

Use of CDBG Funds for Ballfield Lighting

February 15, 1991

MEMORANDUM FOR: Robert J. DeMonte, Regional Administrator-
Regional Housing Commissioner, 9S

ATTENTION: Charles Ming, Manager
Los Angeles Office, 9.4S
Herbert L. Roberts, Director, Community Planning and
Development Division, 9.4C

FROM: Anna Kondratas, Assistant Secretary for
Community Planning and Development, C \s\

**SUBJECT: Non-Compliance Determination for City of San Bernardino
Use of CDBG Funds for Ballfield Lighting at Fiscalini Park**

We have completed our review of the City of San Bernardino's appeal of the decision made by the Los Angeles Field Office, and upheld by your office, to disallow Community Development Block Grant (CDBG) funds spent on ballfield lights at Fiscalini Field. We have provided our response to the City and have forwarded copies to the Los Angeles Field Office and to you.

We agree with the Field Office's and your office's determination that the Fiscalini Ballfield project has not been shown to meet the national objective requirements of 570.208(a) and therefore support your decision to require the City to take corrective action. In our response to the City, we focused on addressing the main issue it raised: did we agree with the City's determination that the activity was an area benefit and, if so, did the information provided by the City demonstrate that the criteria at 24 CFR 570.208(a)(1) had been met? The City raised other peripheral issues to which we did not directly respond. The purpose of this memorandum is to provide some additional clarification that will assist the Field Office in responding to the grantee, should it have other questions. For ease of reference, we have attached a copy of the City's correspondence to Headquarters.

Our first point of clarification concerns guidance provided by the Field Office to the City in correspondence dated August 23, 1989. In this letter, HUD responded to the City's attempt to support its determination of low/moderate income area benefit under the regulatory criteria at 570.208(a)(1). The Field Office stated that the use of Donnelly Demographics statistics by the City was not acceptable for this purpose; therefore, the costs were disallowed because less than 51% of the persons in the service area were low- and moderate-income. The Field Office then offered an alternative method, a user survey, that the City could use to establish the percent of benefit to low- and moderate-income persons. Please be advised that user surveys are not acceptable for demonstrating compliance with the criteria at 570.208(a)(1), benefit to low- and moderate-income persons on an area basis. This is because the statute, and the regulations, require an area benefit activity to qualify on the basis of the income of persons residing in the area served by the activity, not by those who may use the facility. If a grantee

believes that available census data are likely to understate the current percentage of low- and moderate-income residents in an area, the only acceptable alternative permitted by the regulations at 570.208(a)(1)(iv) is a HUD-approved survey of the residents of the area. User surveys can be used to demonstrate compliance with respect to activities that may qualify under the limited clientele criteria at 570.208(a)(2).

Additionally, the City appeared to imply the inclusion of a project description within the Final Statement of Community Development Objectives and Projected Use of Funds and the environmental Request for Release of Funds constituted approval by HUD of this activity. With respect to the final statement, the level of specificity required for activity description as outlined at 570.301(a)(2)(ii) gives grantees considerable discretion. National objective determinations are not made by HUD on the basis of the final statement. In any event, this statement is not approved by HUD but only accepted; acceptance is based upon submission of the required information and certifications as described at 570.304(a). Similarly, the Removal of Grant Conditions in response to the City's Request for Release of Funds is based upon compliance with the requirements of 24 CFR 58.70 through 58.76. HUD's actions in this regard should in no way be construed to serve as an approval of an activity's compliance with national objective requirements.

The last point is a comment made by the grantee that spectators are beneficiaries and that viewing baseball games qualifies as a recreational activity. On the face of it, we do not agree with these statements. However, these comments were not germane to the issue raised to us. The actual activity was qualified as public works and facilities under 570.201(c), not a public service, 570.201(e) recreational activity. Furthermore, as an area benefit activity, it is not the actual spectators that constitute the basis for determining compliance with the 51% threshold requirement of 570.208(a)(1); rather it is the low- and moderate-income percentage of the residents of the designated service area, all of whom have access to the benefits of the activity.

If you have any questions concerning our determination of non-compliance for the Fiscalini Ballfield, please do not hesitate to contact the Entitlement Communities Division at FTS 458-1577.

Attachment

cc: Edwin Gardner, DUSFC