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B-176823

JUNE 4, 1979

The Honorable Sidney R. Yates
Chairman, Subcommittee on Interior
and Related Agencies
Committee on Appropriations
House of Representatives

HSE 00315

Dear Mr. Chairman:

Your February 2, 1979, letter requested that we review the propriety of Land and Water Conservation Fund assistance for the Pioneer Courthouse Square Project, Portland, Oregon. You later sent us a copy of Congressman Duncan's February 5, 1979, letter to you that also questioned funding for the project. The Fund is the largest Federal program providing money specifically for outdoor recreation and is administered by the Heritage Conservation and Recreation Service, an agency of the Department of the Interior.

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In accordance with your request and agreements reached with your office and Congressman Duncan, we reviewed the propriety of the following issues.

--Should the project have been given Fund assistance as an "outdoor recreation" project?

We believe Pioneer Square qualifies as an outdoor recreation project within the meaning of the Land and Water Conservation Fund Act of 1965.

--Was an amendment to the project which would permit reappraisal of a land parcel necessary and reasonable?

Since the city of Portland withdrew the amendment, it never became a part of the grant agreement. In our opinion, the proposed amendment was neither necessary nor reasonable because the city already had a binding commitment with a private concern to purchase the land at a substantially lesser price.

--Are Urban Mass Transit Administration funds being properly used for the project?

Letter Report

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Such funding does not conflict with Land and Water Conservation Fund funding for the Pioneer Courthouse Square Project because the requested funds are for rapid transit A. improvements outside the square and are not dependent upon how the city develops the park.

--Could the grantee use Department of Housing and Urban Development Community Development funds to meet Land and Water Conservation Fund Act matching requirements?

The Land and Water Conservation Fund (LWCF) Act contains a prohibition against using Federal grant-in-aid funds to satisfy LWCF matching requirements. However, the Housing and Community Development Act of 1974 (HUD CD Act), enacted nearly a decade after the LWCF Act, explicitly authorizes the use of community development funds to pay the "required" non-Federal share or local match of another grant program that, like Pioneer Square, is a part of the locality's community development program. We have concluded that the later act creates a limited exception to the application of the prohibition contained in the LWCF Act, and therefore that Portland's use of community development funds in the circumstances described is legally proper.

In the absence of a statute analogous to the HUD CD Act, the LWCF Act would preclude the use of Federal grant-in-aid funds to pay the required non-Federal share. We understand in this regard that numerous other LWCF projects are funded in a manner similar to Pioneer Square, with the local matching funds originating from sources other than or including HUD's community development program. We believe a complete review of the LWCF Act restriction and grant program authorizations such as those contained in the HUD CD Act will be essential if the Congress is to fully evaluate the local matching requirements it initially envisioned for Land and Water Conservation Fund projects.

RECOMMENDATION TO THE
SECRETARY OF THE INTERIOR

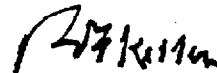
The Secretary of the Interior should apprise the appropriate congressional committees of the circumstances in which it believes Land and Water Conservation Fund local matching requirements may be satisfied in whole or in part with funds from other Federal sources and the justification therefor.

Enclosure I describes the background and current status of the Pioneer Courthouse Square Project and discusses the above issues in more detail.

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We contacted officials in the Heritage Conservation and Recreation Service northwest regional office and Department of Housing and Urban Development Portland area office. We also met with officials from the city of Portland and from the State of Oregon. We discussed the report contents with Heritage Conservation and Recreation Service officials. However, as requested by your office, we did not obtain agency comments on the matters discussed in the report.

As agreed with your office, unless you publicly announce its contents, we plan no further distribution of this report until 5 days from the date of the report. At that time, we will send copies to the Secretary of the Interior; the Director of the Heritage Conservation and Recreation Service; the Secretary of Housing and Urban Development; and make copies available to others upon request.

