

Using CDBG Funds to Upgrade Lighting at a Ball Field

December 26, 1990

Mr. Kenneth J. Henderson
Director of Community Development
City of San Bernardino
300 North "D" Street
San Bernardino, CA 92418-0001

Dear Mr. Henderson:

This letter is in response to your correspondence dated August 2, 1990, wherein you are appealing the HUD San Francisco Regional Office's determination of non-compliance regarding the use of CDBG funds to upgrade lighting at Fiscalini Field.

As we understand it, Fiscalini Field, which is located in the Perris Hill Regional Park, is leased by the city for a portion of the year to a professional minor league baseball team. The team plays approximately 71 home games at the field. The price of a ticket for one of its games ranges between \$2.00 and \$3.50. The field is also used by San Bernardino Valley City College and California State University as well as the American Legion, the San Bernardino Firefighters and the County Sheriff's Department which use the field for fund-raising events for charitable organizations. The field is not open to the public for general recreational use but is kept locked; permission from the city is required to use the field.

Background

According to information provided by you and the HUD Los Angeles Field Office (LAFO), \$147,742, in Community Development Block Grant (CDBG) funds was actually expended, apparently in program years 1987 and 1988, to remove existing light fixtures and towers and install new poles and lighting in Fiscalini Field. It appears that \$75,000 of Fiscal Year 1986 funds was initially appropriated to make temporary improvements to the lighting at Fiscalini Field in time for the inaugural season of the San Bernardino Spirit, the professional minor league baseball team. These temporary improvements appeared to have been made prior to April 10, 1987, which was the date of the first home game. A second appropriation of \$117,090 was made using Fiscal Year 1987 CDBG funds to make permanent improvements to the ballfield lighting. These improvements appeared to have been completed by May 3, 1989.

In July, 1988 a HUD Community Planning and Development (CPD) representative conducted on-site monitoring of various elements of your CDBG program. Correspondence from the HUD LAFO dated July 27, 1988, stated that the Fiscalini Ballfield Lighting activity was reviewed for compliance with eligibility and national objective requirements and that no findings were made in this area.

In April 1989, the HUD LAFO again site-monitored the City's CDBG program. At that time, a finding was made that the City's project field did not contain sufficient documentation to demonstrate that this CDBG-assisted activity met a national objective. The City provided a response on August 7, 1989, and the HUD LAFO made a finding of noncompliance with the national objective requirements on August 23, 1989. On December 22, 1989, the City appealed this decision to the HUD San Francisco Regional Office which reviewed the issue and concurred with the LAFO's determination. This decision was relayed to you on May 22, 1990.

Your correspondence to this office indicates that you may be unclear as the regulatory provision that HUD claims has been violated. The disallowed cost relates to the activity's compliance with the criteria at 24 CFR 570.208 for meeting one of the national objectives of the CDBG program.

Grantee Rationale for Determination of National Objective Compliance

There are inconsistencies in the bases upon which the City appears to have determined that activity met a national objective. The City's "Project Proposal" for Fiscal Year 1987 CDBG funds (an internal city document) claimed that the activity met an urgent need. However, the monitoring visit by HUD staff in April, 1989 indicated a lack of documentation to support this claim. In contrast, the Grantee Performance Report (GPR) for the 1987 program year stated that the activity met the objective of benefit to low- and moderate-income persons. The HUD CPD Representative, however, was unable to locate file documentation during the April, 1989 review in support of this objective. The subsequent information provided by your office has been aimed primarily at showing the activity's benefit to low- and moderate-income persons on an area basis.

Your initial response to the HUD monitoring finding was to state that Perris Hill Regional Park, where Fiscalini Field is located, "is the only City-owned regional park fully developed to accommodate all recreational needs of its citizens. With the improvement completed at Fiscalini Field, financed in part with CDBG funds, the park has realized its full potential as a regional facility, attracting users throughout the corporate boundaries of the City" (page 2 of your August 7, 1989, response to the HUD LAFO). While the same letter makes reference to the term "limited clientele," presumably under the provisions of 570.208(a)(2), the regulations make it clear that limited clientele activities do not apply in the case of an activity that serves an area generally. Thus, the activity does not qualify under the regulations as a limited clientele activity.

Section 570.208(a)(1) defines an area benefit activity as one for which the benefits are "available to all the residents in a particular area, where at least 51% of the residents are low and moderate income persons." The entire area served by the activity is required to be taken into account by the regulation for purposes of meeting this requirement. The question then is what the area served by the night time activities is, and whether the residents thereof meet the 51% requirement.

We do not believe that the area served can qualify under the regulations. The City attempted at one point to show that the activity qualified because it served the City as a whole. Revised data based on the 1980 census supplied to the LAFO in 1985 show that the percentage of low- and moderate-income persons within the city boundaries falls short of the statutory requirement of 51%. Furthermore, that area combined with areas not within the City's jurisdiction but located as to be completely surrounded by the

City also failed to meet the 51% threshold. (The inclusion of areas outside of a grantee's jurisdiction for purposes of determining the area served by a ballfield would be expected for a regional facility.)

