



Parkland Acquisition

BEST PRACTICES GUIDE



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Acknowledgements

The Parkland Acquisition Best Practices Guide was initiated by the Development Finance Review Committee, which is made up of representatives from the province, local government and the development community. It was first published in the Spring of 2006.

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I. Introduction

The Parkland Acquisition Best Practices have been prepared by the Development Finance Review Committee (DFRC). The DFRC is a committee comprised of the Ministry of Community Services, local government and the development industry. The Committee advises the Ministry of Community Services on changes to development finance legislation and best practices.

The best practices were established to provide a consistent policy approach for local government Parkland Acquisition. Municipalities across the province were surveyed regarding parkland acquisition practices. Based on the results of the survey and the DFRC's discussions the Parkland Acquisition Best Practices were prepared.

A second guide entitled *Development Cost Charge Best Practices Guide* provides information for local governments regarding establishing and administering Development Cost Charges (DCCs). A third guide entitled the *Development Finance Choices Guide* provides information on other financing tools including considerations for choosing a particular tool, and provides advice on the design and implementation of the various tools. These documents can be found at www.cserv.gov.bc.ca/lgd on the Internet.

AMENDMENTS

The *Parkland Acquisition Best Practices Guide* is the responsibility of the Ministry of Community Services. Enquiries regarding this material should be directed to:

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DISCLAIMER

This document contains recommendations for a consistent approach to the preparation and use of Parkland Acquisition and Parkland DCCs by local government in British Columbia. It is not intended to contain legal advice. While every care has been taken in the preparation of this document, none of the numerous contributors, nor the Ministry of Community Services, can accept any liability for any loss or damage which may be suffered by any person or organization as a result of its use. Users are encouraged to seek legal advice regarding the drafting and practical application of parkland acquisition policies and bylaws.

2. Principles

In developing the recommended best practices, the Ministry and DFRC were mindful of the principles outlined in the *Development Cost Charges Best Practices Guide*, namely integration, benefiter pay, fairness, equity, accountability, certainty and an emphasis on consultation.

The principles of fairness and equity were particularly important in guiding the development of the best practices. These principles speak to the need for consistency in how parkland acquisition tools are applied within a municipality, for openness and transparency, for predictability in actions, and for mutual respect between players in the development process. These principles are fundamental to the development of good relationships involving municipalities, land owners and developers. Good relationships, in turn, are fundamental preconditions for good development—the kind of development that benefits communities and helps them to achieve their economic, social and environmental goals.

3. Recommended Best Practices

A total of six recommended best practices are outlined in this section. The text used to introduce and describe each practice is presented as it would appear (subject to revisions by the Sub-Committee or full Committee) in the Ministry's appropriate advisory document (i.e., *DCC Best Practices Guide*, *Development Finance Choices Guide*, etc.).

3.1 Avoiding Double-Charging

In addressing their communities' needs for parkland, many municipalities collect parkland DCCs and make use of the 5% dedication/cash-in-lieu provisions of the *Local Government Act*. These tools may be applied separately, or used in combination with one another. In keeping with the principles of fairness and equity, municipalities that choose to combine DCCs with 5%/cash-in-lieu must be careful to avoid charging developers and owners twice for the same acquisitions.

The potential for double-charging increases if municipalities do not establish guidelines to govern their use of the tools. A municipality that does not, for example, specifically target each tool to different types of parkland may inadvertently require developers of subdivisions to contribute to the community's need for one type of park (i.e., neighbourhood parks) by providing 5% of the land in the subdivision, and by paying a parkland DCC.

Some municipalities avoid double-charging by applying either the 5% dedication/cash-in-lieu provisions, or parkland DCCs. Many municipalities, however, prefer having both tools at their disposal. For these communities, it is possible to use the parkland acquisition tools together and protect against double-charging. Consider the following approaches:

- One approach, followed by the City of Surrey, is to treat parkland DCCs as a secondary tool to be used only to acquire lands that cannot be obtained through the 5% dedication/cash-in-lieu provisions. The use of this approach requires a municipality to identify its parkland needs and express them as a standard (i.e., 10.5 acres per 1,000 people). When applied to future growth estimates, the standard identifies how much new parkland the municipality wishes to acquire. The municipality can calculate how much of its target it can likely acquire through the 5% dedication/cash-in-lieu provisions—the remaining amount of land becomes the basis for the DCC calculations.

- Another approach is to use the different tools for different types of parkland. Under this approach, municipalities identify how much of each type of park they need. Smaller park types (i.e., tot lots, neighbourhood parks) that provide a limited, local benefit are acquired using the 5% dedication/cash-in-lieu provisions. Larger park types (i.e., city parks, district parks) that attract and benefit broad areas are acquired using DCCs. Monies and lands collected using the 5%/cash-in-lieu provisions are used only for the park types that are explicitly tied to that tool. Similarly, revenues collected through DCCs are used only to acquire lands that fall into the park types specifically linked to DCCs.

