



MEMORANDUM

Park Lands Acquisition: Code Research and Case Studies

City of Gresham

DATE August 1, 2017
TO Ken Koblitz and Michelle Kimble, City of Gresham
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The purpose of this memo is to document the research performed by Angelo Planning Group (APG) on approaches to acquiring land for parks through the development review or annexation process for the City of Gresham. The memo is organized into five sections:

1. Background information on the issue and purpose of the research;
2. Legal considerations/questions;
3. Precedent examples of from other jurisdictions;
4. Findings of three case studies of jurisdictions in Oregon; and
5. Preliminary recommendations

NOTE: APG is not a law firm and therefore cannot provide legal advice. This memorandum is intended for general information. The City should discuss these issues with its legal counsel.

1. BACKGROUND

The purpose of this research memo is to assess options for establishing a more clear and objective procedure for acquiring land for parks through the development review or annexation process. The City of Gresham does not currently require that lands designated for parks be dedicated or acquired by the City during either the annexation or development review process. Currently, the City asks for the cooperation of developers and property owners to voluntarily sell land that is planned for parks to the City either prior to development or during development review. This process is undefined, administratively complex, and does not ensure that land will be preserved for parks in the locations designated by local plans. The City desires a more clear and objective procedure that is integrated with the annexation or development review process.

City staff have discussed the possibility of establishing a regulatory procedure to address this issue in the past. In 2007, staff considered options for requiring land be preserved for parks within the

Pleasant Valley area, where development had been proposed. Staff determined that the Pleasant Valley Plan District and Master Plan provisions were not intended to require that park land be dedicated to the City. The Plan District and the Master Plan provisions encouraged that the locations of parks be identified in future Master Plans for new development, but did not stipulate that those lands must be dedicated to or acquired by the City. In response, planning staff proposed options for establishing this requirement, including amending the Development Code or the annexation policies in the Comprehensive Plan. Legal staff considered the potential amendments and recommended that any requirements be based on objective standards, such as a formula that calculates the amount of required land based on the number of dwelling units proposed in the development. An objective standard would be more consistent with established legal standards that govern development exactions. The City did not move forward with adopting any code or policy amendments at the time.

2. LEGAL CONSIDERATIONS/QUESTIONS

Requiring dedication or acquisition of park land

The legal basis for requiring park lands to be dedicated or acquired by the City is one of the primary questions related to such regulations. APG conducted research on national cases and best practices to identify case law or statutes that directly prohibit local governments from requiring that land be dedicated or acquired for parks. No cases or statutes were found to directly prohibit this requirement; however, the requirement appears to fall under the general legal framework associated with “takings”. The Fifth Amendment of the U.S. Constitution guarantees that in no case will “private property be taken for public use, without just compensation.” If a property is appropriated by the government without just compensation, it is considered a takings and a violation of the Constitution.

It is our understanding that the City proposes to compensate property owners for the fair market value of any land acquired for parks and avoid takings claims. In most cases, the City desires to cooperate and negotiate with property owners to engage in a voluntary agreement to acquire land. The purpose of this research is to lay out some of the procedures and limitations that might apply should the property owner be unwilling to sell the land for a public park. There are three types of government actions that, in some circumstances, could be considered a taking if the local government does not proceed within the applicable limitations:

- **Direct condemnation.** A direct condemnation occurs when a government directly requires a property owner to sell land. If the land is acquired for a legitimate public use and the property owner is paid just compensation, then it is not a taking. In Oregon, condemnation of land for use as a park is considered a legitimate public use and permitted by statute.¹

¹ See ORS 226.320 Authority to acquire land for certain purposes

- **Regulatory taking.** A land use regulation that completely eliminates or greatly lowers the value of land, without just compensation, could be considered a regulatory taking. For example, if the City were to adopt a requirement that all park lands be acquired by the City at the time of development, and a planned park constituted all or the great majority of a property owner’s land, the property owner could argue that the regulation effectively eliminates the value of the land for development, and thus is a regulatory taking. In this case, the City may be obligated to compensate the land owner at the point when the regulation went into effect, as it was the regulation itself that eliminated or greatly reduced the value of the land. The determination of whether the regulation constitutes a taking is complex and depends on a number of factors. The City should closely evaluate the potential for any park land acquisition requirement to be construed as a regulatory taking for some property owners in specific circumstances. There may be methods of drafting the code language to reduce this risk.
- **Exaction.** An exaction is a fee or cost imposed on a developer or property owner intended to offset or mitigate the impacts of a proposed development. The City currently collects System Development Charges (SDCs) for parks, which are a form of development exaction. Exactions may be considered takings if they violate two criteria established in the “Nollan/Dolan” cases that were decided by the U.S. Supreme Court.²
 - **Nexus:** There must be a “rational nexus” between the exaction and the impact of the development. In other terms, the exaction must be related to an impact that is clearly attributable to the development. In the case of park land acquisition, this criteria is relatively easy to demonstrate, as the land for the park will be located in close proximity and clearly serve the residents of a proposed development.
 - **Proportionality:** The exaction must be “roughly proportional” to the impact created by the development. Proportionality should be demonstrated by objective measures and standards to the greatest extent possible. For parks, proportionality is usually operationalized as a “level of service” standard that is measured as a number of acres of parkland needed per dwelling unit. The City’s SDCs are calculated based on a proportional, level of service standard.

