



City of Seattle
City Budget Office

MEMORANDUM

Date: July 31, 2015

To: Honorable Jean Godden, Chair
Parks, Seattle Center, Libraries and Gender Pay Equity

From: Ben Noble, City Budget Director
Jesús Aguirre, Superintendent of Parks and Recreation

Subject: 2015 Statement of Legislative Intent 47-2-A-2 (Open Space Opportunity Fund)

The 2015 Adopted Budget included Statement of Legislative Intent (SLI) 47-2-A-2 that requested the City Budget Office (CBO) and Department of Parks and Recreation (Parks) to create an interdepartmental team (IDT) to “evaluate the concept and the need for a new Open Space Opportunity Fund.”

Specifically, the fund was envisioned in the SLI as a “...City-managed program that would work with community members or organizations to assist in the purchase or retention of surplus City property for use as publically accessible ‘open space’...”

The IDT has evaluated the concept and need for an Open Space Opportunity Fund and does not recommend the creation of such a fund. The IDT chose to not recommend for two primary reasons:

1. Concerns about feasibility: concerns included the scarcity of available funding, long-term maintenance, social-justice and conflict with other City goals (i.e., housing). These concerns are discussed more thoroughly in the conclusion.
2. Existing, Council-adopted surplus and acquisition policies provide ample opportunity for public involvement and City re-purposing as open space: After analyzing the existing surplus policies and Parks acquisition policies, the IDT found that there was significant public outreach in current policies. Additionally, the analysis showed a comprehensive consideration of uses, particularly by Parks.

Limitations in acquiring open space are a result of limited resources for property acquisition and ongoing maintenance. Parks manages these constraints by focusing on areas of the highest need by prioritizing purchases in urban centers and urban villages where Parks can demonstrate the greatest need and have the greatest impact.

The SLI included a number of issues which the IDT was instructed to consider. These issues are addressed, in order, in the following response.

1. Review of current resources for property acquisition for open space purposes

Parks is the only department with resources appropriated for open space acquisition. There are currently two funding sources:

2008 Parks and Green Spaces Levy

This levy, which expired in 2014, was primarily focused on acquisition, creating and upgrading parks. The levy was very prescriptive, identifying areas for acquisition and specific parks for development. Parks sought to fulfill the acquisition goals of the levy as opportunities arose. With levy funds Parks was able to acquire 14 properties through the Neighborhood Acquisition Program, 6 properties through the Opportunity Fund and 20 properties through the Green Space Acquisition Program. Additionally, the Department of Neighborhoods (DON) was able to create and 20 new p-patches by leveraging levy funds and volunteers.

The levy acquisition fund is fully expended or committed. The levy is no longer collecting revenues.

The Seattle Park District

Through the Parks Legacy Plan project, a planning process undertaken at the completion of the 2008 Levy, priority was placed on maintaining the City's substantial park system at a high level. After years of investing in acquisition, Parks was having difficulty maintaining these extensive investments. The Park District proposal was developed with this in mind and the primary focus of funding is on maintenance, leaving relatively little available for acquisition. Maintenance funds will support infrastructure throughout the Parks system. The Park District will also fund the development of 14 parks on land-banked property, a park at Smith Cove and includes \$200,000 a year to upgrade and improve existing p-patches.

Beginning in 2016, the Park District will provide \$2 million per year for acquisition through the Park Land Acquisition & Leverage Fund. This fund is for new parks property and will be focused on acquiring property where service gaps exist. The funds will be used to leverage King County Conservation Futures and other grants; effective use of these opportunities could double the purchasing power of the fund.

Note: DON's Neighborhood Matching Fund (NMF) does not fund property acquisition. While NMF funds cannot be used to fund property acquisition it is regularly used for the following types of projects: physical improvements, planning and design, community organizing, and environmental (including food security and climate protection).

