STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition by the City of Los Angeles for Review by the State Water Resources Control Board of the Determination of the Water Quality Division Denying Grant Funding for a Japanese Garden, Park Landscaping, and an Experimental Building for the Sepulveda Wastewater Treatment Plant, Project No. 75D-1147. (Our File No. G-35).	ORDER NO. WQG 76-21

BY BOARD MEMBER DODSON:

By letter dated September 16, 1976, the City of Los Angeles (petitioner) requested the State Water Resources Control Board (State Board) to review certain decisions of the staff of the Division of Water Quality (staff) related to grant funding of the proposed Sepulveda Wastewater Treatment Plant. The determinations involved generally relate to grant funding and eligibility of a Japanese Garden, Park Landscaping, and an Experimental Building.

On October 13, 1976, a hearing was held for the purpose of receiving evidence relative to the appropriateness and propriety of the determinations of the staff, Board member Roy Dodson, presiding. The record was held open for the submittal of additional information by the petitioner and said information has been received.

I. BACKGROUND

As early as 1964, petitioner has studied the need for additional sewage disposal facilities generated by the projected

growth in the San Fernando Valley area of the City of Los Angeles. The ultimate proposal became the Sepulveda Wastewater Treatment Plant to be located in the San Fernando Valley.

The petitioner considered numerous alternatives for the site of the proposed plant. The site chosen is situated in the Sepulveda Flood Control Basin, a 1,700 acre parcel originally leased from the United States Army Corps of Engineers for regional park purposes by the petitioner's Department of Recreation and Parks. The site chosen had a substantially lower cost than the alternative site closest in contention which would have cost $15,000,000 in 1967 and is currently appraised at twice that amount. This is contrasted with the terms of lease entered into between petitioner and the Department of the Army, dated October 16, 1970, which called for a rental rate of $100 per year for each acre of the 90 acre site actually utilized for the plant together with petitioner's agreement to conditions relating to the upkeep of the site. Having determined the optimum location for the plant, the petitioner's Department of Public Works initiated discussions with the Department of Army Corps of Engineers (who had jurisdiction over the Sepulveda Flood Basin) and the petitioner's own Department of Recreation and Parks (who was already prime lessee of the 1,700 acre flood basin area). The proposed site was within this 1,700 acre area.

Petitioner approached the Corps of Engineers to negotiate a lease of a portion of the basin as a treatment plant site. The petitioner itself proposed the Japanese Garden and Park as part of its continued long-term upkeep of the Flood Basin. In October 1970, a lease agreement was executed in which, as mentioned above, the Corps leased the site for consideration set forth in the agreement which included a payment to the United States of an annual rental of $100 per acre of the site actually utilized for the plant; a condition that the petitioner develop and maintain for public park and recreational purposes those leased areas not immediately needed for plant development; and a condition that a Japanese Garden park area be developed at the same time as the first phase of the plant.

In June 1971, petitioner's Planning Commission issued the required use permit which would permit construction of the plant. The proposal to attractively landscape that portion of the treatment plant site designated for future development was presented by petitioner at a public hearing on the project and this proposal was adopted as a condition to the use permit. It should be noted that the conditions to the use permit made no mention of the Japanese Garden. It was not until after the acquisition of the treatment plant site and securing of the use permit, that the petitioner applied for grant funding for the project. During public hearings on both the Project Report and the EIR, the petitioner itself proposed the Japanese Garden and landscaped park area as mitigation measures and both of these documents recognized these measures.

The petitioner received informal notification in 1975 of the staff's determination that the Japanese Garden, Landscaped Park, and the Experimental Building were ineligible for grant funding. The petitioner on June 1, 1976, requested reevaluation of these determinations, claiming that it lacks sufficient local funding to construct these items and estimates a one-year delay to revise the EIR and to renegotiate the lease agreement and conditional use permit. The petitioner was notified by staff letter of August 17, 1976, that the Japanese Garden ($1,012,000) was not grant eligible as it was too elaborate and expensive and that only "normal" landscaping would be funded. The majority of the park landscaping ($84,000) was also held to be ineligible. Landscaping in the "planter box" areas, around the maintenance buildings and other parts of the sewage process areas was found eligible. Landscaping in the approximate 50-acre park area was determined not to be eligible. The same letter also informed the petitioner that an experimental building ($125,454) was not grant fundable. Petitioner contends that the building will serve to optimize operation of the plant and aid in future recycling or elimination of pollutant discharges. Staff letter stated that this building is not needed for normal day-to-day operation of the plant and process control and thus is ineligible for funding.