Implications for park land acquisition

The City seeks to achieve acquisition of park lands while minimizing or eliminating the possibility of a takings claim, and in the spirit of a fair and transparent process. The City has the authority to acquire land for parks, but the procedure for doing so depends on the situation.

In the case of a development review, the process could potentially proceed as follows:

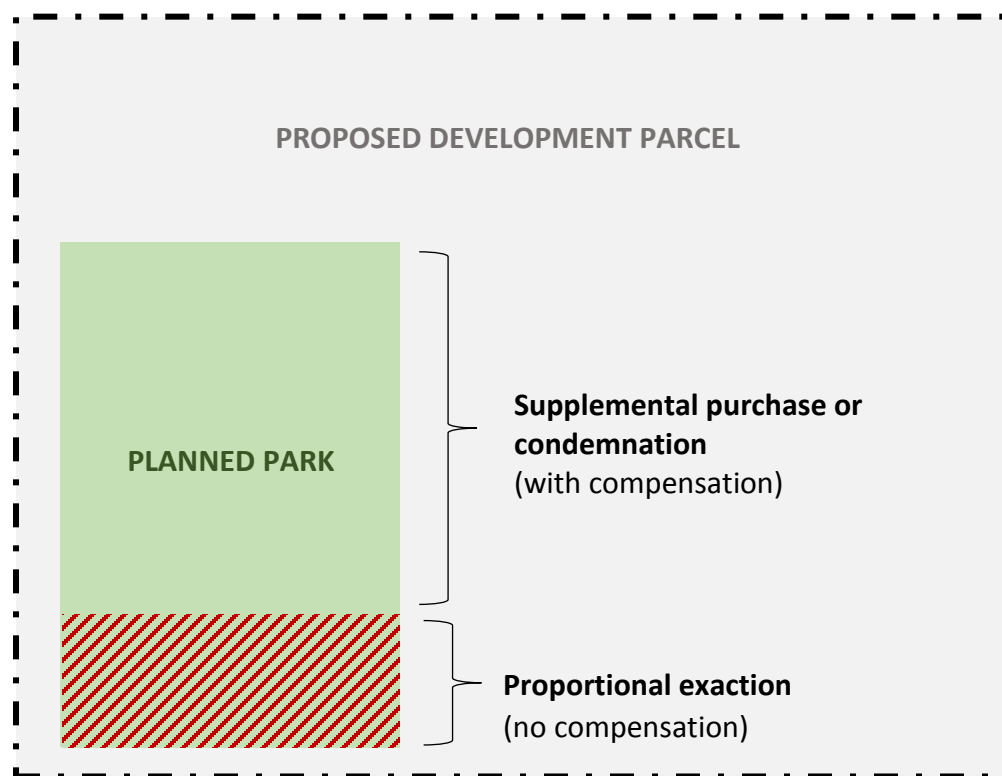
1. **Proportional exaction.** The City would require, based on adopted code, that the developer dedicate or allow the City to purchase an amount of land that is proportional to the impact

² *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987) and *Dolan v. City of Tigard*, 512 U.S. 374 (1994)

of the development. Proportionality would be based on a level of service standard, ideally consistent with or equal to the standard used to calculate the portion of Parks SDCs that covers the costs of land acquisitions. Proportional exactions do not require dedication; the land could be purchased by the City. However, if a developer dedicates the land, they could be credited the value of the dedication. If the developer requests the City purchase the land, then no SDC credits would be applied. If the proportional exaction of land is sufficient to cover the amount of land that is needed for the park and owned by the developer, then the acquisition is complete.

- Supplemental purchase.** If the proportional exaction is insufficient based on the amount of land owned by the developer in relation to the identified park boundaries, then the City could offer to purchase the remaining land at fair market value (see Figure 1). Any compensation would likely need to be paid in cash rather than an SDC credit, because it would be over and above the amount of the Parks SDC, which is proportional to the impact of the development. If the City were to adopt a regulation that requires the land be dedicated or acquired by the City, then having that adopted requirement could be considered a regulatory taking in some circumstances. The City is also free to offer “carrots” to incentivize the supplemental purchase, e.g. waiver of all or part of the SDCs for the proportional exaction, or other regulatory or financial incentives.