Sincerely yours,



DEPUTY Comptroller General
of the United States

Enclosure

PIONEER COURTHOUSE SQUARE PROJECTBACKGROUND AND CURRENT
STATUS OF THE PROJECT

The Department of the Interior will fund the Pioneer Square Project under authority of the Land and Water Conservation Fund Act of 1965, Public Law 88-578, 78 Stat. 897, as amended, 16 U.S.C. §§4601-4 et seq. (1976). Under this act, the Secretary provides financial assistance for projects that are consistent with a comprehensive statewide outdoor recreation plan. More specifically, Land and Water Conservation Fund Act (LWCF) funds are available to provide matching assistance of up to 50 percent of the costs involved in planning, acquiring, and developing land and water facilities for approved outdoor recreation projects.

In December 1974 the city of Portland, through the Oregon State Recreation Director, applied to the Heritage Conservation and Recreation Service (HCRS) (formerly the Bureau of Outdoor Recreation) for \$1.5 million in Fund assistance to acquire one full city block in downtown Portland and develop a landscaped pedestrian park to be known as Pioneer Courthouse Square. The budget for the project was \$3 million, as follows.

Land, structures, right-of-way	\$2,480,000
Relocation expenses	1,500
Demolition and removal	26,500
Construction and project improvement	<u>492,000</u>
Total	<u>\$3,000,000</u>

Occupying the 40,000-square-foot site is a two-level parking structure owned by the May Department Stores Company. At the time the proposal was made, fair market value for the property was set at \$2,480,000 (\$62 per square foot) by an independent appraisal and was accepted by the General Services Administration and the State of Oregon.

The Pioneer Courthouse Square Project is part of the city's neighborhood revitalization program, which addresses matters such as traffic patterns, parking, public transit, the environment, parks, and open space. Under this program, the parking structure on the site would be removed and replaced with a new facility at the edge of the retail core area, and a transit-pedestrian mall--financed in part by the Urban Mass Transportation Administration (UMTA)--would abut the Pioneer Courthouse Square. The UMTA funding does

not conflict with LWCF funding for the Pioneer Courthouse Square Project because the requested UMTA funds are for rapid transit improvements outside the square and are not dependent upon how the city develops the park.

The city's Fund grant application called for a "passive-type" day-use park consisting of walkways, benches, lighting, drinking fountains, trees, lawn irrigation, flower planters, and two information kiosks to be developed on the site. The application also included a conceptual plan to develop other features, including a sculpture, water fountain, water garden and reflecting pool, terraced sitting areas, additional landscaping, and about 15,000 square feet of glass pergola and shelter open on all sides.

The HCRS northwest regional office staff believed that the project would provide a quality recreation site in a high-density area and create a public place with an amiable environment for shoppers, workers, city dwellers, and visitors. The Director of HCRS concurred with this observation.

On March 28, 1975, HCRS approved a \$1.5 million Fund matching grant for the square, which was to be completed by June 30, 1977. Because the State had committed its regular Fund apportionment, half of those funds were to come from the Secretary of the Interior's Contingency Fund and the remainder from the State of Oregon's regular LWCF Act apportionment.

In April 1977 HCRS extended the project completion date from June 30, 1977, to June 30, 1979, to allow the city to continue its negotiations with the May Company. On June 29, 1977, under threat of condemnation, the May Company granted the city the exclusive right and option to purchase its property for \$2.5 million on or before June 30, 1979.

HCRS subsequently extended the project completion date to June 30, 1980, to allow the city additional time to acquire the parking structure, complete construction of the new parking garage, and develop the recreation facility. In October 1978 the city contacted the HCRS northwest regional office to discuss a plan to change the project's scope and financing.

The city wanted to change the project from an open-air park to a multipurpose park. The city also wanted to (1) reduce the area dedicated to outdoor recreation from 40,000 to 30,000 square feet and construct a glass-enclosed structure on the remaining 10,000 square feet, (2) reappraise the property from \$62 to \$90 per square foot, (3) allow the

local matching funds to include a donation from the May Company equal to the increased value from reappraisal, and (4) increase LWCF assistance by \$735,000.