RECOMMENDED BEST PRACTICE

A municipality that chooses to acquire parkland using the 5% dedication/cash-in-lieu provisions and parkland DCCs should demonstrate in its reference materials, including its DCC Background Report, how it will avoid double-charging developers.

3.2 Land vs. Cash-in-lieu

Land use planning is an important process that establishes appropriate land uses and densities for neighbourhoods, typically through consultation with affected land owners and the general public. As part of this process, parkland needs are considered, and locations for specific parks are identified. The resulting land use plans provide the basis for park acquisition decisions, and provide certainty to both land owners and the public regarding the park space that will be required by, and made available to, the community.

Where development applications are consistent with the land use plan, land owners should expect to dedicate or otherwise provide parkland at the location indicated in the plan.

If no park is illustrated on or near the land owner's parcel, identified in the plan's policies or otherwise referenced in the plan, it is reasonable for land owners to expect that cash-in-lieu will be accepted by the municipality instead of land.

In situations where the owner is expected to dedicate land, the parcels required for dedication should reflect approximately 5% of the land value of the entire subdivision. If it is obvious the land represents considerably more than 5% of the land value, the municipality could consider either reducing the size of the park, or purchasing a portion of the land from the owner.

RECOMMENDED BEST PRACTICE

In general, land owners should expect to provide or dedicate land in locations where a park has been identified in a neighbourhood plan, or referenced in other land use planning documents through specific policies or illustrations on a land use map. Where future park locations are not identified or referenced in planning documents, and development applications are consistent with land use plans, it is reasonable for owners to expect to contribute cash-in-lieu of land.

3.3 Basis for the 5% Calculation

To meet its parkland needs, a municipality has the authority to require the dedication of up to 5% of the total land area being proposed for subdivision. Calculating the amount of land eligible for dedication would seem to be a straightforward issue. In some situations, however, making this determination is not so simple. Most communities currently base their 5% land and cash-in-lieu requirements on the gross area of subdivision applications. While this calculation represents the simplest course of action, it may not be the best approach. In some cases, the gross area may include natural features, such as environmentally sensitive areas, that are protected under separate regulations, or are otherwise undevelopable. Although some of these areas can support uses such as walking trails, at least through a portion of the property, some sites are too environmentally sensitive to accommodate any public access. Because these sensitive sites are neither increasing the demand for parkland, nor fulfilling any of the municipality's active or passive park needs, the land should be removed from the equation that determines how much parkland is required within a subdivision. In other words, any environmentally sensitive areas not intended for public access should be excluded from the total subdivision area for purposes of calculating the required parkland contribution (5%).

Public access is the decisive factor in determining whether municipalities consider an environmentally sensitive area to represent a passive park amenity. If public use and appreciation are encouraged through the placement of trails, boardwalks and viewpoints, the area effectively represents a passive park. In such a case, it is fair to include all or part of the environmentally sensitive area in the total land base on which the 5% parkland requirement is calculated. Furthermore, when the municipality determines the required acreage of parkland from the subdivision, the passive parkland located in the environmentally sensitive area should count toward the developer's contribution.

As further clarification, consider the case in which a 100-acre subdivision encompasses a 30-acre wetland. Under separate regulations, the 30-acre wetland is required to be protected from development. Two potential scenarios are detailed below:

– **SCENARIO 1**

The 5% parkland requirement is calculated on the gross area of the subdivision (100 acres), resulting in a request for a 5-acre park, in addition to protection of the 30-acre wetland. No public access is intended for the wetland.

This scenario is contrary to the intention of this best practice. Because the wetland is not recognized as parkland by the municipality (due to the lack of public access), it should be excluded from the equation that determines the developer's parkland requirement. The required parkland dedication should instead be calculated on the 70-acre developable area, resulting in a 3.5-acre park, in addition to the protection, under separate regulations, of the wetland.

– **SCENARIO 2**

The 5% parkland requirement is calculated on the gross area of the subdivision, resulting in a request for a 5-acre park, in addition to protection of the 30-acre wetland. The municipality is planning on providing access trails on the perimeter of the wetland; however, it does not accept any portion of the 30-acre wetland as part of the subdivision's parkland requirement, and requires that the 5-acre park represent land appropriate for active park development.

This scenario is also contrary to the intention of this best practice. Because public access is being facilitated to the wetland, the wetland area becomes a passive park resource to residents, and should be recognized as contributing toward the subdivision's 5% parkland requirement. In this scenario, a total of 5 acres is still required for parkland dedication (based on the fact that no land is excluded from the total subdivision area). The wetland area, however, should be counted as part, if not all, of the required contribution.