2. a. Review of current policies and procedures for surplus [excess] property

Note: There is a technical difference between surplus and excess property. Only the City Council can deem a property surplus. Therefore, this process, which is colloquially referred to as the 'surplus process,' is more accurately the 'excess property process.'

The excess property process was amended by City Council in 2006 to improve public engagement and ensure that community members are aware of property dispositions and have the opportunity to engage with the process. As a result, the excess property process includes extensive public outreach. For properties deemed 'complex' this includes Council committee approval of the outreach and engagement plan.

Additionally, all departments have the opportunity to review all properties before they become surplus. Parks reviews all properties to assess their appropriateness for use as open space. When the properties meet their requirements, Parks acquires them (see section 2b). This process has been very successful in preserving City properties for park and recreation purposes. Since 1990, City departments have transferred 219 acres of property to Parks at no cost. In that same period, Parks has purchased eight former City Light substation properties that meet strategic goals (2.2 acres).

Excess Property Process

The Department of Finance and Administrative Services (FAS) coordinates the review process for most excess property. City Light has a separate process which was developed to allow review of multiple, geographically close properties in a single process. Both processes were adopted by City Council resolution (Res. 29799 in 1998, amended by Res. 30862 in 2006 for FAS; Res. 31424 in 2012 for City Light). The policies and procedures are summarized below, with additional detailed guidelines in the specific documents.

Policy Direction

The following are key directives for the evaluation process, governed by City Council resolutions:

- Property is held to further the City's goals, and properties should not be held without an adopted municipal purpose.
- City departments should periodically review each property under their jurisdiction to assess opportunities for joint use, future use and interim use.
- Excess properties are evaluated on a case by case basis using the guidance in adopted City policy (primarily Resolution 29799).
- Reuse and disposal options should be consistent with the purpose for which the property was originally acquired, the fund sources used to acquire it, and laws and regulations.
- Each property is assessed for its potential to support a range of identified uses, including but not limited to park or open space, low-income housing, or child care facilities, in support of adopted Neighborhood Plans.
- Other factors to be considered include highest and best use, unique property attributes, known environmental factors, and potential for consolidation with adjacent public property.
- The potential for selling the property to non-City public entities and to the general public should be evaluated.
- A request from a City or public agency to acquire the property does not preclude a recommendation to transfer it to a private entity for a municipal use or to classify the property as surplus for public sale.

FAS Process

When a department determines that it has no current future need for a property it notifies FAS that the property is excess to its needs. FAS then distributes an *Excess Property Notice* to all City departments and to public agencies that may be interested in the property or have regulatory or policy responsibilities which affect the property. For properties larger than 2,000 sq. ft., notice is also given the public in the following ways:

- Notice is mailed to owners and residents within 1000 feet of the property.
- All Neighborhood District Councils are notified.
- Other community groups that FAS identifies as potentially interested are notified. According to the Council adopted policy, this can include "community and neighborhood

associations, local chambers of commerce, and non-profit housing, environmental and open space preservation groups.”

All City departments and public agencies return a completed *Excess Property Response Form*, even if they have no explicit interest in the property. Any entity interested in acquiring the property must also return an *Excess Property Proposed Use Form*. The Department with jurisdiction over the property analyzes the proposed uses, considers public comments received, and forwards to FAS its recommendation for reuse or disposal from these options:

- Establishment of “interim use” until identified and recommended future “municipal uses” are implemented.
- Transfer for implementation of a municipal use to another City department or to a non-City transferee (either specific or not yet identified).
- Designation as “surplus property” to be transferred to a non-City transferee (either specific or not yet identified).

