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**PARK IMPACT FEES IN CLARK COUNTY
A DEVELOPER'S PERSPECTIVE**

by

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EXECUTIVE SUMMARY

Aho Construction I, Inc. is a long-time regional builder/developer of single family residences, operating in Washington jurisdictions from Clark County to Spokane. Aho believes that the current administration of the Clark County Park Impact Fee program is unfair to the development community in that it fails to provide adequate consideration for developer dedications of park, open space and other recreational facilities and improvements. This paper analyzes the Clark County Park Impact Fee (PIF) Program from the Developer's perspective. It compares Clark County's parks program and PIF structure with other Washington jurisdictions. Finally, it provides recommendations for changes to the current PIF program which should result in both an increase in the inventory of Clark County parks and trails, as well as provide greater County flexibility and developer equity in the dedication of these lands and facilities. As a case study, this paper looks at the County's land dedication and PIF requirements imposed on Aho's multi-phase residential project in Clark County commonly referred to as the "Hidden Crest Planned Unit Development".

INTRODUCTION

This document analyzes the relationship between Clark County development requirements and restrictions for parks, open space, and recreation facilities, and the Clark County Parks Plan/CFP, from the perspective of the residential land developer. The purpose is to provide guidance and suggestions for improving the fairness and efficiency of the PIF program, including land dedication and improvement requirements, inventory analysis and developer incentives. These recommendations are based on the decades of experience of Aho Construction in the residential building industry in Washington, as well as a survey of methodologies which other Washington jurisdictions use to develop and fund their respective parks, recreation and open space programs.



WASHINGTON STATE PIF REGULATORY FRAMEWORK

Washington law provides for the dedication of land and associated facilities for parks, recreational facilities and open space, by a developer for public use through the subdivision platting process. RCW 58.17.110. Statutory authorization for Clark County's PIF program is found at RCW 82.02.050(1) and (2):

(1) It is the intent of the legislature:

- (a) To ensure that adequate facilities are available to serve new growth and development;
- (b) To promote orderly growth and development by establishing standards by which counties, cities, and towns may require, by ordinance, that new growth and development pay a proportionate share of the cost of new facilities needed to serve new growth and development; and
- (c) **To ensure that impact fees are imposed through established procedures and criteria so that specific developments do not pay arbitrary fees or duplicative fees for the same impact.**

(2) Counties, cities, and towns that are required or choose to plan under RCW **36.70A.040** are authorized to impose impact fees on development activity as part of the financing for public facilities, provided that **the financing for system improvements to serve new development must provide for a balance between impact fees and other sources of public funds and cannot rely solely on impact fees....**[Emphasis added]

State law goes on to identify the uses to which impact fees may be put at RCW 82.02.050(4) and (5):

(4) The impact fees:

- (a) Shall only be imposed for system improvements that are reasonably related to the new development;
- (b) Shall not exceed a proportionate share of the costs of system improvements that are reasonably related to the new development; and
- (c) Shall be used for system improvements that will reasonably benefit the new development.

(5)(a) Impact fees may be collected and spent only for the public facilities defined in RCW 82.02.090 which are addressed by a capital facilities plan element of a comprehensive land use plan adopted pursuant to the provisions of RCW 36.70A.070 or the provisions for comprehensive plan adoption contained in chapter 36.70, 35.63, or 35A.63 RCW

Impact fees themselves are defined at RCW 82.02.090(3) while the public facilities they pay for are defined at RCW 82.02.090(7):

(3) "Impact fee" means a payment of money imposed upon development as a condition of development approval to pay for public facilities needed to serve new growth and development, and that is reasonably related to the new development that creates additional demand and need for public facilities, that is a proportionate share of the cost of the public facilities, and that is used for facilities that reasonably benefit the new development. "Impact fee" does not include a reasonable permit or application fee.

