

East Bay Regional Park District
Measure WW Local Grant Program
Grant Guideline Clarifications for Applicant Agencies – March 2010

By resolution of the East Bay Regional Park District Board of Directors to clarify the January 2009 Measure WW Local Grant Program Guidelines, relating to District's review and approval standards for grant submittals:

The WW Local Grant Program provides bond funds to local agencies (Participating Entities) for park and recreation projects. The types of projects eligible under WW are intentionally broad and as flexible as allowed under bond requirements. Each community has its own needs and priorities for parks and recreation. The demand for different types of recreational services (leisure services) and facilities provided by communities continues to expand and change.

Consistent with the original AA Bond Ordinance, the selection of local parks and recreation projects in the WW Bond Ordinance is the responsibility of the local agency Council or Board. Projects submitted by local agencies will be accepted by the District as long as they are consistent with the guidelines and this clarification document.

The following information has been developed to augment and clarify the Local Grant Program project eligibility criteria and to provide more specific guidance on several aspects of the grant program.

- I) **Tenure** – Project Applications must demonstrate adequate site tenure consistent with the following conditions:
 - a) **Fee Title** - Projects with underlying fee title held by the Participating Entity that have not been encumbered or dedicated for some purpose incompatible with recreation meet the approval standards for the WW Local Grant Program for the purposes of land tenure.
 - b) **School District Land** – In limited circumstances, WW Local Grant projects may be constructed on school district land. To meet the approval standards for the WW Local Grant Program, Participating Entities must have a 25-year agreement and make the property available for general public recreation at a minimum after 3:30 on weekdays and all day on Saturday.
 - i) Projects that may be eligible under the above conditions include: sports fields, swimming pools and recreation centers.
 - ii) Shared Availability for Recreation - In cases where proposed projects are to be constructed on school district land with multiple funding sources, the District may consider allowing proportional public availability. Agencies must provide evidence in the application of the specific level of substantive public recreational use that will be met by their projects.
 - (I) For purposes of a proportional calculation, standard public availability of a shared facility on school property is assumed to be 30 hours per week: 4 hours per day (3:30 to 7:30) weekdays and 10 hours (9 to 7) on Saturday during the normal school year (roughly September to early June). A proportional reduction of this public use will be considered depending on

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the cost share of Measure WW funds to other funds. In no event can school use be more than 15 hours per week (50%) during these periods, regardless of the ratio of different project funding sources.

- c) **Subleases as Land Tenure** – Binding leases or subleases are generally acceptable ways to meet the land tenure requirement for the WW Local Grant Program. Lease and sub-lease agreements must provide the level of site control similar to fee ownership and for the duration necessary to meet the requirements of the program. All agreements pertaining to a project's land tenure must be reviewed collectively and the terms and conditions of the agreements fully disclosed. Projects with complex land tenure and/or lease or sublease situations may require additional legal review that may significantly delay the District's approval of projects.

Leases and subleases will be reviewed to insure they meet the requirements of the WW program as follows:

- (1) Leases and sub-leases must demonstrate a minimum of 25 years of term remaining after the commencement of public use.
 - (2) Leases or subleases can be revocable only by mutual consent, for primary use or cause. Failure to recover a failed project will constitute breach of the Local Grant Amendment and may require repayment of the funds to the District by the participating entity.
 - (3) Lease or sublease language must provide for the power or authority to manage, direct, superintend, restrict, regulate, govern, administer, or oversee a plot of ground suitable for the specific recreational use.
 - (4) Leases, subleases or agreements involving non-governmental organizations must contain a reversion clause in favor of the Participating Entity or other responsible governmental entity.
 - (5) All parties to the lease and/or sublease must agree to continue to operate the facility as a recreational facility consistent with each organization's mission.
- d) **Non-Profit Land Tenure** - A Participating Entity can give or be given control for construction and/or operation of a site to/from a non-profit, provided the agreement(s) contain a reversion clause that, if the non-profit fails to operate the site as required, it returns control of the site to the Participating Entity. Failure to recover a failed project will constitute breach of the Local Grant Agreement and may require repayment of the funds to the District by the Participating Entity.
- i) Examples of permissible agreements include:
 - (1) Non-profit land trusts routinely hold title to property funded by the State through the Coastal Conservancy. Conservancy agreements typically have a reversion clause that returns the property to the State if the non-profit fails to meet the obligations of the agreement.