FAS then prepares a *Preliminary Recommendation Report* which analyzes the factors identified in adopted policy and summarizes input from the public as well as City departments and public agencies. A summary of the *Preliminary Recommendation Report* is circulated to City departments and Public Agencies that expressed an interest in the Excess Property and to members of the public that submitted comments. At this point, signage is put on the property at each street frontage notifying the public of the determination of the property as excess. The sign must be visible from 75 feet. FAS classifies each proposed decision as “simple” or “complex,” using the following factors:

- The potential presence of conflicting proposals.
- The type and amount of consideration proposed or necessary for the property.
- The estimated fair market value of the property.
- Change in zoning requirements required by the proposed action.
- Whether the City will retain any real property rights.
- Community interest in the property.

The interdepartmental Real Estate Oversight Committee (REOC) reviews the recommendation and confirms or upgrades the classification of simple or complex and the decision for further action. Based on the classification, further action follows one of two tracks, with differing levels of additional public input, as outlined in *Attachment A: FAS Disposition Process Flow Chart*. Complex decisions have significant public involvement which must be described in a *Public Involvement Plan* which is sent to interested parties and presented to the appropriate City Council committee for approval.

The REOC reviews a Final Recommendation Report on complex properties following the public involvement process, before any legislation is submitted to Council.

City Light Process

The City Council adopted its current process for City Light excess property (Resolution 31424) after a successful pilot program that tested an alternative disposition procedure in 2012. Like the FAS process, City Light properties are first offered to all other City departments and other public jurisdictions that might be interested. If they are not interested in the properties, the public process begins as outlined below. It is important to note, that due to the State Accountancy Act, City Light properties cannot be used for non-utility City purposes, such as parks, open space, or housing, without compensation to City Light for full market value. Please see section 6 for more information on the legal constraints.

As part of the public process, City Light must:

- Coordinate with the Department of Neighborhoods to obtain its recommendations for community outreach.
- Attend meetings and share information with the Neighborhood District Councils and any neighborhood group requesting a meeting to discuss the properties.
- Hold at least one community information meeting which includes staff members from Parks to discuss park acquisition policies, and the Department of Planning and Development (DPD) to discuss what development could be permitted on the properties.
- Conduct at least one public hearing, with written notification to each person owning a property or living within 700 feet of the properties in question, signage at the properties and two separate notifications in the paper of record.
- If community members propose a City use not requested by a City department, the resident proposal is sent back to the City department for its reconsideration.
- Submit a report to Council which specifies the community outreach undertaken and details reconsiderations that may have been made as a result of the community outreach.

After City Light has completed the above public outreach requirements, it may submit a proposed ordinance to the City Council authorizing the properties sale.

In the case of property currently slated for surplus by City Light in West Seattle, City Light has shown its commitment to working with the community members. One example is the former Delridge substation site. The Delridge Neighborhoods Development Association (DNDA) expressed an interest to City Light in working to acquire the property for wetland restoration and as opportunity for area children and volunteers in this historically underserved neighborhood to learn hands-on science related water to quality and wetlands. The wetland restoration would also improve the water quality and hydrology of Longfellow Creek. DNDA has been seeking grants to help fund the acquisition and City Light has provided support throughout this effort. Recently, DNDA was awarded a grant of \$40,000 from King County Green Grants. This puts DNDA halfway to the appraised price. DNDA has two more granting sources that they will apply to shortly. City Light staff have communicated with interested community members and provided support and assistance with grant and funding information.

2. b. Review of acquisition policies for the Parks and Recreation Department or other City Departments that acquire property for public use or enjoyment.

Parks is the only department that acquires property for this purpose. Some departments, such as the Seattle Department of Transportation (SDOT), may allow public use on their properties and others, such as City Light, may include properties for 'public use or enjoyment' as required mitigation for a larger project, but only Parks acquires for that express purpose.

Parks has limited acquisition funding. The Park District provides only \$2 million a year for acquisition. This is expected to leverage King County Conservation Futures funds, potentially creating up to \$4 million in purchasing power annually. With property costs what they are in Seattle, Parks must focus their resources on the areas of greatest need.

