

Entitlement CDBG Eligibility

May 31, 1985

MEMORANDUM FOR: Duncan Howard, Regional Administrator-
Regional Housing Commissioner, 9SC

FROM: Alfred C. Moran, Assistant Secretary, C

**SUBJECT: Entitlement CDBG Eligibility
City of Montebello, California
City Park Repair Program**

This is in response to your memorandum of March 11, 1985 requesting an eligibility determination regarding the subject CDBG activity of the City of Montebello. Section 570.207(b)(2) of the regulations of the Community Development Block Grant (CDBG) program states that "any expense associated with repairing, operating or maintaining public facilities and services is ineligible", and paragraph (i) of this section specifically identifies "... maintenance and repair of streets, parks, playgrounds..." as ineligible. Section 570.207(a)(2) of the regulations states that "expenses required to carry out the regular responsibilities of the unit of general local government are not eligible for assistance under this Part." Similarly, OMB Circular A-87, Cost principles for State and local governments, states in paragraph C.I.a. that to be allowable a cost must "not be a general expense required to carry out the overall responsibilities of State, local or federally-recognized Indian tribal governments." The City Park Repair Program is ineligible for CDBG funding under each of these citations, since the actions carried out are maintenance of public facilities and regular responsibilities of the unit of general local government. We do not accept this project as rehabilitation, as proposed by the City.

The City of Montebello claims this activity as a rehabilitation activity on the basis of the language of Section 570.202(b)(2) which makes eligible "repair directed toward an accumulation of deferred maintenance, replacement of principal fixtures and components of existing structures, installation of security devices and renovation through alterations, additions to or enhancement of existing structures." This language was included in the regulations specifically to make eligible public housing modernization with CDBG funds. This provision does not qualify maintenance activities as rehabilitation. The maintenance functions carried out by the City of Montebello under the City Park Repair Program (predominantly exterior painting) constitute nothing more than standard maintenance of public facilities.

The degree of deterioration necessary to qualify structures for rehabilitation under Section 570.202(b)(2) of the CDBG regulations is substantially greater than that evidenced by the City in this case. The City quotes the Uniform Housing Code, Chapter 10, as defining structures as substandard when that structure endangers the life, limb, health, property, safety or welfare of the public or occupants. Further the Code states that such conditions may be due to faulty weather protection, including "deteriorating, crumbling or loose plaster, deteriorated or ineffective waterproofing of exterior walls, roof foundation or floors, including broken windows or doors, and defective or lack of weather protection for exterior wall coverings, or weathering due to lack of paint or other approved protective covering." In another place the City states

that, "such, a lack of weather protection will, over a period of time contribute to the accelerated deterioration of the structural integrity of the buildings." It is significant to our determination, stated above, that the City does not claim that the current condition of the buildings endangers the life, limb, health, property, safety or welfare of users of the parks, nor even that the current conditions are limiting the use of the parks. In fact, the City states that the structures in the city park are "occupied on a daily basis by citizens of all ages."

The city seeks to define maintenance as only "routine housekeeping chores required on a frequent basis to keep a facility clean, attractive and functioning at 100 percent of its intended purpose (e.g., the changing of light bulbs, window cleaning, janitorial services, etc.)" The regular responsibilities of a unit of general local government in maintaining a public facility are substantially broader than these activities, and in our view should include many of the activities carried out by the city in its City Parks Repair Program: repainting trim and doors on buildings, replacing broken doors, repairing a barbecue, replacing broken or missing electrical panel doors, etc.

We also question how the City Park Repair Program can qualify for CDBG funding as a public service activity. Section 570.201(e) of the CDBG regulations requires that each eligible public service activity be either "(i) a new service, or (ii) a quantifiable increase in the level of service above that which has been provided by or in behalf of the unit of general local government (through funds raised by such unit, or received by such unit from the State in which it is located)in the twelve calendar months prior to the submission of the statement [of community development objectives]." The service of concern in this case appears to be the provision of recreational facilities to the community. The activities carried out by the City of Montebello under its City Park Repair Program do not provide additional recreational facilities, nor do they quantifiably increase the level of recreational needs satisfied. While the quality of recreational facilities may be improved by these activities, no increase in the level of recreational service is quantifiable. Again, the City Parks Repair Program constitutes maintenance of existing public facilities, and as such would be ineligible for CDBG funding.