(7) "Public facilities" means the following capital facilities owned or operated by government entities: (a) Public streets and roads; **(b) publicly owned parks, open space, and recreation facilities**; (c) school facilities; and (d) fire protection facilities. [Emphasis added]

The Washington State Legislature has explicitly identified parks, recreation and open space facilities, together with highways and stormwater facilities, as general public benefits to all county residents at RCW 36.89.020:

The legislature finds that the open spaces, park, recreation and community facilities, public health and safety facilities, stormwater control facilities and highways within any county of this state, whether located partly or wholly within or without the cities and towns of such county are of general benefit to all of the residents of such county. The open spaces, park, recreation and community facilities within such county provide public recreation, aesthetic, conservation and educational opportunities and other services and benefits accessible to all of the residents of such county. The public health and safety facilities within such county provide protection to life and property throughout the county, are functionally inter-related and affect the health, safety and welfare of all the residents of such county. The stormwater control facilities within such county provide protection from stormwater damage for life and property throughout the county, generally require planning and development over the entire drainage basins, and affect the prosperity, interests and welfare of all the residents of such county. The highways within such county, whether under the general control of the county or the state or within the limits of any incorporated city or town, provide an inter-connected system for the convenient and efficient movement of people and goods within such county. The use of general county funds for the purpose of acquisition, development, construction, or improvement of open space, park, recreation and community facilities, public health and safety facilities, stormwater control facilities, or highways or to participate with any governmental agency to perform such purposes within such county pursuant to this chapter is hereby declared to be a strictly county purpose.

In defining the scope of the County's authority over parks and open space, RCW 36.89.010 states in part:

The words "open space, park, recreation and community facilities" as used in this chapter mean any public facility, improvement, development, property or right or

interest therein for public park, recreational, green belt, arboretum, multi-purpose community center (as defined in RCW 35.59.010), museum, zoo, aquarium, auditorium, exhibition, athletic, historic, scenic, viewpoint, aesthetic, ornamental or natural resource preservation purposes.

Taken together, this statutory framework provides vast general authority and wide discretion for Clark County to tailor its Parks Plan and CFP to meet the community's needs.

CLARK COUNTY PIF REGULATORY FRAMEWORK

Pursuant to the authority granted by the state, Clark County has adopted code section 40.620.020 which contains its PIF formula, and sections 40.630.050 and .060, which contain provisions for PIF exemptions and credits. The County published its current Parks, Recreation and Open Space Plan, including the CFP, on September 15, 2015. A supplemental Park Impact Fee Technical Document was issued in April, 2016. These documents make up the current regulatory framework around which Clark County sets its PIF rates.

Clark County PIF's are calculated according to the formula found at CCC 40.620.020:

40.620.020 Park Impact Fee Component

The impact fee component for parks, open space and recreational facilities shall be calculated using the following formula as further defined in the Park Impact Fee Technical Document adopted by the Board in the impact fee revision process pursuant to Section 40.630.010:

PIF = (Acquisition Cost + Development Cost) - Cost Adjustment Factor

$$PIF = \left(\left(\frac{Ca \times Ia \times Sa}{P} + \frac{Cd \times Id \times Sd}{P} \right) \times U \right) - A$$

A. "PIF" means the park, open space and recreational facility component of the total development impact fee.

B. 1. "Ca" means the average cost per acre for land appraisal, acquisition, associated due diligence fees and expenses, closing and Level 1 Development for each service area or overlay area as described in the Vancouver-Clark Parks and Recreation Comprehensive Parks, Recreation and Open Space Plan for neighborhood parks, community parks and urban open space, and adopted by the Board in the impact fee revision process pursuant to Section 40.630.010.

2. "Cd" means the average cost per acre for site development. Development costs shall be calculated assuming development standards described in the Vancouver-Clark Parks and Recreation Comprehensive Parks, Recreation and Open Space Plan for neighborhood and community parks, and adopted by the Board in the impact fee revision process pursuant to Section 40.630.010.

C. 1. "Ia" means the percentage annual inflation/deflation adjustment index applicable to the acquisition component, as outlined in the Park Impact Fee Program Technical Document and annually determined by the Board in the impact fee revision process pursuant to Section 40.630.010.