Figure 1. Illustration of Example Park Land Acquisition Scenario



3. **Condemnation (if necessary).** If the developer does not agree to comply with the supplemental purchase, the City could acquire the land through a condemnation procedure. The developer would still be compensated fair market value. This process would need to conform with the general procedures for condemnation prescribed by state statute.³ The developer could still proceed with development of the surrounding area.

Annexation agreements

It may be possible for the City to require more land to be dedicated or acquired than what is proportional to the impact of the development if the transaction is included as part of an annexation agreement. If the developer or property owner has not yet annexed to the City, and sees significant value in doing so, then they may be willing to agree to dedicate or sell the land if it enables annexation. As a “voluntary” contract between two parties, annexation agreements may not be subject to the limitations on exactions required by Nollan/Dolan. If the property owner did not want to sign the agreement, they could always elect to not annex into the City.

In contractual agreements between two parties, one party may waive its constitutional rights when voluntarily entering into the contract. This waiver would be included as a term of the agreement.⁴ Therefore, the proportionality criterion that limits exactions would not be applicable. The only limitation is the voluntary cooperation of the developer or property owner in entering the contract. The City would need to consider how any requirements to dedicate or sell land for parks would affect the overall negotiation with the property owner and weigh the costs and benefits of the requirement.

Development agreements

Development agreements may be another method for requiring more land be dedicated or acquired than what is proportional to the development; however, it is unclear if the limitations on exactions apply to development agreements. LUBA has ruled that development agreements made pursuant to ORS 94.504 are land use decisions and subject to LUBA’s jurisdiction.⁵ It is not clear whether the implication of this ruling is that development agreements, as land use decisions, may include waivers of Nollan/Dolan rights as a term of the agreement. We recommend the City seek legal counsel on this question.

3. PRECEDENT EXAMPLES

APG collected examples of jurisdictions across the country and in the state of Oregon that have adopted park land dedication ordinances. The following examples are relevant and potentially

³ See ORS Chapter 35.

⁴ The City of Canby has codified this authority. See Canby Municipal Code, Division VI, Chapter 16.84.040. Available at <http://canbyoregon.gov/Chap16/16.84ANNEXATIONS.pdf>

⁵ LUBA No 2007-265. Available at: <http://www.oregon.gov/LUBA/docs/opinions/2008/07-08/07256.pdf>

useful as references for guidelines and best practices when drafting policy or code amendments to address this issue:

- Three large cities were found to have adopted specific park land dedication requirements: Lakewood, Colorado; Austin, Texas; and St. Paul, Minnesota.⁶
- The State of Pennsylvania has adopted state law that enables local jurisdictions to require park land dedications. The Pennsylvania Land Trust publishes guidelines for jurisdictions to implement this requirement.⁷
- The Tennessee Parks and Recreation Association has organized conference sessions on this topic that include useful guidance for drafting clear and defensible code provisions.⁸

Within the state of Oregon, we identified the following jurisdictions with adopted park land dedication or acquisition requirements: Bend, Washington County (North Bethany Subarea), Sandy, Veneta, Canby, and Pendleton. Other than Washington County, we did not identify any other jurisdictions in the Portland Metro area that have adopted park land dedication requirements. The City of Tualatin requires public land acquisition for greenways and natural areas, which often include trails; however, these lands are usually located in riparian corridors that are not developable. The City of Oregon City acquires park land as a condition of approval of an annexation in some cases, but the amount of land required or the location of parks is not specified in code or policies. Several cities require open space in Planned Unit Developments but the open space is not required to be in public ownership as it can be owned and maintained by a homeowners association. Many cities achieve the majority or all park land acquisition through proactive negotiations with property owners prior to a proposed development or rely on voluntary cooperation of developers or property owners when development is proposed.

4. CASE STUDIES

This section of the memo summarizes the findings for three case studies of jurisdictions in Oregon that have adopted park land acquisition or dedication requirements: the City of Bend, Washington County, and the City of Sandy. In addition to reviewing relevant code provisions and planning documents, phone interviews with staff from each jurisdiction were conducted to assess the effectiveness of the requirements and guidelines for implementation.

