

Using CDBG Funds for Land Reclamation

August 12, 1993

Mr. Kenneth J. Knuckles
Commissioner, Department of
General Services
1 Centre Street
New York, NY 10007

Dear Mr. Knuckles:

Thank you for your letter of April 26, 1993, regarding New York City's use of Community Development Block Grant (CDBG) funds for its Land Reclamation Project.

In your letter, you request that the Department of Housing and Urban Development (HUD) reconsider its recent determination that the City's Land Reclamation Project was ineligible for CDBG assistance. You contend that the Land Reclamation Project activity represents site development as opposed to property management and maintenance. You also provide information that indicates that since the start of the Land Reclamation Project in 1982, 66 percent of the total acreage treated under the program has subsequently been redeveloped.

The Land Reclamation Project involves the cleaning of targeted sites and a three-year treatment of seeding, fertilizing, and mowing. The determination by HUD Headquarters that the Land Reclamation Project was ineligible for CDBG assistance was made following a May 1992 request from our New York Regional Office for guidance regarding the City's request to use CDBG funds to purchase certain vehicles and equipment needed for the activity. The determination of ineligibility was based on a review of all the information regarding the activity that was available at that time. HUD's conclusion that the Land Reclamation Project was not being implemented as a precursor for some further redevelopment of the sites was based, in part, on information contained in the City's April 16, 1992, request to purchase the above-referenced vehicles and equipment with CDBG funds. In that letter, the City stated that the tracts treated as part of the project are those "where there is little private sector interest or development potential."

With your letter of April 26, 1993, the City has provided new information regarding the redevelopment of Land Reclamation Project sites. City staff have now conducted a physical inventory of all the sites treated under the Land Reclamation Project since the inception of the program in 1982, noting all the presently developed sites. This inventory documents that 684 acres, or 66 percent of all the land treated under the Land Reclamation Project, has been redeveloped. This additional information is sufficient to demonstrate that the program does serve as a precursor for further redevelopment of the sites that is to be carried out as soon as practicable. Therefore, HUD has concluded that our previous determination that the program was ineligible for CDBG assistance should be rescinded. New York City's Land Reclamation Project is now considered to be eligible as an interim assistance activity under 24 CFR 570.201(f)(1)(ii). Please note, however, that treatment of each individual site under the program must be strictly limited to a three-

year period consistent with the City's previous agreement with HUD's Regional Office as to the minimum length of time necessary to establish adequate ground cover on the rubble-strewn lots indicative of Land Reclamation Project sites.

Inasmuch as the Land Reclamation Project has now been determined eligible for CDBG assistance, New York City's request to use CDBG funds to purchase certain vehicles and equipment needed for the activity must also be revisited. Pursuant to 24 CFR 570.207(b)(1)(iii), the purchase of equipment, fixtures, motor vehicles, furnishings, or other personal property is generally ineligible. However, that section of the regulations does further provide that CDBG funds may be used to purchase or to pay depreciation or use allowances (in accordance with OMB Circular A-87) for such items when they are necessary for use by a recipient in the administration of activities assisted with CDBG funds. Where the equipment is to be used solely on the CDBG program (a single cost objective), it may be purchased with CDBG funds. If, however, the equipment will also be used on non-CDBG activities (more than one cost objective), it is an indirect cost. The proper cost treatment would then be to pay for the equipment with local funds and recover the amount allocable to the CDBG program through the application of depreciation or use allowances and a cost allocation plan.

Information provided in the City's initial April 16, 1992, request to purchase certain vehicles and equipment with CDBG funds indicated that these items would be used solely for the Land Reclamation Project, which has been fully funded by the CDBG program in the past. If that is still the case, New York City may use CDBG funds to purchase the truck, tractor, trailer, and mowers it needs to implement the Land Reclamation Project provided that the City complies with the procurement requirements contained in 24 CFR 85.36. This includes the requirement at 24 CFR 85.36(b)(4) that the grantee conduct an analysis of lease versus purchase alternatives to determine the most economical approach. Please also be advised that the use, management, and disposition of any equipment purchased with CDBG funds is also subject to the requirements delineated in 24 CFR 85.32, as modified by 24 CFR 570.502(a)(8).

As a closing issue in your April 26, 1993, letter, you also ask at what point a HUD eligibility determination may be considered final. You express concern that the Headquarters Office of Community Planning and Development (CPD) and the Office of General Counsel can override the decisions of the Regional Office. Please note that all written eligibility determinations issued by CPD in Headquarters are formulated in conjunction with the Office of General Counsel. These determinations are based on a thorough review of all information available at that point in time. While Headquarters does have final authority in making eligibility determinations, in those instances where our conclusions differ from those of the Regional Office, HUD attempts to mitigate any adverse impacts of such determinations to the extent possible.

Thank you for your continuing interest in the CDBG program.

Very sincerely yours,

Andrew Cuomo
Assistant Secretary