On November 14, 1978, the Mayor of Portland presented the revised plan to the Secretary of the Interior. In December the city requested the change in scope and an increase in LWCF assistance by \$735,000--from \$1.5 million to \$2,235,000.

The plan was questioned by HCRS's northwest regional director, the Acting Deputy Inspector General, and the Director of HCRS. The HCRS Director informed the Secretary that with a firm option agreement with the May Company, there was a binding commitment to sell and there was no value to be donated; therefore, no basis existed for Interior to allow the city's proposal which would needlessly inflate the amount of Federal assistance. In spite of the questioned propriety of the city's proposal, the amendment was approved on January 17, 1979, by the HCRS Director on behalf of the Secretary.

The next day, the Acting Deputy Inspector General reported to the Secretary that allowing the city to increase the value of the land to be acquired from \$62 to \$90 per square foot was neither reasonable nor necessary. The Acting Deputy Inspector General also requested that in accordance with section 5(d) of Public Law 95-452 (Inspector General Act of 1978), the Secretary send copies of the report to the appropriate congressional committees and subcommittees. We reviewed the Acting Deputy Inspector General's opinion and concur in his view that the proposed amendment was neither reasonable nor necessary.

As a result of congressional concern over the city's proposal for reappraisal and refinancing, the Mayor of Portland withdrew the amendment to increase LWCF funding on February 2, 1979.

Withdrawal of the amendment has made the project's financial viability uncertain, and the city is reconsidering the extent of development.

City officials told us that the city will exercise its option with the May Company to acquire its parking structure for \$2.5 million and demolish it but has not decided how the site will be developed. The city is considering two alternatives for developing the site and will construct either a project of terraced lands, walkways, and grass or an open-air-and-glass structure on one-quarter of the land area. Depending on which alternative is implemented, LWCF Act funds

will supply either one-half of the land costs (\$1.25 million) for the entire site that was originally proposed or 50 percent of the costs of three-fourths of the site's land costs (\$937,500) if the building is constructed. The amount of LWCF assistance is less if the building is constructed because the land under it is not eligible for acquisition with LWCF money. If the glass-enclosed structure is constructed, the city estimates that the project will cost about \$7.17 million as shown below.

Land acquisition	\$2,500,000
Site demolition, development, architectual fees, and structure	<u>3,170,000</u>
Total	5,670,000
Street and sidewalks	<u>1,500,000</u>
Total	<u>\$7,170,000</u>

The city will have to provide a minimum of \$4,045,000, of which only \$500,000 has been committed to the project--the donation from the May Company. The source and amounts of the remaining non-Federal funds are speculative. The city anticipates the following funding for the project.

	Amount of funding		
	<u>Committed</u>	<u>Pending</u>	<u>Total</u>
Federal sources:			
HCRS grant (minimum)	\$1,125,000	\$ -	\$ -
HUD grant	500,000	300,000	-
UMTA grant	-	1,200,000	-
Total Federal funding	<u>1,625,000</u>	<u>1,500,000</u>	<u>3,125,000</u>
Local sources:			
May Company donation	500,000		
City		195,000	
Portland Development Commission		200,000	
Anticipated donations		1,500,000	
Unknown sources		1,650,000	
Total local funding	<u>500,000</u>	<u>3,545,000</u>	<u>4,045,000</u>
Total	<u>\$2,125,000</u>	<u>\$5,045,000</u>	<u>\$7,170,000</u>

The city would like the Federal share be raised to \$3.5 million and has proposed that HCRS fund \$1.5 million as committed to the original project, even if the glass enclosure is built, because development costs of \$500,000 identified in 1974 are inadequate due to inflation.

