

Regs. Governing the Use of CDBG Funds to Match Grants under SBA's Small Business Development Center

October 19, 1995

MEMORANDUM FOR: Herbert L. Roberts, Director, Community Planning and Development Division, 9DD

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

**SUBJECT: Community Development Block Grant (CDBG) Program
Request for waiver
County of San Diego - Fallbrook drainage channel**

This is in response to your memorandum of August 14, 1995, which transmits and recommends approval of a request from the County of San Diego, California, for a waiver of the CDBG regulations at 24 CFR 570.207(b)(2) to permit the use of CDBG funds to clear a drainage channel in the community of Fallbrook.

Due to severe storms and above average rainfall during the past winter, an extensive deposit of silt has accumulated in an unimproved drainage channel that runs through a five block area of Fallbrook. The County Department of Public Works flood control engineers project substantial flooding in this area during the next rainy season if this silt deposit is not removed. Because the CDBG regulations at 24 CFR 570.207(b)(2) provide that expenses related to the repair, operation or maintenance of public facilities and improvements are not eligible, the County has requested a waiver of this part of the regulations to permit removal of the silt before the rainy season begins in November.

In applying the regulation at 24 CFR 570.207(b)(2), the Department uses OMB Circular A-87, Attachment B, as its source in defining maintenance and repair. This Circular characterizes maintenance and repair as that "which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition." Based on the information provided in this case, the removal of silt from the drainage channel would be considered maintenance of a public improvement because it will serve only to improve the operating condition of the drainage channel. Therefore, it would be ineligible for CDBG assistance.

The CDBG regulation at 24 CFR 570.5 permits the waiver of requirements that are not required by law when it is determined that failure to do so will result in undue hardship and adversely affect the purposes of the Act. While the County has requested a waiver of 24 CFR 570.207(b)(2), this part of the regulations is based on language in the statute at section 105(a)(2) which states that the activities related to public facilities and improvements which may be assisted are acquisition, construction, reconstruction, or

installation. Because the prohibition at 24 CFR 570.207(b)(2) is based on the statute, which does not include "maintenance," it cannot be waived under the authority at 24 CFR 570.5.

However, although the County's request for a waiver cannot be authorized under 24 CFR 570.5, Section 234 of the Multifamily Housing Property Disposition Reform Act of 1994 amended the Housing and Community Development Act of 1974 to permit the waiver of requirements for CDBG funds to be used to address damage in an area for which the President has declared a disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The County of San Diego has been declared a disaster area under title IV (declaration FEMA-1044-DR).

It is the Department's understanding that the accumulation of silt in the Fallbrook drainage channel occurred from the storms and flooding the area experienced earlier in the year which resulted in the County's inclusion in the disaster declaration. Therefore, in accordance with the authority provided by Section 234 of the Multifamily Housing Property Disposition Reform Act, a waiver is hereby granted to permit the County of San Diego to use CDBG funds to clean the drainage channel in Fallbrook. Based on this waiver, the use of CDBG funds for this purpose is an eligible activity under 24 CFR 570.201(c), public facilities and improvements.

It is also understood that the County will be qualifying this activity under the national objective of meeting an urgent community development need at 24 CFR 570.208(c). Because the certification required by this part of the CDBG regulations must state that the recipient is unable to finance the activity on its own and that other sources of funding are not available, such certification should be signed by the Chief Executive Officer of the County and submitted to HUD as part of the County's Consolidated Plan amendment.

If you have any questions about this information, please contact the Entitlement Communities Division at (202) 708-1577.

cc: John E. Wilson