2. "Id" means the percentage annual inflation/deflation adjustment index applicable to the development component as outlined in the Park Impact Fee Program Technical Document and annually determined by the Board in the impact fee revision process pursuant to Section 40.630.010.

D. 1. "Sa" means the parks acquisition standard in acres per thousand residents for neighborhood parks, community parks and urban open space as established in the Vancouver-Clark Parks and Recreation Comprehensive Parks, Recreation and Open Space Plan.

2. "Sd" means the parks development standard in acres per thousand residents for neighborhood and community parks as established in the Vancouver-Clark Parks and Recreation Comprehensive Parks, Recreation and Open Space Plan.

E. "P" means one thousand (1,000).

F. "U" means the average number of occupants per single-family/duplex dwelling unit or per other multifamily dwelling unit based on the most current applicable statistical census data (U.S. Census Bureau or Washington State Office of Financial Management census data for persons per dwelling unit) and as adopted by the Board in the impact fee revision process pursuant to Section 40.630.010.

G. "A" means an adjustment to the cost of park facilities for past or future payments made or reasonably anticipated to be made by new development to pay for park system improvements in the form of user fees, debt service payments, or other payments earmarked for or pro-ratable to park system improvements. Such adjustment for park impacts is determined to be as set forth below:

Unit Type	Adjustment
Single-Family	\$228.50
Multifamily	\$166.98

H. The Director of the Department of Community Development shall maintain a schedule of current park impact fee rates.

I. At least one copy of the Park Impact Fee Program Technical Document adopted by the Board, and the current park impact fee schedule as calculated thereunder, shall be filed in the Office of the Director of the Department of Community Development for use and examination by the public.

J. After the effective date of the ordinance codified in this section, park impact fees collected for the costs of acquisition and costs of development required by the ordinance codified in this section shall be deposited into a single fund for expenditure on acquisition

and/or development of park infrastructure consistent and in compliance with RCW 82.02.050. Funds collected prior to the date of the ordinance codified in this section shall continue to be expended on acquisition or construction consistent with the fund in which the money was placed at the time of collection.

CCC 40.630.060 provide a system for credits against the value of developer land dedications and public facility improvements:

40.630.060 Impact Fee Credits

A. The developer shall be entitled to a credit against the applicable impact fee component for dedication of land for, and reasonable documented construction acceptable to the county engineer associated with the improvement to, or new construction of, any system improvements provided by the developer (or the developer's predecessor in interest), to facilities that are identified in the capital facilities plan in place at the time impact fees are calculated or recalculated as set forth in Section 40.610.040 and Section 40.630.030. Such dedication or construction must be required by the county as a condition of approval for the immediate development proposal. Credits shall be issued at the time impact fees are imposed as set forth in Section 40.610.040. [Emphasis added.]

B. For the traffic component of the impact fee, credits shall be based upon estimated costs set forth in the capital facilities plan. Credit shall be calculated by multiplying the proportion of the total system improvement being provided by the developer times the estimated cost of such system improvement in the capital facilities plan; provided, that the County Engineer may adjust the credit to account for extraordinary cut, fill or structural costs which are reflected in the plan estimate.

C. Additionally, the developer may be provided a credit against the impact fee in an amount up to ten percent (10%) of the traffic component thereof for the value of mass transit facilities that are approved by the county and made a condition of approval for the development.

D. Where impact fees are owing prior to completion of a system improvement undertaken by the developer, the impact fee shall be reduced by eighty-five percent (85%) of the allowable credit up to the amount of the impact fee for the subject development when the system improvements have been assured by a bond or other guarantee to be completed no later than the date of occupancy for commercial/industrial/multifamily structures or the final building inspection for single-family and other uses. Upon completion of the required system improvement, the remainder of the credits will be issued.

E. Credits recognized by the county may be utilized in lieu of cash payment of impact fees for the subject development and/or any other development within the same service area; provided, that PIF credits shall

first be applied to offset impact fees for the subject development. [Emphasis added.]