PROPRIETY OF LAND AND WATER CONSERVATION
FUND ACT ASSISTANCE FOR PROJECT

To be eligible for Land and Water Conservation Fund Act funding, a project must, among other things, offer opportunities for outdoor recreation. (See 16 U.S.C. §4601-8(a) (1976).) The term "outdoor recreation" is not defined by the act or explained by the act's legislative history. The concept of outdoor recreation, however, is at best flexible, and none of the materials we have reviewed limit the application of the term exclusively to projects that offer more active or athletic types of outdoor recreational opportunities. The omission of such a limitation from the act and program regulations is significant, in our view, since a substantial part of an urban community's population may perceive relaxing or picnicking in a park to be as much a form of outdoor recreation as an athletic event. Because there is no statutory direction or regulation to the contrary, we see no legal basis for concluding that because Pioneer Square will offer limited opportunities for more active and athletic pursuits, the grant will fail of its essential purpose, namely, to provide opportunities for outdoor recreation.

Though criteria clarifying the meaning of outdoor recreation could be viewed as desirable, the determination of what that criteria should be is a matter for consideration by the Congress and the Secretary of the Interior. (See 16 U.S.C. §4601-8(a) (1976).)

The types of land HCRS has made eligible for LWCF assistance include those within urban areas for day-use picnic areas as well as "more generalized parklands" to serve a wide variety of outdoor recreation activities, including walking for pleasure. HCRS also allows structures to be purchased that are to be removed or demolished.

HCRS regulations require that plans to develop land should be based on the needs of the public, the expected use, and the type and character of the project area. Acceptable projects vary considerably from those for swimming, boating, skiing, and other active recreational activities to more passive activities in urban areas, including

"Beautification of an outdoor recreation area, such as landscaping to provide a more attractive environment."

To be eligible for HCRS grants from the Fund, a State must develop a statewide comprehensive outdoor recreation plan. Oregon's statewide plan indicates that a 560-percent increase in acreage is needed for recreation areas, usually located within or near urban centers that are primarily for intensive day use. According to the city, the site selected for the Pioneer Courthouse Square is in a high-density area of residents, shoppers, workers, and visitors with the highest pedestrian count in the city.

Our review showed that the city's plan, approved by HCRS in March 1975, meets HCRS's general criteria for eligibility.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
FUNDS USED TO MATCH LAND AND WATER
CONSERVATION FUND ACT ASSISTANCE

A second question of relevance to LWCF funding eligibility deals with the sources from which Portland obtained funds to satisfy the required 50 percent match of project costs. According to documents supporting the Pioneer Square grant application, LWCF funds would cover \$1,500,000 of the total project cost of \$3,000,000. The non-Federal share--the costs to be provided by the city of Portland--would total \$1,500,000, or 50 percent of total project costs. With the concurrence of the Department of the Interior and the Department of Housing and Urban Development (HUD), however, Portland will discharge one-third of its \$1,500,000 obligation, or \$500,000, with HUD Community Development Block Grant funds. The use of the HUD Community Development money to satisfy part of Portland's obligation to match project costs was questioned by the committee, and is discussed below.

Sections 6(c) and 6(f) of the Land and Water Conservation Fund Act require LWCF grantees to satisfy their 50-percent share of project costs from sources other than Federal funds:

"(c) Payments to any State shall cover not more than 50 per centum of the cost of * * * projects that are undertaken by the State. The remaining share of the cost shall be borne by the State in a manner and with such funds or services as shall be satisfactory to the Secretary * * *."

* * * * *

"(f) [N]o payment may be made by the Secretary for or on account of any project with respect to which financial assistance has been given or promised under any other Federal program or activity, and no financial assistance may be given under any other Federal program or activity for or on account of any project with respect to which such assistance has been given or promised under [this Act] * * *." 1/

The usual rule applied by this Office with respect to grant matching requirements is that in the absence of specific statutory authority, Federal grant-in-aid funds from one program may not lawfully be used to pay the local match required in connection with another Federal grant-in-aid program. (See 57 Comp. Gen. 710 (1978); 56 Comp. Gen. 645 (1977); 47 Comp. Gen. 81 (1967).) The language of the statutory restriction quoted above explicitly provides that funds from other Federal grant programs may not be used to satisfy the non-Federal share or match that is required in connection with LWCF grants. 2/

