate corrective action for the city and the Authority is to reimburse affected tenants in an amount equal to the total mandatory community fees charged to past and present Mirasol tenants.

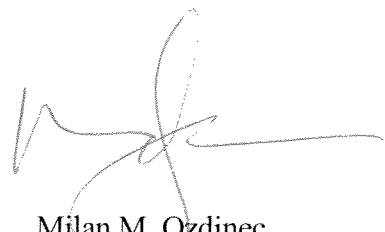
The city will be advised to repay affected Mirasol tenants in an amount estimated at \$332,220, which is based on the collection of the \$113 fee for the 49 units over a five-year period. The resolution for the amounts due for the CDBG and HOME programs must be coordinated with Mr. LeRoy P. Brown, Director, Denver Office of Community Planning and Development. Should you have further questions for the CDBG and HOME programs, please contact Mr. Brown, at (303) 672-5076. The resolution of the HCV program findings must be coordinated with Ms. Ann Roman, Director, Denver Office of Public Housing. Should you have further questions on the HCV program, please contact Ms. Roman, at (303) 672-5370.

Thank you for your attention to this matter.

Sincerely,



Yolanda Chávez  
Deputy Assistant Secretary  
for Grant Programs



Milan M. Ozdinec  
Deputy Assistant Secretary for Public  
Housing and Voucher Programs