Because the HUD-supplied computer runs of census data showed the City residents as being comprised less than 51% low- and moderate-income persons, the City used statistics based on Donnelly Demographics data which showed that at least 51% of the beneficiaries in the incorporated area were low- and moderate-income. The use of Donnelly Demographic statistics is not acceptable to HUD because they lack sufficient credibility to substitute for census data which are readily available to grantees. If a grantee believes that available census data are likely to understate the current percentage of low- and moderate-income residents of an area as described at 570.208(a)(1)(iv), the only acceptable alternative permitted by the regulations to identify the percentage of low- and moderate-income residents of census areas is a HUD-approved survey. The City chose not to conduct a current survey of the residents of the area. Accordingly, the HUD-supplied census data constitute the sole basis for determining area benefit compliance.

When the LAFO maintained its determination that the service area claimed by the City failed to meet the required threshold for area benefit, the City re-defined the service area as more neighborhood than regional in character, comprised of various block groups in nine census tracts within a one and a half mile radius. Based on this area, 52.27% of the residents were determined to be low- and moderate-income persons using the HUD-supplied computer runs of census data.

Before discussing the acceptability of this claim, a few points should be made. In explaining why the activity's service area was revised, your August 2, 1990, correspondence to this office states that the "rationale for first using the regional park argument was simply to forward the easiest and simplest answer that would have qualified the project" (page 5). This assumes that more than one service area could have been designated. It is the grantee's responsibility to ensure compliance with national objective requirements prior to funding an activity. In the case of an area benefit activity, this means that the area served has to be determined upfront as well as that the area contains a sufficiently high percent of low- and moderate-income residents. For this purpose, there can be only one service area.

While the area might be comprised of several geographic components, the activity must qualify on the basis of the percent of residents in the entire service area who are low- and moderate-income. While the delineation of a service area will generally involve some judgment, the determination should be based on the nature of the activity, including its location and accessibility to the area resident, and the availability of other comparable facilities.

The lack of file documentation to support the national objective, which was evidenced during the April, 1989 monitoring visit, makes it difficult to reconcile the statements made in your correspondence to this office that the City chose to develop Fiscalini Field for pedestrian traffic. Your current claim of the area served by the activity appears to rest on the assumption that the intentionally limited number of parking spaces dictates that 80-90% of the spectators at the ballgames would be pedestrians within a one and a half mile radius. Even if that were true, it would not limit the service area to those boundaries. The lack of documentation notwithstanding, HUD staff are responsible for taking into account evidence which would indicate a determination contrary to the grantee's. In this case, even without considering the availability of public transit and nearby, on-street parking, the provision of 316 parking spaces shows that the City

clearly intended a substantial number of spectators to drive to the ballfield. Moreover, locating a ballfield within a regional park certainly raises the expectation that it will serve an area larger than the immediately adjacent census tracts within a one and a half mile radius. Such a facility is typically designed to serve the entire jurisdiction, at a minimum, and perhaps an even larger area, depending on the proximity of similar facilities that sponsor night-time professional minor league games. In this regard, it is also noteworthy that your environmental assessment checklist (p.5) contains the statement that the "housing of a pro ball team at Fiscalini Field represents a recreational amenity not found elsewhere in the City of San Bernardino." We therefore do not find the City's arguments regarding the service area being smaller than the City boundaries defensible.

Reliance on Prior HUD Advice

As a final point, you state that because the project was reviewed previously by another CPD representative in July, 1988, without any findings, HUD is prevented from "subsequently changing its eligibility determination on this project." This statement appears to rest on the HUD letter at that time that stated it made no findings with respect to several activities, including the activity at issue here. The basis for that conclusion in this regard is not clear although we understand that the project was not complete at the time of review. HUD reviews are normally made on the basis of how the activity is described to the CPD Representative and what file documentation is available for review. However, if, in fact, an erroneous conclusion was drawn by the CPD Representative, this does not in any way lessen HUD's responsibility to ensure compliance with CDBG requirements nor does it alleviate the grantee's responsibility to follow the applicable regulations.

Conclusion

In summary, we support the Region's and LAFO's determinations that the Fiscalini Ballfield lighting project has not been shown to meet the national objective requirements of 570.208(a). It is entirely unfounded to apply a neighborhood service area test to what is clearly a regional use of the facility in the context of the HUD-assisted activity: professional minor league baseball. We want to emphasize that it is the grantee's responsibility to have a system in place for ensuring that projects are eligible and meet national objective requirements prior to funding. The nature of the CDBG entitlement program is such that HUD's role is to provide funds to a grantee based on its promise that it will use them in compliance with program requirements, and then to monitor the actual use of funds to determine whether such was the case. HUD may question national objective or other compliance at any point during the life cycle of an activity, including after completion. We therefore support the LAFO's decision to require the City to take corrective action.

Very sincerely yours,

Anna Kondratas
Assistant Secretary