The HUD Community Development money involved here, however, was made available to Portland under the authority of the Housing and Community Development Act of 1974 (Public Law 93-383, 88 Stat. 633, 42 U.S.C. §§5301 et seq. (1976).) Based on a statutory allocation formula, this act made block grant funds available to certain local units of government such as the city of Portland, provided the locality used the funds for any of a variety of broadly outlined community development objectives, including, but not limited to, the conservation of scenic areas, the provision of recreational opportunities, and other public purposes. (See 56 Comp. Gen. 645 (1977).) Of particular relevance to the funding arrangements in question here is section 105(a)(9) of the 1974 act (42 U.S.C. §5305(a)(9) (1976)), which specifically authorizes

1/16 U.S.C. §§4601-8(c) and 8(f)(1) (1976).

2/The authority of the Secretary under section 6(c) to determine the manner by which and the funds with which grantees may cover their share of project costs is in our view consistent with section 6(f), and neither overrides the section 6(f) restriction nor provides an independent basis for authorizing the use of Federal funds to satisfy all or a part of the grantee's match. If it were otherwise, the Secretary's determinations under section 6(c) could all but render section 6(f) meaningless.

the use of HUD Community Development funds to pay "the non-Federal share required in connection with a Federal grant-in-aid program undertaken as part of the Community Development Program." LWCF grants, which do "require" a non-Federal share, are "grant-in-aid" programs, as that term is defined by the 1974 HUD act, and the Pioneer Square Project was unquestionably undertaken as part of Portland's Community Development Program.

Section 105(a)(9) of the 1974 HUD Community Development Act, which was enacted nearly a decade after section 6(f) of the LWCF Act, provides explicit authority for the use of Community Development funds to pay the non-Federal share required by any grant program that, like the LWCF project in question here, is a part of an approved community development program. Nothing in the HUD act or its legislative history suggests that the section 105(a)(9) authorization to use Community Development funds to meet matching requirements for non-Federal shares excluded explicit statutory requirements imposed earlier by the Congress in such prohibitions as section 6(f) of the LWCF Act.

Decisions of this Office have considered the purpose of section 105 of the 1974 act as well as the purpose of an almost identical authorization for the use of funds available for expenditure under the Demonstration Cities Act, 42 U.S.C. §3305(d) (1976). The apparent underpinning of these authorizations is a congressional recognition that one reason why local units of government fail to seek and receive grant funds from various Federal programs is that they cannot afford to put up the required match in every instance. It was believed that the objectives of comprehensive and remedial social programs like demonstration cities and community development were likely to be defeated when cities were not able to obtain and effectively use grants from other programs. So, to encourage and assist the cities in this regard, both programs authorize the use of program funds to satisfy the matching requirements of other Federal programs.

We believe it is reasonable in view of the foregoing to conclude that the Congress intended in the later act to create a limited exception to the general application of section 6(f) of the LWCF Act, and therefore that Portland's use of Community Development funds to satisfy LWCF matching requirements is legally proper.

recognized that, in the absence of a statute analogous to section 105(a)(9) of the HUD act, section 6(f) would preclude the use of Federal grant-in-aid funds to pay the required non-Federal share. Nevertheless, it is clear to us that the authorization contained in the 1974 HUD Community Development Act has substantially affected the manner in which LWCF projects are funded. We understand in this regard that numerous LWCF projects are funded in a manner similar to Pioneer Square, with the local matching funds originating from Federal sources other than or including HUD's Community Development program. We believe a complete review of the section 6(f) restriction and grant program authorizations such as those contained in the HUD act will be essential if the Congress is to fully evaluate the local matching requirements it initially envisioned for LWCF projects.

RECOMMENDATION TO THE
SECRETARY OF THE INTERIOR

The Secretary of the Interior should apprise the appropriate congressional committees of the circumstances in which it believes Land and Water Conservation Fund local matching requirements may be satisfied in whole or in part with funds from other Federal sources and the justifications therefor.