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- (2) Land Trust ownership of a WW funded property was approved based on provisions that return the property to the local City or District if the trust fails.
- (3) A Participating Entity may contract with a non-profit organization for construction and/or operation of a facility provided that agreements contain reversion provisions that return the project to the Participating Entity if the non-profit fails to operate per the agreement.

2) Eligible and Ineligible Projects:

- a) **Ineligible Projects** – The following projects, project elements or expenses are not deemed to be capital park and recreation expenditures and are therefore ineligible for funding under the program:
 - i) Libraries
 - ii) School facilities not associated with a parks & recreation facility
 - iii) Street and highway beautification
 - iv) Master Plans
 - v) Public art not associated with a parks & recreation facility
 - vi) Equipment Purchases (trucks, mowers, tractors, etc.)
 - vii) Non-fixed equipment (removable soccer goals, portable air conditioners, etc.)
 - viii) Recreational programming and staffing
 - ix) Normal maintenance and repairs expected to last less than 25 years. (The District shall make the final determination regarding expected project life.)

- b) **Community, Recreation & Senior Centers** – Community, recreation and senior Centers are eligible projects provided they engage in activities that are generally available to the public. A wide variety of activities that are consistent with the Measure WW program may take place in a community, recreation or center. Following are some examples of eligible and ineligible activities:
 - i) Types of eligible activities include, but are not limited to:
 - (1) arts and crafts
 - (2) exercise equipment and classes
 - (3) dance and theater
 - (4) counseling, health screening and information
 - (5) receptions and party rentals
 - (6) childcare, homework assistance and life enrichment classes
 - ii) Ineligible Activities include:
 - (1) Classes that are part of an organized school curriculum.
 - (2) Organized school sports programs.
 - (3) Programs that discriminate against participants as prohibited by State or Federal statute.

3) Split, Combined and Complete Projects

- a) **Scope of the Project** – Participating Entities are responsible for defining the scope of their project and the source of any additional funds used to augment

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WW funds on the project. The project scope and budget must be consistent. Matching funds are not required for Measure WW Local Grant Projects.

- b) **Projects with Eligible and Ineligible Elements** - WW funds cannot be used for ineligible projects or project elements. WW funds may be used in combination with other funds to complete projects with ineligible elements under the following conditions.
- i) Project applications, budgets, and reimbursement requests must clearly delineate the funding applied to each project element.
 - ii) The Participating Entity must have policies and procedures in place to account separately for eligible and ineligible elements of the project.
 - iii) Costs for the participating WW elements must be clearly identified in the project construction documentation and accounting records.
 - iv) A combined project may be constructed under a single contract.
 - v) A WW project funding one or more elements of a combined project using several funding sources will not be eligible for final reimbursement until completion of the entire project.
 - vi) A combination of eligible and ineligible elements in a WW funded project will make the project approval, close out and accounting more complex and may delay approval and/or final reimbursement for project expenses to the participating entity.

As an example, for a project such as a combined trail and street beautification project, WW funds may only be used to fund the trail elements of the project, not the street beautification portion.

- c) **Complete and Useable Projects** – Completed development projects must result in a definable capital asset that provides an identifiable public benefit. Projects that improve park land may be eligible if they result in an improvement to the public value of the property by abatement of a hazard (demolition), re-grading or landscaping the site, or performing site restoration. Park, trail or resource acquisition projects do not need to result in constructed facilities.

4) Design and Construction

- a) **Design and Construction Management** – Participating Entities can design and manage projects themselves or they can hire a consulting firm or other partner (including a non-profit) as their agent to perform design and/or construction management (including bidding and contracting) of the project. Construction management of the project must be consistent with the agency's contracting procedures including prevailing wage requirements. Design and construction management expenses are grant-eligible costs of the project.
- b) **Construction of the Project** - Participating Entities may construct projects themselves with their own forces or hire construction contractors. Participating Entity's contracting procedures and prevailing wage requirements apply.