City of Bend

Steve Jorgenson, Parks Planner, Bend Parks and Recreation District
Phone interview on May 25, 2017

⁶ See the following links for the code provisions: [Lakewood](#), [Austin](#), and [St. Paul](#)

⁷ [Pennsylvania Public Land Trust: Public Dedication of Land and Fees-in-Lieu for Parks and Recreation.](#)

⁸ [Park Land Dedication Ordinances, Tennessee Parks and Recreation Conference, November 2015.](#)

The City of Bend requires that land designated for parks be transferred (with compensation) to the Bend Parks and Recreation District wherever the proposed development meets certain criteria. The code provision is part of the City's Public Improvement Standards.⁹ The requirement applies citywide, but is only intended to require land acquisition for neighborhood parks (it does not apply to community or regional parks). In order to meet the criteria, the proposed development must be in a park service area with an identified park need in an adopted plan, be at least 10 acres in size, and include land that is suitable for a public park. The Bend Parks and Recreation Master Plan indicates park service areas—areas with a need for a neighborhood park—and in some cases identifies the specific location of parks (Figure 1). The code provides that the City can determine the specific location and size of land for the park. The price of the land is based on its appraised value under the base zoning requirements, prior to development approval. The code includes a reference to the Nollan/Dolan principles: the City must demonstrate that the required dedication is consistent with regulations that govern all conditions of approval, which stipulate that the conditions must be related to and roughly proportional to the impact of the development.

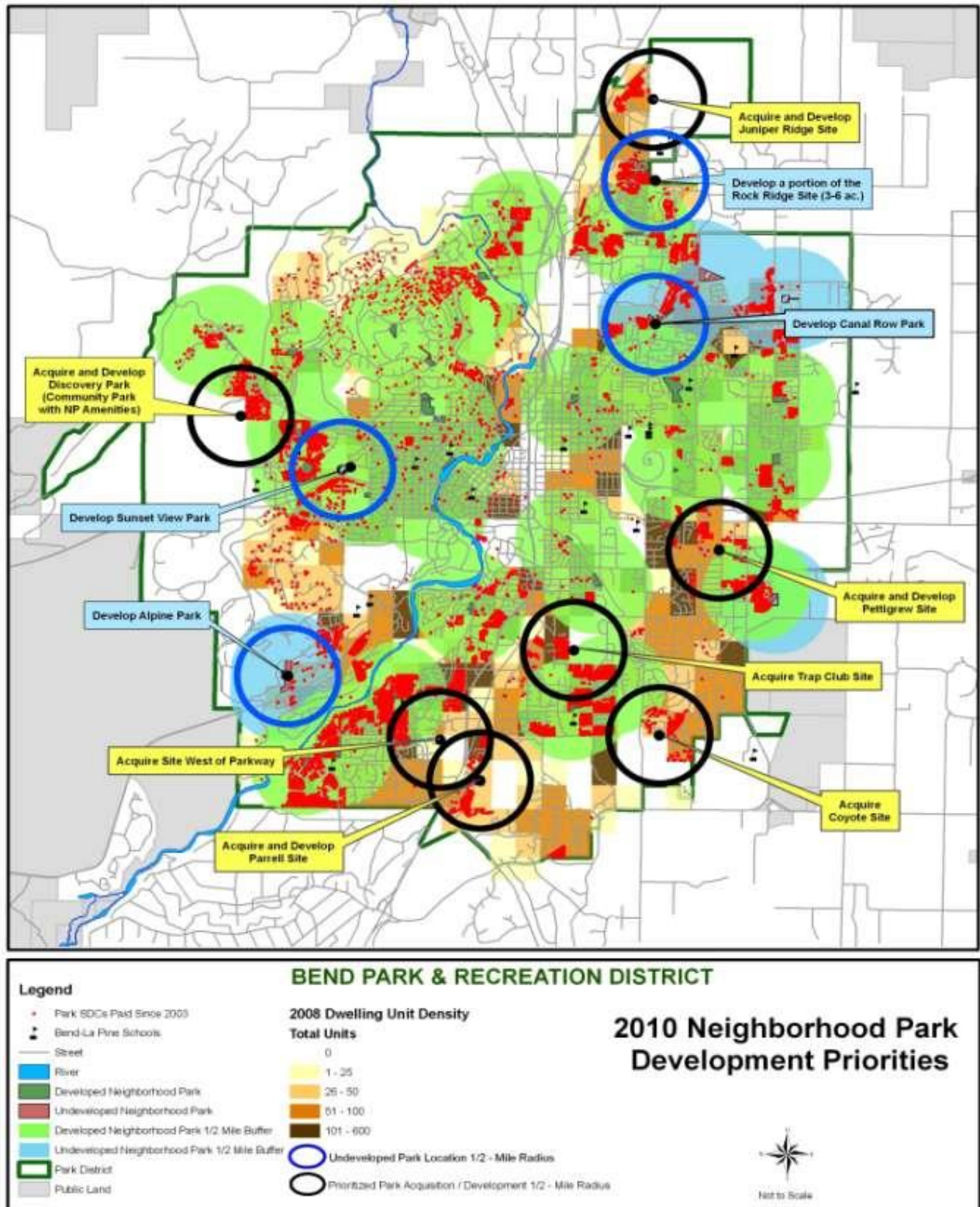
The City of Bend has not acquired a significant amount of land for parks by applying these code requirements. Most land needed for parks has been acquired through proactive negotiation with property owners prior to a proposed development. However, staff did note that the existence of the code requirement may incentivize property owners to engage in negotiations as they may be required to dedicate the land prior to approval of any future development. The City applies similar code provisions for trails, however, which are used widely and successfully to acquire lands for trails through development review.

