

Request for Policy Analysis

July 26, 1989

Elaine S. Wright, Project Manager
Pasco County CDBG Program
Strategic Planning Group, Inc.
6622 Southpoint Drive South, Suite 350
Jacksonville, FL 32216

Dear Ms. Wright:

**Subject: Request for Policy Analysis
Pasco County, Florida CDBG Program
Project #5.30, Trilby/Lacoochee Water Line**

This office is in receipt of your correspondence dated May 15, 1989, requesting a policy analysis of the eligibility of impact fees which you had previously discussed with James R. Broughman, Director of our Entitlement Cities Division. In the situation described, the grantee, Pasco County, has an ordinance requiring that an impact fee of \$539.00 be charged in order for property owners to obtain new water service. The question you raise focuses on the eligibility of using CDBG funds to pay this \$539.00 impact fee on behalf of low and moderate income persons.

Fees charged as a condition of access to a public facility are eligible under 24 CFR 570.201(c) to the extent that the fee is used to recover costs of constructing the facility. In the instant case, the proceeds from the fees would simply be held to help pay the costs of future expansion of public facilities in the county. This raises several issues:

- since the funds would be used for construction of a public facility, eligibility would still be at 24 CFR 570.201(c). However, because the exact nature of the future public facility is not known, it would not be possible to determine how a national objective would be met until it can be decided more precisely the location and features of the facility that would be assisted with the CDBG funds. (Such a determination would need to be made at the time that the grantee uses the CDBG funds to pay the fees);
- although the law was changed last year to authorize the use of CDBG funds to pay special assessments for low and moderate income persons under this national objective even when the area served by the public facility does not contain a sufficient proportion of such persons, the proposed use of CDBG funds in question here does not constitute paying an assessment as that term is used in the CDBG legislation;
- Treasury rules prohibit drawing funds before needed to pay for the eligible activity (the construction); in this case, CDBG funds would be withdrawn from the Treasury to pay the fees before those funds are needed for construction.

We considered whether payment of the fee could be eligible as rehabilitation. 24 CFR 570.202(b)(6) makes eligible the financing of costs of connection of residential structures to water distribution lines. However, in this case, the purpose of the fee is clearly to provide funds for future infrastructure. The fact that the connection of the water lines to the property cannot be made without paying the impact fee does not make it an integral cost of the connection because the fee's purpose is clearly established as for something other than the cost of connection.

We also considered whether payment of such fees on behalf of lower income persons could be eligible as a public service at 24 CFR 570.201(e). However, since the fee proceeds are to be used for the provision of a public facility eligible at 24 CFR 570.201(c), we do not believe the payment of the fees would constitute a public service as that term is used in the CDBG program.

The principal obstacle to achieving the county's objectives appears to lie in the ordinance itself. According to you, county counsel advises that the fees may not be waived for any property owners. Presumably, the ordinance could be amended in one of several ways to alleviate the problems you outline. It could be amended to allow such waivers, or it could be changed so as to make payment due on sale for low and moderate income property owners. Alternatively, if the ordinance was amended to identify the purpose of such fees as being to recover the costs of constructing the facility to which access is provided, the fees would be considered to be a special assessment under CDBG rules and could be paid using CDBG funds, assuming other applicable requirements were met.

I hope you will find this analysis to be helpful to the county. Should you have any questions on this, please feel free to contact James R. Broughman, Director, Entitlement Cities Division, at (202) 755-5977.

Sincerely

Audrey Scott
General Deputy
Assistant Secretary