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5) Public Access and Public Benefit

- a) **Public Access to Projects** – Recreation projects must generally be available to the public; however, some types of projects are not required to be open for public access as long as they result in a specific public benefit related to parks or recreation.
- i) Examples:
- (1) Park and trail land acquisitions may be completed and placed in land bank pending development of public access facilities.
 - (2) Park maintenance facilities need not be open to the public, but must be dedicated to public park facility maintenance (not school or general public works).
 - (3) Restriction of public access into historic structures, archaeological sites or resource restoration projects may be necessary for resource protection and safety reasons.
- b) **Public Use Commensurate with the Project** – Park and recreation projects do not need to be continuously open to the public, but they must be open and available for public access commensurate with the project type.
- i) Examples:
- (1) Swimming pools may only be open during spring and summer
 - (2) Recreation centers and offices may be operated on designated days and business hours, and closed to use at other times.
 - (3) Natural or cultural preservation areas may have access limited to guided tours, pathways or viewing areas.
 - (4) Resource areas, or planted landscapes may limit access to pathways or require seasonal closures for species protection.
- c) **Projects Must Remain in Service** – Participating Entities are required to maintain and operate the property only for the purposes for which the grant was made. Interest and responsibility for the property or project can be transferred to a successor with approval from the District, provided that the committed use continues.
- d) **Non-Discrimination** – Projects that provide public access must be available to the general public. Access to projects can be limited to small groups or clubs for specific purposes as long as membership is not restricted and the group does not discriminate.
- i) Examples:
- (1) Rowing centers can be limited to use by rowing club members as long as any interested member of the public can join the club. Use may be segregated by skill level, age, type of activity or ability.
 - (2) Swimming pools can offer separate classes or swim times for swimmers of various skill levels, ages, types or abilities.
 - (3) Senior centers can offer programs limited to seniors.
 - (4) Daycares can be for enrolled children of appropriate ages.

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- (5) Dining facilities may be managed by groups such as veterans organizations as long as the public can otherwise rent, use or participate in programs at the hall.
- 6) **Fees, Private Business Use, Other Uses of Funds** – Reasonable use fees may be charged and Measure WW funded projects may be operated by employees of the Participating Entity, volunteers, or non-profit organizations for park and recreation purposes provided that the operators comply with the following:
- a) **Reasonable Fees** – Fees may be charged at facilities funded with Measure WW funds as long as the facility does not make a net profit and the fees are not discriminatory. Participating Entities are prohibited from setting fees that produce profit for the entity. Examples of acceptable fees would be standard green fees at golf courses comparable to other similarly situated public golf courses, entry fees at pools and modest membership fees at community or recreation centers to offset insurance, utility, staff or similar costs of providing the service.
 - b) **Private Business Use** – Park and recreation projects rarely produce revenue above the overall capital, maintenance and operational cost of the project. Therefore, the District will find that the tax-exempt bond limitation on private business use of bond proceeds is not triggered for local agencies holding land tenure and operating public use facilities, either with direct employees or through agreement with non-profit or for-profit contractors, *provided that* participating entities or their operating partners are prohibited from charging users fees, or receiving funds from third party operators or non-profits, that would exceed the combined capital, maintenance and operational cost of the project over the life of the bond.

Examples of previously approved projects operated by others where fees are charged include: golf courses, aquatic (boating) centers, day care facilities, and swimming pools.

- c) **Loan of WW Funds to Third Parties** – Measure WW Local Grant Program funds are intended for the acquisition or construction of local public park and recreation facilities and may not be loaned by the Participating Entity and then recovered and/or re-appropriated for other uses, either directly or indirectly. Loaning the proceeds of the grants could violate the District's tax covenants contained in the bond documents. The Participating Entity's application must disclose and include all agreements, leases, sub-leases or other documentation that govern the relationship with any sub-leasee or co-participant in the project. Modifications or amendments to these agreements during the life of the project that result in repayment of funds to a Participating Entity will be deemed a default of the grant agreement and require return of the Local Grant Funds from the Participating Entity to the District.