Parks acquisition policies are guided by the Parks Gap Analysis which is informed by the goals of the Comprehensive Plan. This sets out different standards for hub urban villages, residential urban villages and the city as a whole. Please see *Attachment B: Parks Gap Analysis Map* and *Attachment C: Current Open Space Goals* for greater detail. Parks looks for properties that fill a

gap in their coverage. Parks acquisition preferences, which ensure Parks is maximizing the return on their investment, provide additional guidelines:

- Site location within or adjoining the Urban Village.
- Minimum area is approximately 10,000 square feet (about 1/4 acre).
- Frontage on key pedestrian routes.
- Flat terrain or gentle slope to facilitate ADA accessibility and uses such as short-term sitting and picnics, as well as to minimize site development costs.
- Sun orientation and avoidance of shading from existing or future Midrise buildings (i.e., location on SW or SE corner of block preferred).
- Location adjoining existing and/or immediate future uses that will generate appropriate park uses and provide “eyes on the street” to deter inappropriate uses – both for as much of the day as possible.
- Willing sellers.
- “Underutilized” sites without existing uses or structures that contribute significantly to property value or to demolition costs; (i.e., vacant properties, parking lots or properties with “tear-down” buildings).
- Properties with no or minimal relocation costs; i.e., vacant properties or those with fewer tenants.
- Absence of development permit activity or development very early in process.
- Minimal remediation costs for hazardous materials.

These acquisition preferences help Parks focus on properties which will serve the needs of the greater community and the immediate neighbors, have minimal acquisition risk, will be efficient to maintain and have a high likelihood of long-term success. Because of the limited acquisition funds – driven by a need to maintain what Parks has – it is important for Parks to make the most efficient and effective use of those funds. These policies ensure that happens.

3. Review of how or whether current City goals related to Urban Forest Stewardship and the Climate Action Plan are considered when the City acquires or determines to surplus property. Should existing surplus policies be modified to address these goals?

In general, the Urban Forest Stewardship Plan and the Climate Action Plan are not specifically considered in the acquisition or surplus of properties.

Urban Forest Stewardship Plan: The goals of the Urban Forest Stewardship Plan are to promote stewardship for the urban forest; replace and enhance urban forest functions and benefits when trees are lost, and achieve a net increase in the urban forest functions; expand the tree canopy cover to 30 percent by 2037; and increase the health of the urban forest by removing invasive species and improving species and age diversity. The most pressing priorities are compliance with the 2 for 1 Tree Replacement Policy and properly maintaining existing trees on City property and the public right-of-way. Both efforts are currently underfunded. Parks is currently on an 11-year pruning cycle and the SDOT’s pruning cycle is 24 years compared to the 5-7 year industry standard. In 2014 the Urban Forest Interdepartmental Team produced a report in response to Statement of Legislative Intent 31-1-A-1 on the 2 for 1 Tree Replacement Implementation. The report found that of the six departments tasked with implementing this policy, four would need additional funding to comply: Parks would need additional \$300,000 and 1.0 FTE; Seattle Center would require \$130,000; City Light would need \$300,000 and 2.5 FTE, and SDOT would need \$128,000.

Although there may be value to be found in preserving surplus properties that have mature, healthy trees present, a more effective use of limited resources would be to invest in the aforementioned programmatic priorities.

Climate Action Plan: The Climate Action Plan outlines actions City government should take in the near- and long-term to achieve our community climate action goals. There are two areas where there is a nexus between climate action, surplus properties and open space.

1. Carbon sequestration. Urban trees tend to be shorter lived and smaller than those in natural settings reducing their carbon sequestration potential. At the end of their lives, these trees are typically chipped into mulch which emits greenhouse gases as it degrades. Additionally, the cost of property in the city is high, and there are more cost effective opportunities to reduce greenhouse gas emissions than planting trees on isolated locations. The City should seek to get the most for its dollar invested and Climate Action staff do not find this to be the most cost effective means to reduce greenhouse gas emissions, particularly in the timeframe needed to meet our goals.
2. Green stormwater management. The City has existing goals for managing stormwater through the Green Stormwater Initiative. Seattle Public Utilities (SPU) works with City departments to support green stormwater goals. SPU's Drainage and Wastewater Division thoroughly reviews all excess properties, as do all SPU divisions. The green infrastructure team is part of this review process and identifies properties well suited to green stormwater opportunities. Investments are made or not made as they are in any other SPU project and as budget allows.