F. In the Highway 99 Overlay district, the developer may be eligible for credits or trip reductions as set forth in the Traffic Impact Fee Technical Document.

It is important to note that the dedications referenced in this code section must be for public use, but do not specifically require dedication to Clark County. Presumably a dedication to the HOA with a public access easement would meet the same standard for PIF credits under section 40.630.060(A).

All exemptions to Clark County impact fees are found at CCC 40.630.050, however, there are no specific exemptions for PIF's.

ANALYSIS OF CLARK COUNTY FRAMEWORK

Clark County clearly has the provisions built into its regulatory framework to provide PIF credit incentives to residential developers for dedications of land for both current and future park and recreational facilities. Unfortunately, the County has chosen to finance virtually all of its park acquisitions for new development through the imposition of park impact fees while offering very little in the way of development incentives whereby land can be dedicated and/or improved in exchange for PIF credits. This in higher costs to the County by having to compete on the open market for available, suitable land. It also results in higher costs of improvements where a private developer can generally be more cost-competitive and the County through its public works or private bid processes.

The primary question from Aho's perspective is: What can the County legally require in terms of parks, recreational facilities and open space land and improvement dedications, and what duty does the County have to credit the value of those dedications against the PIF's imposed pursuant to its formula?

It should first be noted that fully constructed neighborhood and community parks¹ are not required for ANY land dedication under Clark County code. To the contrary, CCC 40.540.040 (Subdivisions) states in part:

The review authority shall approve a preliminary plat if he or she finds the applicant has sustained the burden of proving that the application complies with the following approval criteria or that the application can comply with those criteria by complying with conditions of approval:

1. The preliminary plat is in the public interest;
2. The following facilities are adequate to serve the proposed subdivision before or concurrent with development of the preliminary plat:

¹ "Parks" and their characteristics are generally defined at CCC 40.260.157

- a. Public and private streets and roads,
- b. **Open spaces, parks and recreation,**
- c. Drainage,
- d. Access to mass transit where there is or will be such transit,
- e. Potable water supplies,
- f. Sanitary waste collection and treatment,
- g. Schools and educational services (if residential),
- h. Pedestrian facilities (if residential), particularly for students who only walk to and from school, and
- i. Fire prevention services;

[Emphasis added]

As CC 40.630.060 above states in part, "The developer shall be entitled to a credit against the applicable impact fee component for dedication of land for... any system improvements provided by the developer (or the developer's predecessor in interest), to facilities that are identified in the capital facilities plan in place at the time impact fees are calculated or recalculated as set forth in Section 40.610.040 and Section 40.630.030."

In short, under the County's code regime, a developer dedicating open space as a condition of project approval, should be entitled to a PIF credit in the amount of the County's acquisition costs as stated in the Clark County Parks, Recreation and Open Space Plan. This is not, however, how the County operates in practice.

As the case study below indicates, Clark County, via its Parks Department, is "double-dipping" in the way it approaches open space dedications and PIF's. The County Parks Department currently will only authorize impact fee credits for fully constructed neighborhood and community parks. There is currently no provision in County policy or practice which accepts undeveloped or partially developed open space, park or recreation facilities. This is a direct violation of CCC 40.630.060 resulting in what likely amounts to an unconstitutional taking. Clark County's failure to work more closely with the development community has resulted not only in a large deficit in its target number of parks for the population, it has also resulted in the highest park impact fees of any county in the State of Washington. The following case study of the Hidden Crest Planned Unit Development illustrates the concern.

CASE STUDY

In order to demonstrate some of the areas of concern for the Clark County development community related to PIF's, this paper will analyze a current Aho project for which both impact fees and open space dedications have been required as conditions of approval.

Aho is currently in construction on a 236-lot, multi-phase project in Clark County referred to as the Hidden Crest Planned Unit Development (PUD). Aho acquired the project and engineered it to conform with current and vested state and local code provisions. The project was approved by Final Order of the Hearings Examiner on March 1, 2016.