It is from these determinations that petitioner has appealed.

II. CONTENTIONS AND FINDINGS

A. Japanese Garden and Park

Petitioner contends for a variety of reasons that the determination of the staff to deny grant funding of the Japanese Garden and Park Landscaping was wrong. Petitioner relies on federal and state laws emphasizing environmental protection and argues that efforts to combat water pollution not be made at the expense of other components of the overall environment, including visual and recreational aspects. Petitioner states that the Japanese Garden and landscaping of the adjacent 50-acre expansion area were identified and listed as mitigation measures in the EIR, the lease agreement with the Corps of Engineers and the conditional use permit which authorized construction. The petitioner contends that if the items are not grant fundable, they would have to be deleted since it does not have funds to finance them and that the concomitant delay in negotiating a deletion of these items as conditions in the lease and conditional use permit together with preparation of a supplemental EIR will greatly delay the project. However, the Environmental Quality Act of 1970 (CEQA), recognizes the problem of economic conditions making mitigation measures infeasible, and permits projects to be approved and carried out nonetheless. (Public Resources Code, Section 21002.1). Thus a supplemental EIR may not be required.

The petitioner further submits that the Japanese Garden and Park Landscaping are reasonable landscaping expenses and that the cost of the former should be treated as an eligible site acquisition expense since the Garden is used in the treatment process to control residual chlorines. Finally petitioner asserts that a denial of funding would be inequitable in light of the Board's decision in WQG Order 76-6 which funded a recreational field at the San Francisco Southeast Plant.

As recognized in the Order mentioned above, there are no absolute and universal criteria for determination of whether proposed mitigation measures and the cost thereof are reasonable, ordinary, and necessary expenses eligible for grant funding.[1] Said Order also recognized that mitigation measures are not necessarily the burden of grant funding and that each case must be examined on its own merits and within the context of the circumstances which surround it. Thus, WQG Order 76-6 can in no way be considered controlling in the matter at hand. The differences between the two situations are many. The mitigation measures of the Japanese Garden and Park Landscaping did not emanate from strong local opposition to the project. The EIR for the Sepulveda

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[1] There is no question that in order to be grant eligible under the California grant program the cost involved must be reasonable, necessary, and ordinary. (Title 23, Chapter 3, Subchapter 7, Section 2139, California Administrative Code).

project does not discuss the recreational needs or deficiencies in the area. Neither did the petitioner at our hearing on October 13, 1976. In fact, the idea of these measures appears to have been developed within the petitioner's own Departments and it was petitioner who initiated discussion of these items during the environmental review process. Unlike the situation in San Francisco, neither this Board, its staff, nor the EPA has determined that the Japanese Garden and Park Landscaping were necessary to mitigate Sepulveda's environmental impact.

In the San Francisco case there was a scarcity of recreational areas near the site which is surrounded by a densely populated urban core area. At Sepulveda, the plant site lies adjacent to an area of over 1,600 acres administered by the petitioner's Department of Recreation and Parks. Over two-thirds of this 1,600 acre site has already been developed as a recreational area. It appears to this Board that the social and environmental pressures surrounding both projects are completely dissimilar.

We have carefully reviewed the evidence and find that the staff's determinations regarding the eligibility of the Japanese Garden and Park Landscaping are well-supported. Federal and state grant regulations clearly state that the costs of acquiring the treatment plant site are ineligible. (40 Code of Federal Regulations, Section 35.940-2(h) and Title 23, Chapter 3, Subchapter 7, Section 2140(10), California Administrative Code.)

We agree with staff that the development of these two items by petitioner was an essential condition of the lease through which petitioner has acquired the site and that the costs of such development are part of the consideration given in return for obtaining said lease. This is acknowledged in petitioner's own exhibit, a letter from the Corps of Engineers' dated October 12, 1976, which states that ... "Because your present lease addressed the Japanese Garden and other extensive landscaping which is reflected in part on your rental consideration, any deviation from this agreed to performance might require an examination of your current rental consistent with our understanding and knowledge of your proposed long-term upkeep in the basin".