For the reasons stated above, the IDT does not recommend modifying the existing surplus property process to address Urban Forest Stewardship Plan or Climate Action Plan goals.

4. Review the open space standards of the City's Comprehensive Plan and quantify the need for additional resources to acquire open space to meet the standards.

The current comprehensive plan provides both per capita and distribution requirements for open space. Per capita goals, like the 'breathing room' goal (1 acre of open space per 100 residents) are not attainable. This is due to the nature of the goals (see *Attachment C: Current Open Space Goals* for more detail), the cost and supply of eligible space within the city, and what is considered open space (non-City owned properties do not qualify in the current plan). Quantifying the need for open space is a significant undertaking, but Parks and DPD staff estimate that achieving the 'breathing room' goal would require 1,400 acres of new property at a cost of roughly \$20-30 billion to fulfill current open space goals.

It is important to note that although the shortfall is significant, it is not universal. Many parts of the city have enough open space to meet the goals. The Parks Gap Analysis Map (*Attachment B*) illustrates where there is a shortfall and where there is not. The most significant gaps exist in urban centers and urban villages where space is at the highest premium.

The City is currently developing an update to the Comprehensive Plan. DPD recently released a draft of the new Comprehensive Plan for public comment. The Mayor will send the final version to the City Council in the beginning of 2016. The open space goals for the new Comprehensive Plan recognize the challenges of the previous plan and are designed to set forth ambitious standards that will ensure that all residents have equitable access to open space, and are achievable and maintainable with current and projected funding sources.

Because of the ongoing discussion on impact fees (see section 5 more further information) and the implications of district elections, the draft does not include specific, quantifiable goals, but sets out the City's policies for open space. It is likely that DPD and Parks will develop more specific goals in 2016. The two primary policies of the draft describe how planners envision the challenge of open space and parkland will be addressed in the coming years:

1. Continue to expand the City's park holdings, with special emphasis on serving urban centers and urban villages and areas that have been traditionally under-served.
2. Identify goals for the City's future open space system that are realistic about the quantity of land that could be acquired, consider land managed by other agencies, and that drive improvements in the quality and usability of those spaces.

The full draft Parks and Open Space section is included as *Attachment D*.

5. Identify new and innovative funding, ownership and management strategies for retaining surplus property as open space.

There are a number of innovative opportunities that could be pursued, however, all require some level of prioritization of open space over other government uses (i.e., housing). Some of these concepts have been put to use in other places, some have not. In general, the most successful approach nation-wide has been preservation efforts led by community-based organizations and funded by grants and donation.

Community-Based Organizations

Nationally, the most successful strategies for retaining open space are led by community-based organizations and funded primarily through fundraising and private investment. There are many of these organizations nation-wide. Examples include:

New York Restoration Project (NYRP)

The NYRP is a private conservancy in New York City dedicated to preserving and enhancing open space throughout the city. It owns 52 community gardens, works closely with NYC Parks, and is actively engaged in tree-planting campaigns on public and private lands throughout New York City.

The NYRP began in 1995 as a project to collect garbage out of neglected city parks. In 1999, NYC was selling community gardens to cover a budget shortfall and the group, led by Bette Midler, rallied to purchase the properties from the city and preserve the open space. In 2007, they launched the Million Trees initiative to plant one million trees in the city by 2015 and are on track to meet that goal. Key aspects of NYRP include:

- Strong community organization
- Fills a need NYC could not fulfill due to budget challenges and competing priorities
- Receives most of its revenue from contributions, gifts and grants
- Founded by Bette Midler, her patronage provides a strong foundation for their success.