Finding 3 of the Hearing Examiner's approval of the project states:

CCC 40.520.080.c.3 requires all PUD's to provide a minimum of 12% open space based on the net site area for active or passive recreational purposes. The applicant proposes a total of 4.46 acres (14%) for both passive and active recreational areas. The open spaces will contain play areas, picnic tables, seating areas and walking trails...

Common open space shall be permanently maintained by and conveyed to a homeowner association or dedicated to a public agency...

Specifically, the Hearings Examiner identified the acquisition component of the PIF to be imposed as \$1800 per single family residence. Hearings Examiner Final Order, page 26.

Upon the Hearings Examiner's decision, Aho began negotiations with the Clark County Parks Department regarding the dedication of the 4.46 acres. On July, 26, 2016, Bill Bjerke, Clark County Parks Manager, set the following to Aho:

I understand that our planning staff contacted you this morning to notify you with (sic) the county determined on the property. By my understanding, the property must be conveyed to the HOA per PUD requirements, and if the HOA wishes to do so, they can then convey the property to the county.

As the county parks manager, I have a responsibility to be frugal with limited public funds, and if there is a chance that the HOA may decide to convey the property to the county, possibly at no cost, in effort to reduce their maintenance expenses and liability, I'll need to explore that avenue as a first step. I apologize for the unpleasant news and hope that we can pursue other opportunities together in the future. Please let me know if you have any further questions and I'll do my best to address them.

Mr. Bjerke's statement above not only distorts the actual Finding 3 of the Hearings Examiner's Final Order which leaves the issue of public dedication open, but directly violates the dedication provisions of CCC 40.630.060(A) entitling a developer to PIF credit "for dedication of land...identified in the capital facilities plan in place at the time impact fees are calculated". In an attempt to be "frugal", Mr. Bjerke rejected the public dedication of the Hidden Crest recreational facilities in favor of PIF's and the hope of a "free" dedication by the homeowner association at a later date.

Under the County's own Parks, Open Space and Recreational Plan, there is no "level of service" standard for natural or open space facilities although their value to the County is referenced throughout the Plan. Natural areas and open space are conceptually grouped together. Under the Parks Department's rationale, neighborhood parks and open space are separate dedications and the County's PIF program only relates to Neighborhood and Community Parks. This makes it virtually impossible, from the perspective of the Parks

Capital Facilities Plan, to give credit PIF credits for undeveloped or partially developed open space. Again, this is a direct contradiction to CCC 40.630.060(A) which provided for impact fee credits for all land dedications.

To date, Aho has set aside approximately 4.5 acres for open space, trails and recreational facilities in Hidden Crest. Aho has made substantial improvements to the areas including many features identified in CCC 40.260.157. It is Aho's position that it is entitled to PIF credits for these dedications and improvements. Using the County's Neighborhood Park Standards as an example, there should be approximately 2 acres of developed park for every 1000 residents. Per the April 2016 Park Impact Fee Technical Document, the single-family residence household size for purposes of the PIF calculation is 2.76. This means 2 acres serves approximately 362 single family residences ($1000/2.76$). By extension 4.5 acres should serve approximately 815 single family residences. At the \$1360 per residence acquisition rate for parks identified by the Hearings Examiner, and pursuant to CCC40.630.060(A), Aho should be entitled to at least \$1,104,320 in PIF credits as a result of the Open Space and Recreation dedications in the Hidden Crest PUD. This excludes the additional improvements made to the areas that include CCC 40.260.157 amenities, the cost of which should be added to the credit total.

Aho was and remains fully willing to dedicate this area for public recreational use provided the County refunds and/or credits Aho for the PIF's imposed on the development up to the value of the dedications. However, it is Aho's firm belief that the imposition of BOTH open space and recreational facility dedications, as well as the entire PIF rate, amounts to an unconscionable and unconstitutional effort by Mr. Bjerke, the Parks Department and Clark County to extort PIF's from a project that is already dedicating 14% of its gross area to "both passive and active recreational areas" per the Hearings Examiner Final Order.