One strength of Bend's code is that it requires the appraisal of the land value—which is used to determine the purchase price for acquisition—to occur prior to approval of the development. If the appraisal occurred after approval, it is possible that the appraisal may be based on the value of the land as if it were subdivided and entitled for development, which increases the value and thus the cost to the public agency.

There are some limitations to Bend's approach, however. The requirement cannot be applied to land needed for community parks, because there is no specific plan for community parks that designates their location, establishes a service area, or defines a level of service (LOS) standard that could be used to calculate the amount of land needed for parks as a result of any particular development. Additionally, the code does not address whether a development would be eligible for System Development Charge (SDC) credits if land is dedicated to or acquired by a public agency.

⁹ Bend Development Code, Chapter 3.4, Section 3.4.300 Public Use Areas.

Figure 2. Bend Neighborhood Parks Plan



Washington County

Jeannine Rustad, Parks Planner, Tualatin Hills Parks and Recreation District

Phone interview on May 22, 2017

Washington County, in coordination with the Tualatin Hills Parks and Recreation District (THPRD), requires that land designated for parks in the North Bethany Subarea be transferred to public ownership under THPRD. The requirement is included in the County's Public Facility and Service Requirements.¹⁰ It only applies in the North Bethany Subarea and is limited to neighborhood parks, trails, or other off-street pedestrian routes. North Bethany is a 700-acre Urban Growth Boundary expansion area that is similar to Pleasant Valley in that it has a Concept Plan and an adopted Community Plan. Most of the neighborhood parks are identified in a fixed location in the North Bethany Subarea Plan, but some parks are designated for a more general area (Figure 2). The location of the park is determined—or adjusted if already determined by the subarea plan—if the location meets certain criteria defined in the code. Intent for the land to be acquired by THPRD must be documented prior to development approval; however, the purchase price and other terms of the agreement may be specified at a later date.