Chelan-Douglas Land Trust (CDLT)

Based out of Wenatchee, Washington, CDLT conserves open space through land agreements, education, partnerships and planned growth. They make use of conservation easements and fee-ownership to preserve land. Over 15 years, CDLT has grown to an 800 member organization with approximately 3000 acres of land, 2500 acres protected by conservation easements, \$14.3 million in assets and 6 full-time staff. Key aspects:

- It has developed a \$3 million endowment through private grants and fundraising. This endowment provides over \$100,000 annually for operations.
- Significant support from grants from organization like the Trust for Public Lands and active fundraising.

John Muir Land Trust (JMLT)

The JMLT is a private land trust that raises money directly from public agencies, private foundations and corporations, specifically to leverage matching funds from local, state and federal agencies, enabling the preservation of open space throughout Contra Costa County, California. It owns and stewards over 2,000 acres of land on 12 properties with 5 staff. Key aspects:

- Since 1989, has raised over \$20 million dollars from public agencies, private foundations and corporate sponsorship.
- Focuses on property-by-property approach, targeting specific properties and growing strategically.

These community-led organizations and others like them are organized as non-profits and rely heavily on private donations and grants. In some cases they buy land, in others they persuade or pay private owners to attach permanent conservation easements to their property. This technique has been repeated all over the country. However, it does require a very high level of community involvement. The City could potentially offer support to an organization like this by offering it the first opportunity to purchase surplus properties well-suited to open space.

Public Development Authority

The Seattle Greenspace Coalition has recommended the creation of Public Development Authority (PDA) to preserve City-owned excess properties. In this model, the City would transfer excess properties which had the potential for revenue generation (though rents, parking, etc.), in addition to those that would be preserved as open space. The revenue-generating properties would then provide the funding for ongoing maintenance and the purchase of utility-owned properties.

Advantages to this approach:

- Creation of a PDA would create an organization that could manage the acquisition and maintenance of open space, thereby retaining open space without adding administrative load to the City.
- Non-utility City properties could potentially be transferred to a PDA without monetary compensation. This does not violate the prohibition on gifts of public funds because it is a public organization. Utility properties would still need to be purchased at full market value. (Please see section 6 for a discussion on the prohibition on gifts of public funds.)

Disadvantages to this approach:

- High opportunity cost for the City. Properties with revenue generation potential are likely those best suited for redevelopment into other purpose, including affordable housing, or will generate the most value if sold. If they are gifted to a PDA, the City would lose that opportunity to seek redevelopment in service of other municipal interests or will forego revenue that could be dedicated to such interests. Such a transfer thus places open-space needs ahead of other potential municipal interests.
- Holding and maintaining open space is a central function of the Department of Parks and Recreation. Transferring properties to another entity to perform this purpose does not inherently provide any advantages over administration by Parks. Additionally, it

duplicates the administration of open spaces by having two separate agencies performing essentially the same task.

- PDAs have no ability to tax. All revenues would be derived from the business activities of the PDA. A PDA of this nature would require revenues to support staff, maintenance and potentially fund acquisitions of utility or private properties. An analysis would be required to determine if sufficient revenues could be derived from excess properties and if the benefit for preservation exceeded the costs.

Preservation of open space by a PDA has no advantage over preservation of open space by the City. Two distinct characteristics of a PDA are its ability to shield jurisdictions from liability and allow the project to operate without direct day-to-day oversight from the City. In this case, a City department could do this work as effectively as a PDA. The liability protection is not relevant to this application. As it stands, the City must balance the acquisition or retention of surplus property, plus the ongoing maintenance costs against using such funds for other City purposes. The primary purpose of a PDA would be to divorce the choice of purchasing and maintaining open space from the overall prioritizations that the City must make to fund all services.

