

Removal of Architectural Barriers

August 22, 1994

MEMORANDUM FOR: Bruce Crawford, Director, Community Planning and Development, Division, 3.3C

FROM: Kenneth C. Williams, Deputy Assistant Secretary for Grant Programs, CG

SUBJECT: Request for Policy Determination - Eligibility and National Objective Determination of Activities Carried Out at a Regional Park Westmoreland County, PA

This is in response to your memorandum dated April 21, 1994, requesting guidance in determining whether several activities undertaken in Northmoreland Regional Park by Westmoreland County, Pennsylvania, with Community Development Block Grant (CDBG) funds are properly classified as removal of architectural barriers for eligibility purposes and as special projects under §570.208(a)(2)(ii) for national objective purposes.

The County contends that the following activities undertaken in the park are eligible as Removal of Architectural Barriers, and that as such they can be presumed to benefit low- and moderate-income persons: paving of gravel walkways and parking lots; construction of a fishing dock; and construction of two new restrooms (comfort stations). It is the County's position that these alterations to the park were for the purpose of making the park accessible to handicapped persons. The Field Office agrees that paving the existing trails and walkways is eligible as removal of architectural barriers but it views the other activities as improvements to a public facility.

The major concern in this case is whether or not the modifications to the regional park were done principally to remove barriers which restrict the mobility and accessibility of handicapped persons to the park or whether they constitute general improvements to the park. If they are not determined to be removal of architectural barriers, the activities would apparently not be able to meet a national objective and therefore not be eligible for CDBG-assistance, since this is an area benefit activity which does not serve a predominately low- and moderate-income area.

Section 570.201(k) authorizes the use of CDBG funds for special projects directed towards removing material and architectural barriers which restrict the mobility and accessibility of elderly or handicapped persons to publicly-owned and privately-owned buildings, facilities, and improvements. This includes physical modification to such buildings, facilities, and improvements to make them accessible to handicapped persons. Section 570.201(c) of the regulations allows acquisition, construction, reconstruction, rehabilitation, or installation of public facilities and improvements. Since the inception of the CDBG program, parks have been recognized as public facilities.

In order to determine that each activity carried out by the County as removal of architectural barriers is properly classified, the material or architectural barriers which prevented access to the public facility must be identified and it must be evident that the primary beneficiaries of the modifications are elderly and handicapped persons, not the general public. Documentation which supports that the activities meet the eligibility criteria for removal of architectural barriers is particularly important with respect to these activities since they might otherwise not be eligible for CDBG assistance. Our conclusions and comments regarding each of the activities is as follows:

Parking Lots

The County paved several gravel parking lots. According to the information provided, the lots were paved to accommodate wheelchairs. Approximately one-tenth of the parking spaces are wider and set aside as designated parking for handicapped persons. The Pittsburgh Office indicated that only two slots per lot were designated for handicapped persons.

Clearly gravel parking lots are a barrier to persons in wheelchairs as well as to others who may use walkers or canes or have difficulty walking without assistance. The primary issue in this instance appears to be whether paving the parking lots removed architectural barriers which prevented access to park facilities by elderly or handicapped persons and, thus, whether the entire cost of the paving is eligible. As a general rule, the design of the park facilities should be considered to determine the extent to which modifications to the existing improvements, such as parking lots, are needed to permit access by elderly or handicapped persons. The primary beneficiaries of any activity classified as removal of architectural barriers must clearly be handicapped persons. Therefore, in the instant case, expenditures for paving the Regional park's parking lots are

allowable as removal of architectural barriers to the extent that the County can identify the barriers that were removed and justify the extent to which the paving was needed to make the park facilities and improvements accessible to handicapped persons. If the County is able to provide adequate justification for paving the entire parking lots, the Department will accept the activities as removal of architectural barriers.

Fishing Deck

The County stated that the fishing "dock" which was constructed for handicapped persons is actually a deck built to accommodate wheelchairs. Prior to the installation of the deck, the only access to fishing was a stone and gravel grade leading down to the lake which was not accessible by wheelchair.

The picture of the fishing deck provided to Headquarters shows a moderate size deck that provides a place from which handicapped persons are able to fish that did not exist previously. This appears to be a reasonable accommodation to allow handicapped persons access to fishing and we have determined that the cost of construction of the deck is eligible as removal of an architectural barrier if it is documented that the structure is clearly for the accommodation of handicapped persons. This appears to be the case based on the information available to us. The structure appears to not replace the large fishing area at the water's edge from which non-handicapped individuals may fish.

Comfort Station

Prior to the construction of the comfort station, the County supplied portable restrooms which were permanently attached to the ground. The County replaced the portable restrooms with a newly constructed comfort station containing six stalls, three for women and three for men. Two of the stalls and two sinks were designed to make them accessible to handicapped persons.

It is clear that the newly constructed comfort station provides benefits to the general public, particularly because the portable restrooms were removed. Furthermore, there are portable restrooms which are designed to accommodate handicapped persons in wheelchairs which could have been installed to supplement the portable restrooms. Therefore, for this improvement, the eligible costs will be limited to the lesser of either: (1) the costs which the County would have incurred to supply portable restrooms for handicapped persons to the park; or (2) the actual costs of the modifications to the comfort stations that are accessible to handicapped persons.

As a part of this same project, the County paved several roads leading to and away from the parking lots. The County stated that these improvements were eligible as removal of architectural barriers. It is our understanding that the road is for vehicular traffic and is not generally intended for pedestrian use. Therefore, the pavement of the roads is not a removal of an architectural barrier because it does not remove barriers exclusively for handicapped persons; it represents a barrier for any vehicle. As such, it could only be eligible as an improvement to a public facility and must meet one of the three national objectives.

The Field Office questioned whether the construction of the restrooms and dock meet the criteria previously addressed in a February 12, 1990, policy memorandum which stated that Section 570.201(k) "plainly permits removal of barriers from existing structures, and does not contemplate expenditure to defray costs of assuring that barriers are not created in new structures." Generally, we would agree that the use of CDBG funds to pay for parts of newly constructed facilities to make them accessible to handicapped persons would not be eligible under §570.201(k), and we would not agree to pay for the construction of a public facility that would not otherwise meet a national objective. However, in this case where we have an existing public facility which contains barriers which limit the access of handicapped persons to portions of the facility, it is the Department's policy to allow the cost of modifications to allow full use of the facility by handicapped persons.

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