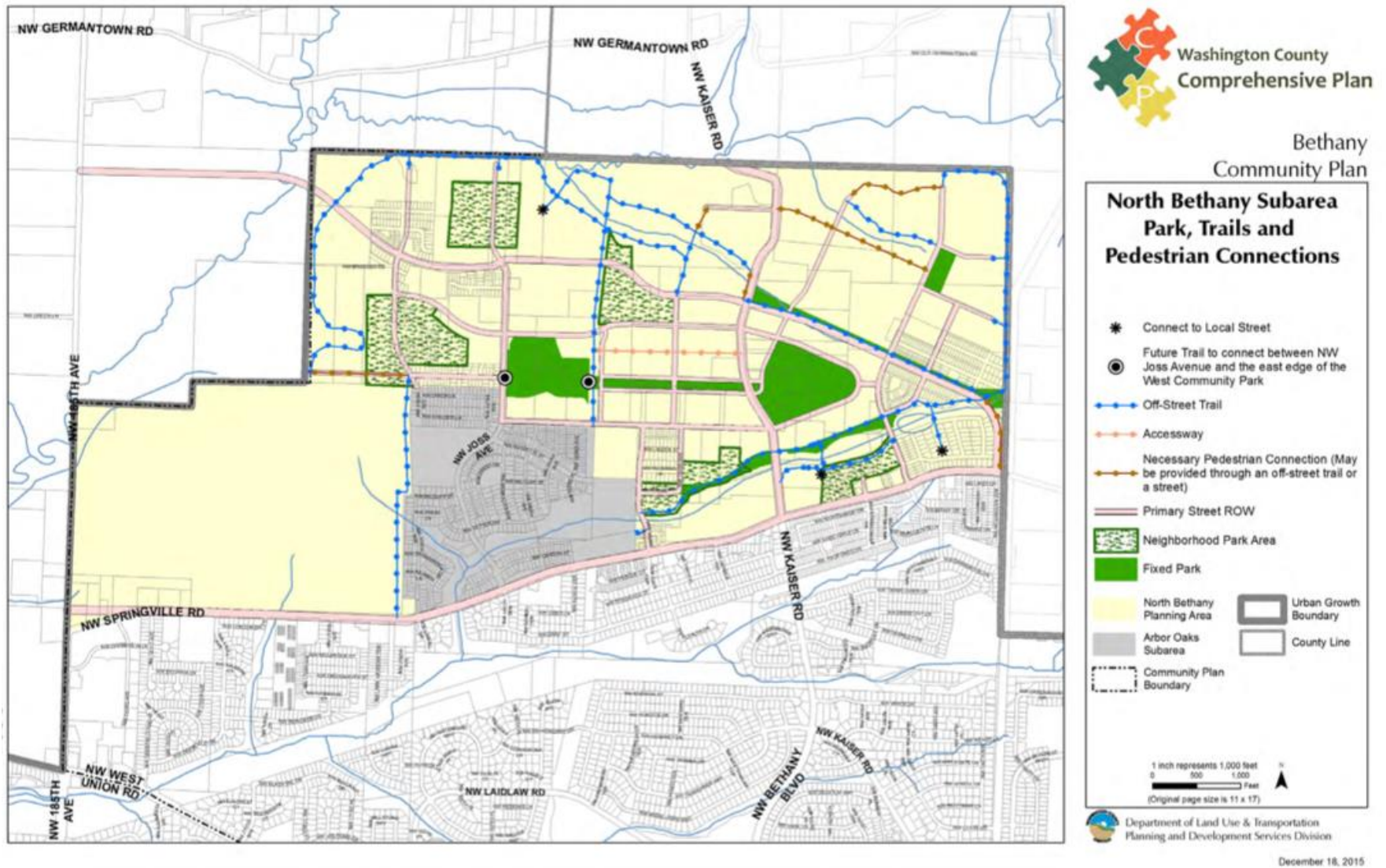
County staff generally perceive the code provisions specific to the North Bethany subarea as having allowed the County and THPRD to acquire more land for parks than in other subareas where the requirement does not apply. However, the requirement can be complex to administer, primarily because the parks plan for the area does not specify the location of all parks and the code does not define all of the procedures by which the land will be acquired. THPRD staff have needed to dedicate a significant amount of time to negotiating with developers about the location of parks and the purchase price for the land.

Because the code does not specify the assumptions underlying the appraisal of land value, THPRD and developers must agree to a fair and reasonable valuation of the land. Generally, THPRD believes the land value should be based on the development capacity of the base zone with no improvements and no entitlements (subdivision or development approval). The developers and property owners have argued that the appraisal should include the value of the land if it were entitled for development.

A second challenge with Washington County's approach is that the timing of acquisition related to collecting SDCs can create cash flow issues. The County's parks and recreation SDCs are formulated to include the cost of land acquisition. Therefore, if a developer conveys land to THPRD for a park, the developer does not receive a credit on their SDCs for the cost of the land because the developer has already been compensated for that cost. The County recovers the cost of acquiring the land, or a portion of the cost, when it receives the SDC payment from the developer upon approval of building permits. Thus, the County must make an outlay of cash to acquire the land prior to collecting the revenue from SDCs that is intended to cover that cost.

¹⁰ Washington County Community Development Code, Article V, Chapter 501, Section 501-10 Standards for Development Within the North Bethany Subarea Plan Area

Figure 2. North Bethany Subarea Parks Plan



The City of Sandy

Kelly O'Neill, Community Development Director, Bend Parks and Recreation District

Phone interview on June 4, 2017

The City of Sandy has adopted a park land dedication ordinance that has been in place since the 1990s. The regulations are located within the City's general development regulations.¹¹ The code requires land to be dedicated to the City or a fee paid in-lieu of land dedication. The City's parks SDCs do not include the cost of land acquisition—they are limited to the cost of development and capital improvements—therefore, this park land dedication requirement functions as a fee to recover this portion of the cost of parks. The code applies to all subdivisions, partitions, Planned Developments, or multi-family developments. The amount of the land, or the fee-in-lieu, is based on a population factor determined by the Parks Master Plan (number of acres of parks per person). The City has the authority to either accept the land or the fee-in-lieu, depending on the proposed development. If the City decides to accept a fee-in-lieu, the amount of the fee is calculated based on a standardized rate (dollar value per acre) that applies to all land in the city.

Overall, staff report that the park land dedication code is a necessary and effective means for the City to ensure implementation of the Parks Master Plan. The fee-in-lieu option is used extensively—significantly more often than the land dedication requirement—as the City is relatively selective about the lands they will accept for parks uses. If land is accepted, the land is almost always identified for park use on the Parks Master Plan.