Delayed Authorization Ordinance

In this scenario, properties that are well suited as open space, and not identified as promising locations for housing, could be identified and made eligible for a process which would provide an opportunity for them to be preserved for that open space. If a community group demonstrates interest and can present a viable plan to raise sufficient funds to purchase City surplus property, they would receive a 12-month window in which to close on the property.

The proposed ordinance submitted to Council authorizing the surplus of the property would identify a date 12 months in the future when the property would be released into the market if the community failed to raise sufficient funds. The property could then be sold on the open market without further authorization from Council.

Advantages to this approach include:

- No significant cost to the City.
- Committed community groups could raise funds to purchase properties without creating a larger community-based organization as described above.
- The City would maintain the flexibility to prioritize other uses for excess property.

Disadvantages include:

- Significant negative race and social justice implications. More affluent neighborhoods and communities would be in a much better position to raise funds and preserve properties in their community.
- Because this type of arrangement would support the purchase of surplus property by community groups with less staying power than a large community-based organization, it raises concerns about the viability of the organization and long-term maintenance.

If the City Council were to pursue this approach as a matter of policy, it should consider the disadvantages and constraints above. The IDT recommends applying the Race and Social Justice toolkit to fully identify the race and social justice implications.

Impact Fees

Impact fees are fees imposed on new development to pay for a portion of the costs of public services associated with that development. This may be an effective way to support the acquisition of more parks and open space in the city. One barrier is the open space goals of the comprehensive plan. Creation of impact fees requires that current deficiencies are identified and that a plan is in place to address the deficiencies. Parks and DPD estimate that the current "land deficit" would require roughly \$20-30 billion to fully address. As such, the development of the new comprehensive plan, *Seattle 2035*, is critical to any future impact fees. Currently, an IDT is analyzing the potential for impact fees for both transportation and parks. The IDT anticipates providing a proposal to Council for their consideration in the summer of 2016.

Valuation of Open Space

The City could implement a cost-benefit analysis of surplus properties which considers the environmental benefit which the properties provide over the long term. One could argue that in this in such an analysis, the value of the ecosystem services provided by open space would increase over time as land becomes scarcer and the environmental impacts more significant. It could be difficult to establish the basis for such value. Additionally, such an analysis would still not address the need for revenue to support the maintenance that has been shown to be a barrier for acquisition system-wide. It could, however, lead to a different prioritization of existing resources.

Open Space Toolkit

The IDT discussed the idea of developing an open space tool kit which could support community groups in organizing to purchase properties. The toolkit could include examples of how community-based organizations have organized, resources to find grant opportunities and things to consider when engaging in the process. This could help community members organize and build organizations to support their goals.

6. Identify any legal barriers to the City funding a program which would assist in the purchase or retention of surplus City property by community members or organizations for use as publically accessible open spaces, natural areas, P-Patches or similar uses.

There are three areas for legal concern when considering surplus City property for use as open space.

Gift of Public Funds

The state constitution bars the "gift of public funds" or the loaning of public money. The only exception is as "necessary support for the poor and infirm." Giving City real property to a non-profit for open space, or loaning money to a non-profit to acquire open space, would not qualify for this exception. Any financial assistance, including grants, gifts, loans or revolving funds, would require the City to receive sufficient benefit or consideration for its investment. State programs which assist in the purchase of open space ensure a public benefit by requiring grant recipients to sign an agreement to keep the land in a protected state and record a "Deed of Right" that gives the State an interest in the property to keep it protected. Any open space funding program, making grants or loans to non-profit organizations must include similar requirements.