The intent of this best practice is *not* to provide a single definition of what represents parkland, or to prescribe specifically what represents developable land, but rather to promote consistency in the calculation of the amount of land that can reasonably be required for parkland dedication, and the area accepted as the resulting 5% dedication. The best practice also reflects the view that environmentally sensitive or protected natural areas constitute valuable parkland resources when the public has the ability to access and enjoy them.

RECOMMENDED BEST PRACTICE

When municipalities calculate a subdivision's required parkland contribution (up to 5% of the proposed subdivision area), environmentally sensitive areas not intended for public access should be excluded from the equation. If trails or other public features are planned for environmentally sensitive lands, these areas effectively represent passive parks; at least a portion should therefore be included in the total subdivision area for purposes of calculating the required 5% park dedication. Publicly accessed environmental areas should also be accepted by municipalities toward the required 5% dedication.

The recognition of publicly accessed environmentally sensitive land as a valid parkland contribution should also apply to situations where developers are providing cash-in-lieu of parkland dedication. Even though a municipality may not be requesting the dedication of any land for park purposes (i.e., is accepting cash-in-lieu), where a subdivision contains environmentally sensitive land that is protected under separate regulations, and at least a portion of the land is planned for public access, the passive parkland contribution of the site should be considered prior to the calculation of the developer's cash-in-lieu payment.

3.4 Selecting Parkland Within a Subdivision

The *Local Government Act* permits a municipality to require a developer to dedicate up to 5% of the total land area of a subdivision for parkland purposes. In setting out this provision, the *Act* does not explicitly constrain or guide the municipality in determining which lands to select. For instance, the *Act* does not limit the municipality from requesting choice parcels such as waterfront properties or view lots. Clearly, however, the location of the parkland requested may have implications for the marketability, profitability and even viability of the proposed development.

The legislation does provide direction to municipalities in calculating the amount of cash-in-lieu of parkland to require, in the event that the cash-in-lieu option is chosen. Under the *Act*, municipalities that choose the cash-in-lieu option must calculate the payment required based on the value of land in the entire subdivision. Given that the cash-in-lieu amount is intended to reflect the cash equivalent of the 5% land dedication, it is reasonable to infer that the 5% *area* dedication should similarly represent 5% of the overall *value* of the subdivision. This line of reasoning suggests that in cases where the municipality wishes to acquire portions of the subdivision (i.e., waterfront parcels) that, taken together,

exceed 5% of the subdivision's overall land value, the municipality may wish to obtain less than the full 5% of the subdivision area, or pay for a portion of the land it wishes to acquire.

It should be clarified that, under the *Local Government Act*, municipalities do have the authority to require up to 5% of a subdivision's total area, regardless of the value of the dedicated parcels. The intent of this best practice is not to limit a municipality's authority, but rather to encourage municipalities to consider the potential impacts of their parcel selections on developments.

Finally, the consideration of land value in the acquisition of parkland may appear to suggest that an appraisal would be required to determine land values in every instance. In practice, appraisals would likely only be used in the event of a perceived unfairness, or in cases where obvious discrepancies in value are expected to be an issue. For example, an appraisal may be warranted in a case where the municipality has requested waterfront property in a subdivision that has very little waterfront, or the municipality wants to acquire a spectacular viewpoint in a subdivision where most views are obstructed.

RECOMMENDED BEST PRACTICE

When 5% parkland dedication is required, the value of the lands being acquired by the municipality should represent, in approximate terms, 5% of the value of the entire subdivision.

3.5 Determining the Cash-in-Lieu Value

The *Local Government Act* permits cash-in-lieu amounts to be determined based on the average market value of all the land in the proposed subdivision. The *Act* specifies that the calculation of the market value should assume that the land is zoned to permit the proposed use, but that any works and services necessary to develop the subdivision have not been installed. Market values are typically established through appraisals.

A survey of current practices in municipalities indicates that some communities forego the use of appraisals and choose to negotiate the value of the land directly with developers. Assessed values are often used in these cases as a basis for negotiation. Given that assessed values do not typically take into account the impact of the proposed rezoning, it may be more appropriate for the municipality to commission an

appraisal by a qualified professional. In some municipalities, appraisals may be done in-house using appraisers on staff. In other communities, independent appraisers may need to be contracted.

A developer that does not agree with the resulting appraised value is always entitled to commission its own appraisal. The commissioning of a separate appraisal does, however, introduce the potential for different appraised values, and the need for a process to resolve differences. Some municipalities use the following process:

- if the developer’s appraisal falls within 10% of the municipality’s appraisal, the two parties typically agree simply to split the difference;
- if the values vary by more than 10%, the two parties agree to obtain and cost-share a third appraisal; and
- the third appraisal can, by agreement, be binding on the parties; alternatively, the parties can agree to take the average of the three appraisals.