The system is generally received favorably by developers and property owners. On occasion, a developer will attempt to dedicate land to the City that is not suitable for a park use, and thus the City must require that the developer pay the fee-in-lieu despite having proposed a land dedication. The City finds the procedure to be relatively simple to administer. The amount of land is based on a standardized formula and the determination of whether land is suitable for a park is usually directly linked to the Parks Master Plan. The land need formula includes both neighborhood parks and community parks.

The amount of the fee-in-lieu is also relatively straightforward to determine as it is based on a standardized rate rather than an appraisal specific to a tract of land. However, one challenge associated with the standardized rate is that it must be increased over time and may not keep pace with the actual cost of the land. The code also includes a provision that allows a developer to split the fee into two payments, before and after final plat approval. This allows the developer to generate some revenue after final plat—but before building permits are issued—to pay for the cost of the fee. This provision has been well-received by developers.

¹¹ City of Sandy Municipal Code, Chapter 17.86, Parkland and Open Space.

6. PRELIMINARY RECOMMENDATIONS

This section of the memo presents preliminary recommended strategies for the City to consider to acquire land for parks. As detailed below, we recommend an overall strategy of pursuing proactive acquisition of land prior to annexation or development. If the property owner is unwilling to sell, then the City may pursue acquisition as a part of a broader annexation agreement or as a code requirement to be addressed in a development application.

Proactive acquisition

A key finding of this research is that no jurisdictions we contacted or interviewed use the development review process as the primary method of acquiring park land. All jurisdictions we spoke with sought to acquire land for parks through proactive contacts and negotiations with property owners prior to annexation or development. The advantage of this approach is that land may be acquired prior to it being marketable for development, when developers may be attempting to purchase the land or the property owners may be interested in developing it themselves. This approach, of course, relies on the property owner being willing to sell and the City being able to provide an attractive offer. Proactive acquisition is worth pursuing in all cases, given some of the limitations and complexities of acquiring land through annexation or development review.

Acquisition through annexation agreements

If proactive acquisition is not feasible, we recommend strategies for land acquisition be integrated into both the annexation and development review processes. A key concept to consider regarding this overall approach is the proportionality of the requirement related to the impact or size of the development. As noted above, the proportionality limits related to exactions may not apply to the annexation process. Thus, the City could utilize annexation agreements to acquire lands needed to completely implement park plans, even if the acquisition may not meet a strict test of proportionality.

Annexation may offer a more flexible and strategic approach to land acquisition than what can be accomplished through the development review process. The City Attorney and legal staff should be consulted to clearly define the legal requirements applicable to annexation. This initial research found that the Nollan/Dolan principles may not be applicable to annexation agreements when Nollan/Dolan criteria are waived within the agreements; however, legal counsel is needed to confirm this finding. We identified two examples of other cities in Oregon that use annexation agreements that require the waiver of Nollan/Dolan criteria.¹²

¹² The City of Canby has codified this waiver be required in annexation or development agreements. See Canby Municipal Code, Division VI, Chapter 16.84.040. Available at <http://canbyoregon.gov/Chap16/16.84ANNEXATIONS.pdf>

See provision number 8 in this example annexation agreement from the City of Bend: http://bend.granicus.com/MetaViewer.php?view_id=5&clip_id=299&meta_id=6602

If legal counsel agrees with this interpretation, the City should consider the following approach to annexation:

- 1. Update annexation policies and procedures.** The City should review and revise annexation policies and procedures to ensure that they sufficiently establish the City's authority to require that land for parks be dedicated or acquired, and that annexation may be conditioned on the assurance that land for parks will be conveyed to the City. The policy should describe the importance of complete implementation of community plans and provision of the full range of services, including parks and associated recreation facilities. The policy should also state that the amount and location of the land will be based on adopted plans, but may be revised to account for a change in circumstances. The policy may also establish that annexation agreements include time limits to ensure that the proposed development occurs in a reasonable timeframe. The City may also consider including provisions that SDC credits will be made available toward future development in exchange for land dedications.
- 2. Leverage annexation agreements to assure acquisition of park lands.** The City should utilize the flexible and voluntary nature of annexation agreements to assure that sufficient land will be conveyed to the City for parks. The terms of the annexation agreement should specify the amount and approximate location of land to be acquired. The final boundaries of the park may be platted at the development review stage. Satisfying the terms of the annexation agreement will be a condition of approval for any proposed development.