The Accountancy Act and Okeson-Lane Court Decisions

The state accountancy act (RCW 43.00.210) provides that a public agency or department must pay the true and full value of any service rendered or property transferred from another agency or department. Additionally, no agency or department can benefit financially by an appropriation or fund made for or from another agency or department. This applies in particular to municipal utilities. State law requires that utility funds must only be used for purposes related to operating and maintaining a utility service and cannot be used for general government purposes. This means that property purchased with utility funds cannot be transferred to another department or put to any other use without the utility receiving true and full value compensation. Preserving open space is a general government purpose, and not a utility purpose or responsibility under state law.

In the *Okeson* case in 2004, King County Superior Court ruled that City Light could not pay for City streetlights because that was a general government purpose. The *Lane* case was similar; the court ruled that SPU could not pay for fire hydrants for the same reason. Regarding open space, The *Okeson* court stated specifically that “services such as coordinating urban forest decisions ... serve primarily a *general government function*.” These cases resulted in the General Fund having to reimburse City Light and SPU over \$30 million dollars.

City Light Authority to Mitigate Environmental Impacts

RCW 35.92.430 authorizes municipal utilities to mitigate the environmental impacts of its operations, using “those greenhouse gases mitigation mechanisms recognized by independent, qualified organizations with proven experience in emissions mitigation activities.” It does not authorize City Light to establish open space, natural areas, tree banks, or similar areas to mitigate environmental impacts of its operations. For City Light to engage in such an activity, there must be parity between the cost of such an activity and the benefit to ratepayers.

Forestry offsets are very difficult to quantify and verify. In fact, City Light has not be able to obtain greenhouse gas/carbon offset credits for the 13,000 acres of fish and wildlife habitat lands it owns in the Skagit watershed.

Recommendation of the IDT

The IDT does not recommend creating an Open Space Opportunity Fund For a number of reasons:

1. Resources: The SLI does not identify any funding source for such a fund. An open space fund would require seed money to establish the fund and ongoing staffing and operations funding. Applying resources for this purpose would preclude the use of those resources for some other purpose, not least of which is the acquisition of open space where legitimate need has been established through the comprehensive plan and the Parks gap analysis.
2. Ownership and long-term maintenance: Because of the legal constraints delineated in section six above, if the City provides funding for community groups to purchase these properties, it would be required to maintain some control over the deed. The IDT had concerns that community groups may not be able to keep up with maintenance or that the community groups themselves might disappear over time – perhaps not in 10 years, but 20 or 30 years down the line and the preservation of the property as open space could be placed at risk. Controls on the deed would limit the ability for community groups to liquidate the properties if they were unable to maintain them. At a minimum this would require additional oversight on the part of the City and possible legal enforcement of deed covenants.

3. Race and Social Justice Equity: The IDT voiced concerns about the race and social equality implications of such a fund where certain areas of the City might have greater abilities to raise matching funds to purchase surplus property for open space than other areas.
4. Conflict with other uses for surplus property: Seattle is in the midst of a significant housing crisis. There is strong desire in the city to increase the capacity of affordable housing. With property costs in the city skyrocketing, surplus City property will be a useful tool for building this capacity.

Opportunity for Process Improvement

There may be an opportunity to improve the equity of the disposition of excess property by fully integrating the Race and Social Justice Initiative (RSJI) Toolbox into all excess property decisions. FAS will review the current process in this context and integrate the RSJI Toolbox if appropriate.

Conclusion

Through the IDT's research on how open space is protected in other areas, it found that one of the most common and successful models is the community-based organization model. Such a group could be well suited to purchase and protect open space. Because these organizations are large and stable, they can take on maintenance for the long-term and reduce concerns which are raised about the staying power of smaller groups. With a city-wide view, a group like this could also potentially address race and social justice concerns by making that a central consideration of acquisitions. The City may want to consider offering technical support to community efforts to establish organizations which have the capacity to fund-raise, receive grants and pursue the preservation of land.

Attachment A: FAS Disposition Process Flow Chart

Attachment B: Parks Gap Analysis Map

Attachment C: Current Open Space Goals

Attachment D: Draft Comprehensive Plan, Parks and Open Spaces