

Acquisition of Real Property by Long-term Lease

October 28, 1988

Mr. Joe Nagel
Director, King County Parks,
Planning and Resources Department
506 Second Avenue
Seattle, Washington 98104

Dear Mr. Nagel:

Thank you for your letter of October 12, 1988, to Secretary Pierce regarding the regulations for the Community Development Block Grant Program published on September 6, 1988. In your letter, you ask for a waiver of the provision at §570.201(a) that makes eligible the acquisition of real property by long-term lease. You indicate that a hardship will occur unless HUD waives this provision.

This provision in the regulation implements section 105(a)(1) of the Housing and Community Development Act of 1974 which states: Activities assisted under this title include only- (1) "the acquisition of real property (including air rights, water rights, and other interests therein) which is (A) blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth; (B) appropriate for rehabilitation or conservation activities; (C) appropriate for the preservation or restoration of historic sites, the beautification of urban land, the conservation of open spaces, natural resources, and scenic areas, the provision of recreational opportunities, or the guidance of urban development; (D) to be used for the provision of public works, facilities, and improvements eligible for assistance under this title; or (E) to be used for other public purposes."

In implementing this provision in its prior program regulations, HUD had set forth at §570.201(a) as an eligible activity the "acquisition in whole or in part by a public agency or a private nonprofit entity, by purchase, lease, donation, or otherwise, of real property (including air rights, water rights, rights-of-way, easements, and other interests therein) for any public purpose, subject to the limitations at §570.207(a)."

In the regulations published on September 6, 1988, the reference to acquisition by "lease" was changed to "long-term lease." This change did not establish a new requirement. Rather it clarified what was meant by the term "lease" in the context of "acquisition of real property." Given the degree of possession and control involved in the term "acquisition" a period shorter than 15 years could not reasonably be considered to be "acquisition of real property."

The short term leases that you describe in your letter are, as you point out, specifically eligible as public services. As eligible public services they are subject to the statutory provision which limits the amount of CDBG funds that may be used for public services to 15 percent of each grant. We do not agree with the conclusion regarding the eligibility of acquisition by lease without regard to length of time as contained in the August 1984 letter to your office from our Seattle Office. That letter, however, clearly shows the

County's good faith in trying to comply with the program rules and based on that letter, HUD will not impose sanctions on violations that may have occurred as a result of its content.

In conclusion, we can not provide you with the waiver that you request. HUD's waiver authority is limited to regulatory provisions not required by statute. In this case, the activities that you describe are, under the Act, clearly eligible as public services and subject to the 15 percent limitation. They are not eligible under the Act as acquisition of real property.

Sincerely,

(signed)

Jack R. Stokvis
Assistant Secretary