Acquisition through development review

Some planned parks are located on lands already annexed into the City of Gresham; thus, absent a friendly sale, parks would need to be acquired through the development review process. As outlined above, the legal context for a regulatory requirement that land be acquired for parks during development review is subject to more scrutiny related to takings claims than an annexation agreement. The Development Code should specify the criteria, standards, and process that will govern the land acquisition. The following is an outline of the general code concepts that need to be addressed and discussion of potential options for how to structure the regulations.

- 1. Authority and Purpose.** The code will need to establish that the City has the authority to require dedication or acquisition, with compensation, pursuant to the provisions of the code section. This section may also establish the general purpose of the code provision to ensure the implementation of the parks plan and create complete communities.
- 2. Relationship to Parks SDCs.**
 - *Purpose in Conjunction with SDCs.* The code should explain the relationship of this requirement to the parks SDCs. An initial recommendation is to describe that the parks SDCs provide a revenue source to pay for the cost of land acquisition but do not ensure that specific locations are preserved for park uses. This code provision, as part of the City's land use regulations, ensures that lands designated for parks are used for parks.

- *SDC Credits.* A developer may receive a credit on the parks SDC for the cost of land if the land is dedicated to the City. If the developer is compensated for the land then they will not be eligible for a SDC credit, except if making park-related improvements.
- 3. Applicability.** The code should specify the applicability of this regulation to both the park locations and the types of development.
- *Park locations.* The Gresham Parks Master Plan does not include a map of planned parks. However, the parks SDC Methodology includes a specific list and map of planned park projects. Parks are also identified in the Pleasant Valley Plan District. The code should specify the planned park locations that will be the primary basis for determining lands that need to be acquired for parks. Additionally, the City may elect to include a discretionary criterion that allows for the location of the park to be adjusted or a new park location determined in order to meet an identified need in the Parks Master Plan, or other City requirement, such as conditions of approval of a development agreement.
 - *Types of development.* The code should specify the types and sizes of development that will be subject to this requirement. A minimum size of the subdivision may be established, for example. The City should consider if the requirement should be applicable to Planned Developments or multi-family developments. The code may also address how this provision applies to phased developments.
- 4. Proportional Dedication.** This section could establish that the City will require a dedication of land that is proportional to the impact of the development, based on a level of service standard. If the land is dedicated to the City (not purchased), then the developer would be eligible for a SDC credit for the value of the dedication. If the land is purchased, then the developer has been compensated and they are still obligated to contribute SDCs. As noted above, the City has options for how to set the level-of-service standard that will apply:
- *Single Citywide Standard.* The City may adopt a single citywide standard for how much park land is required based on the size of the development (number of dwelling units). The City has adopted LOS standards in both the Parks Master Plan and the SDC Methodology. Either standard may be used, but legal counsel should advise on the legal basis of the standard. In some cases, the amount of land owned and proposed for development in an area designated for a park may be greater than the amount of land that can be required of the developer under a proportional calculation.
 - *District Standards.* As defined by the City's SDC methodology, the City may define multiple standards based on the location of the development. The SDC methodology defines standards for the City generally, the Pleasant Valley area, and the Springwater area. The advantage of this approach is that the City can ensure that the amount of land dedicated is sufficient to meet the specific park needs of different areas of the City.
- 5. Supplemental Purchase.** This section could establish that, in some circumstances, the City will offer to purchase additional land to be used for the park. The City could consider language that states that the acquisition of land is required in order to approve the development; however, legal counsel should advise as to whether the adoption of such a

requirement (in conjunction with a map identifying specific properties) in itself could be argued to represent an action that requires compensation (regulatory taking). As noted above, in the case of an unwilling seller, the City has an option to consider condemnation.

6. Procedures. The code should establish the procedures by which the land will be dedicated or acquired, including the following.

- *Documentation.* The code should define the legal documentation necessary to convey the land and when it must be finalized relative to approval of the development.
- *Land valuation.* The City has options for how to determine the market value of the land for the purposes of public acquisition, or in the case of dedication, SDC credits.
 - The valuation could be based on a standardized rate applied citywide or based on a subarea of the city. This may be the same rate used in the SDC Methodology. The advantage of this approach is that it is simple to administer. The disadvantages include that it may not be sufficient to cover the actual cost of land if the rate is not representative of the cost in areas where parks are needed, or that the rate does not keep up with the cost of land as it increases over time.
 - The valuation could be based on an appraisal of the land. The code should specify some terms of the appraisal, including when it occurs relative to development approval and what assumptions are made about the status of the land and capacity for development. The City may consider consulting a land appraiser when drafting this section.
- *Status of land.* The code may specify standards for the status of the land at the time it is acquired. An environmental assessment may be required prior to acquisition. The City may require that the developer clear, fill, and/or grade the land, or even install frontage improvements.