Petitioner states it is unreasonable for the State to deny funding of mitigation measures by saying the costs are ineligible site acquisition costs. On the contrary, we feel that a situation wherein mitigation measures are ineligible costs under the grant program we administer is the clearest case for denying funding of such measures. We would further submit that petitioner's approach in proposing the mitigation measures during the site acquisition stage at a time long before the state and federal funding programs were enacted, setting them forth itself during the EIR process, and then saying it cannot finance them if grant funds are not available is the unreasonable one. We certainly do not question the petitioner's wisdom in choosing the Sepulveda Flood Basin site. One need only contrast the $9,000 maximum yearly rental of the

site chosen versus the over $30,000,000 purchase price of the alternative site closest in contention. Rather we feel that petitioner's contention that grant funding be used to pay the costs of the additional consideration of developing the plant site is untenable.

Petitioner does make an argument that the lakes and watercourses of the Japanese Garden will be incorporated in the treatment process, controlling the residual chlorine in the treatment plant effluent. This would be accomplished by blending fresh effluent and recycled lake water with the dual effect of purifying the recirculated lake water and reducing the effluent chlorine residual. However, evidence at the hearing indicated that the real need for diluting the water entering the lake was to make the lake system satisfactory to grow Japanese carp with which the lake will be stocked. While there is some indirect dechlorination, residual chlorine requirements could be met without this dilution. This being the case, any treatment involved would appear to be ineligible as it would involve providing treatment to a degree which exceeds that reasonably necessary to assure compliance with applicable waste discharge requirements, (Title 23, Chapter 3, Subchapter 7, Section 2134, California Administrative Code).

Petitioner commented extensively concerning its inability to finance these two mitigation measures and the fact that delays will greatly increase the cost of the project. However, if the petitioner cannot pay for these measures, how will it be able to

pay for the increased rental charges the Corps of Engineers might require. The petitioner has known of the staff's position on the eligibility of these costs for over a year. Yet it raises at this late date the spectre of financial inability. If such delays do cause increased costs, the Board will ask the staff to consider carefully the question of the eligibility of such costs.

Although we have found the costs associated with the Japanese Garden and Park to be ineligible site acquisition expenses, we want it well understood that even had the City already owned the site in question, the costs at issue could not be considered reasonable landscaping expenses. As stated by petitioner during the hearing ... "there is no such thing as a cheap Japanese Garden. They are very expensive items. The trees are specimen trees, they are grown and pruned in order to qualify for being a Japanese Garden. So this is certainly an expensive amenity, but if it is going to be a Japanese Garden, by the nature of it it is expensive". (Hearing Record, page 54). Needless to say amenities are not to be considered reasonable expenses, especially amenities of such an exotic and costly nature that they would normally be funded through public subscription or philanthropic organizations.

B. Experimental Building

In addition to the laboratory in the Sepulveda Administration Building which the staff has reviewed and approved as part of the eligible project, the petitioner states that it needs a separate laboratory to be used for testing, evaluating, and experimentation. Petitioner submits that it cannot use the operational lab to conduct such testing, while the actual operational

processes are going on. While petitioner states that such an experimental building is an integral part of any plant of this size, the staff determination was that the functions and testing proposed for the Experimental Building can be accomplished in the approved Sepulveda laboratory. The staff contends that, to do otherwise, would mean funding an item not necessary for the normal day-to-day operation of the plant. We agree.

III. CONCLUSION AND ORDER

After review of the entire record, we conclude as follows:

1. The proposed Japanese Garden is not grant fundable.

2. The proposed landscaping in the adjacent 50-acre expansion area is not grant eligible.

3. Landscaping proposed in the sewage processing area itself and in a minimum buffer and screening area around it are grant eligible.

4. The proposed Experimental Building is not grant eligible.

NOW, THEREFORE, IT IS HEREBY ORDERED that this matter be remanded to the staff for processing of the application of the petitioner relative to the proposed Sepulveda Wastewater Treatment Plant in a manner consistent with this order.

Dated: NOV 18 1976

/s/ Roy E. Dodson
Roy E. Dodson, Member

WE CONCUR:

/s/ John E. Bryson
John E. Bryson, Chairman

/s/ W. Don Maughan
W. Don Maughan, Vice Chairman

/s/ W. W. Adams
W. W. Adams, Member

ABSENT
Jean Auer, Member