Aho has attached a proposed code amendment which we believe resolves the issue by providing developers the option of PIF's, dedications, or some combination thereof, and fairly addresses the developer's contribution to Clark County parks, open space and recreation facilities in a way that is not disproportional to the impact of the development.


SUMMARY

Aho Construction has a long history of successfully residential development in Clark County. However, with skyrocketing home prices due, in large part, to increases in regulatory costs and fees, we believe Clark County's parks policies have become a major contributor to unaffordability and that the PIF and land dedication requirements the County is imposing on new residential development is counter-productive and possibly illegal.

Aho looks forward to working with Clark County to create greater efficiency, fairness and value in the development of its park, recreation and open space facilities. We believe the code changes we have recommended will go far towards those goals.

Thank you for your consideration.

AHO CONSTRUCTION I, INC.



Steven B. Madsen, General Counsel

APPENDIX A

PROPOSED CODE AMENDMENTS

#1 An amendment to CCC 40.630.060 (Impact Fee Credits):

G. Where approval of any permit for residential short plat or subdivision requires the dedication of land for park, open space or recreational facilities, the developer shall have any combination of options 1 through 4 below:

1. Pay the park impact fees according to the fee rate for the park district in which the development is located in lieu of such dedication;
2. Dedicate and fully construct park facilities in accordance with the Clark County Parks, Recreation and Open Space Plan and as approved by the Clark County Parks Advisory Board with PIF credits allocated up to the final cost of dedication and construction;
3. Fully or partially construct facilities on either on- or off-site park, recreation or open space areas previously reserved for such uses with PIF credits to be allocated in relation to the cost of such improvements;
4. Dedicate land for open space, recreation, neighborhood parks or community parks, and any appurtenant or partially constructed facilities identified in CCC 40.260.157 with a proportional reduction in the PIF's imposed for the development costs of such facilities and land dedication. Land dedication shall be valued at a per-acre amount equal to Clark County's acquisition cost for such property as identified in the Clark County Parks, Recreation and Open Space Plan and related technical documents.
5. Any dedication or improvements for which impact fee credits are sought pursuant to this code provision must be approved by the Parks Advisory Board prior to preliminary plat approval. The Parks Advisory Board shall review the dedication proposal and provide its written recommendation of acceptance or rejection of the proposal and the reasons therefore. Dedication shall be concurrent with final plat recording.

#2 An amendment to CCC 40.520.080(C)(4) (Planned Unit Development):

e. A Planned Unit Development which meets the open space dedication requirements of this section shall be deemed to have provided mitigation for any impacts of the development per the Clark County Parks, Recreation and Open Space Plan and shall be exempt from further park impact mitigation fees.

APPENDIX B

SURVEY OF OTHER CITY/COUNTY PARK PLANS/CFP's/ORDINANCES

<u>JURISDICTION</u>	<u>SFR PIF</u>	<u>MFR PIF</u>
Clark County ² (2019)	\$3852 - \$5572	\$2973-\$4300
Snohomish County ³ (2016)	\$421 - \$1625	\$279 - \$1050
Thurston County (2018)	\$1191	\$1011
Pierce County (2018)	\$2552	\$2552
Vancouver ⁴ (2016)	\$2142 - \$2379	\$1565 - \$1739
Battle Ground (2018)	\$2840	\$2680
Ridgefield (2018)	\$3075	\$3075
Olympia (2017)	\$5446	\$5446
Pasco ⁵ (2018)	\$1466	\$1466
West Richland	\$1290	\$645
Moses Lake ⁶	5% Fee in Lieu	10% Fee in Lieu

² Clark County has six park districts with varying fee rates. Listed rates are as of year three of CFP adopted 2016.

³ Snohomish County has seven park districts with varying fee rates.

⁴ Vancouver has three park districts with varying fee rates.

⁵ Pasco PIF formula includes an automatic 3.25% annual increase.

⁶ Moses Lake uses a "fee in lieu of dedication" program based on the value of the parcel to be developed. Where park, critical area and/or open space dedications are required as a condition of subdivision approval, fees are typically waived.