Having a policy to resolve differences in opinion promotes equity, fairness and consistency in the cash-in-lieu valuation process.

RECOMMENDED BEST PRACTICE

Where cash-in-lieu is required, municipalities should encourage valuation of the land through an appraisal completed by a qualified professional. To promote equity, fairness and consistency in the cash-in-lieu valuation process, municipalities should consider developing a policy to resolve differences of opinion on value that arise between land owners and the municipality.

3.6 Park Frontage Costs

Municipalities typically plan for parkland in advance of an area’s development. Municipalities can directly purchase future parkland prior to the development of the area, or wait and require developers to dedicate the land during the subdivision process. When land is purchased directly, and road access does not already exist, the municipality may allocate a portion of its newly-bought parcel for use as an access road, and pay some of the road and servicing costs along the park frontage. Conversely, when a developer dedicates land for park purposes, the parcels are typically designed with road access and services provided to the property line by the developer.

This best practice is intended to address inconsistencies between land purchased directly by the municipality (using, for example, monies collected through cash-in-lieu provisions), and parkland dedicated by a developer within a subdivision. When a park is being developed on dedicated land within a subdivision, the municipality should consider sharing the cost of servicing the frontage of the park – that is, the road and the associated services – with the developer.

Direct cost-sharing agreements between the municipality and the developer could be used to facilitate cost-sharing. Alternatively, the portion of the road and associated services fronting the park could be included in the municipality's DCC bylaw, using the rationale that the need for the park, and the road fronting the park, are at least in part attributable to new growth. Under the DCC approach, the developer could build the road during the development of the subdivision and receive a DCC credit. In these instances, roads would not remain unfinished while awaiting contributions from the municipality.

RECOMMENDED BEST PRACTICE

Where a significant road dedication or park frontage is required to develop a park on dedicated land, municipalities should consider sharing the costs of servicing the frontage of a park, either through cost-sharing agreements or DCCs.

4. Other Considerations Regarding Parkland Acquisition

4.1 Parkland Needs

Prior to determining which finance tools to use in acquiring parkland, many municipalities evaluate existing inventories, and their respective community's overall need for park space. Often this need is expressed as a ratio of parkland area per population (i.e. acres or hectares per 1,000 people). In evaluating this need, municipalities take into account not only municipal parks, but parkland provided through regional parks and the local school district. Often these standards reflect only active parks, although some include passive open space in their standards. The development and maintenance of these standards provides a sound basis for policy decisions regarding parkland acquisition. It also promotes an open, fair and consistent approach in dealing with parkland acquisition.

The accompanying list identifies some of the policy considerations involved in assessing parkland needs. The text box below the list provides examples of parkland standards in a sample of municipalities around BC, the types of parks included within the standards, and how the standards guide acquisition practices.

Sample standards (and accompanying explanation) to be inserted

COMMUNITY A

- 10.5 acres/1,000
- Active municipal parks included (no regional or passive parks, no school sites)
- Used as basis for DCC contributions (less what is estimated through 5%)

COMMUNITY B

- 12 acres/1,000
- Municipal parks, schools and regional active parks (no passive parks)
- Used as guideline for parkland acquisition

POLICY CONSIDERATIONS:

- existing parkland inventory, including municipal and regional parks, as well as park facilities provided through the school board;
- densities and mix of housing;
- natural features and open space (in addition to parks);
- local preferences for parkland;
- impacts on taxes;
- impacts on sustainability; and
- impacts on developable land, and associated growth targets.

4.2 Non-Residential Parkland Requirements

The tools of 5% parkland dedication and/or cash-in-lieu during subdivision, as well as parkland DCCs are available as means to acquire parkland from industrial and commercial users and developers. If a municipality chooses to apply these tools to industrial and/or commercial developments, the same best practices and guidelines regarding the use of the tools for residential developments apply.

The decision to apply the tool of requiring up to 5% dedication/cash-in-lieu and parkland DCCs to non-residential uses is a policy decision for each municipal council to make. Some questions that councils often consider when making this decision include:

- Are employees using or enjoying parks?
- Are parks provided in close proximity to non-residential uses?
- Do parks play a role in attracting businesses to the area?
- Do parks attract pedestrians or customers to commercial areas?
- Do parks play a role in attracting employees to local businesses?
- What is the existing tax differential between commercial/industrial and residential uses? Do the taxes suggest that non-residential uses are already paying for services such as parkland?
- Are these uses creating a need for more parkland?
- Is the development of these uses creating a need for additional open space as visual relief or amenity for balance, or to improve water and air quality?