

Waiver of CDBG Environmental Standards

April 1, 1994

MEMORANDUM FOR: Joseph J. O'Hern, Regional Administrator- Regional Housing Commissioner, 7S

ATTENTION: Miguel P. Madrigal, Director, Community Planning and Development Division, 7C

Roger M. Massey, Manager, 7.2S

FROM: Andrew Cuomo, Assistant Secretary for Community Planning and Development, C

SUBJECT: Waiver of CDBG Environmental Standards under 24 CFR 570.604 City of Lincoln, Nebraska

This is in response to your memorandum dated December 29, 1993, in which the City of Lincoln, Nebraska, has requested a waiver under 24 CFR 570.604 of the Community Development Block Grant (CDBG) program. This waiver is being requested to allow the City to use CDBG funds to pay the special assessments for low-income persons for a paving project that was completed in April 1993.

On August 3, 1992, Lincoln's City Council approved construction of a street paving project that would result in special assessments being levied against affected property owners. At an August 10, 1992, City Council meeting, reconsideration of the activity was requested until a CDBG program could be created to assist very low-income households with paying the special assessments. The recommendation was not approved and the City began the paving activity. On July 21, 1993, however, the City Council adopted a Special Assessment Street Paving Program to use CDBG funds to pay assessments on behalf of the very low-income property owners (those at or below 50 percent of median income). Construction was completed in April 1993, at a total cost of \$33,842.

The CDBG regulations at 24 CFR 570.200(c)(3) permit CDBG funds to be used to pay special assessments for public improvements not initially assisted with CDBG funds. However, the public improvements must be carried out in compliance with all of the requirements applicable to activities assisted under this part including environmental, citizen participation and Davis Bacon requirements. The City Council maintains that its desire was to provide CDBG financial assistance for the low-income property owners. However, bids for construction were received in late fall 1992 without Davis-Bacon Wage assessments and, furthermore, no environmental assessment was completed prior to project implementation.

The CDBG regulations at 24 CFR 570.5 permits the Secretary to waive any requirement under the CDBG regulations that is not required by law. The environmental review standards are statutory requirements and therefore not waivable. Because the public improvement project was not carried out in compliance with applicable statutory requirements, a waiver cannot be granted.

cc: Robert P. Allen, SC