

Local Agency Strategies for Funding the Development and Maintenance of Parks and Recreation Facilities in California



ChangeLab Solutions
Law & policy innovation for the common good.

Introduction	2
Background History	3
Funding Mechanisms and Strategies	5
Funding Mechanisms that Can Be Used to Create or Improve Parks	5
Funding Mechanisms That Can Be Used Both to Create and to Operate Parks	9
Funding Mechanisms that Can Be Used to Operate Parks	15
Looking Forward: Identifying New or Innovative Funding Sources	17
Conclusion	26
References	27

Acknowledgments

This white paper was made possible by significant contributions from Ian McLaughlin (program director), Amy Ackerman (consulting attorney), Reece Trevor (legal intern), Kim Arroyo Williamson (senior communications manager) and Catalina Baker (copywriter and editor) (all are affiliated with ChangeLab Solutions), and Benjamin Fay and Clare Gibson of Jarvis, Fay, Doport & Gibson LLP in Oakland, CA.

This white paper was created by ChangeLab Solutions using funds generously provided by Kaiser Permanente's Northern California Community Benefits Programs.

ChangeLab Solutions is a nonprofit organization that provides legal information on matters relating to public health. The legal information in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.

© 2015 ChangeLab Solutions

Design by www.wickdesignstudio.com

Introduction

The Great Recession (2007-2009) hit local funding for parks and recreation facilities particularly hard. As local government agencies shifted increasingly limited public funds to basic services such as police and fire, funding for parks took a significant hit.¹ As a result, public agencies have been forced either to find creative ways to fund parks and recreation facilities or to reduce parks and recreation services considerably – or both.

Parks and recreation facilities serve many essential functions. They build community and a sense of place. They provide opportunities for local residents to improve their health, potentially reducing health care costs. They improve nearby property values and encourage tourism, new development, and investment. They provide an affordable source of recreation, which is particularly important to the public during an economic downturn, and they preserve the environment.

Given these extensive benefits, it is critical that we continue to fund our parks. This paper surveys the various options and strategies available to California municipalities and other local public agencies (such as special districts) for funding both the acquisition of new park facilities and the continued operation and maintenance of existing facilities and recreational programs. Such facilities may include neighborhood and citywide parks, regional parks operated by park districts, sports fields, community centers, and even large sports complexes.

Funding options are constrained by Proposition 13 and its progeny, which have severely restricted the ability of local agencies to obtain new funding. Most formal revenue sources (taxes and assessments) now require the consent of those who will be paying the revenue, and that consent can be difficult to obtain. It is often easier for local agencies to fund the acquisition of new parks than it is for them to subsidize the ongoing maintenance and operation of existing ones. This is because it is easier to induce a developer to provide new parks than it is to obtain the necessary votes for new revenue measures.

Perhaps the most potentially fruitful strategy is to generate community involvement. To thrive, parks need local support. Community volunteers can help with maintenance and operations, while also building support for park-dedicated revenue measures on the local ballot.

This paper is a companion to *The Complete Parks Playbook*. ChangeLab Solutions developed the Playbook as an introductory resource to help decision makers and advocates develop a safe and accessible parks system. Visit www.changelabsolutions.org/publications/complete-parks to learn more.

Background History

The Taxpayers' Revolt, which began with the passage of Proposition 13 in 1978, significantly transformed the nature of California local government financing. Before the passage of Proposition 13, local government agencies were primarily financed with property taxes. Cities, counties, and many special districts, including some park districts, had the independent power to levy property taxes. Each agency would set its own tax rate based on the revenue it needed. The local government would determine the budget for the following year, and then calculate and impose the tax rate needed to raise the revenues necessary for that budget. The primary constraint was political – if voters thought taxes were too high, they would presumably elect new political representatives to reduce them. The political effectiveness of this system is open to debate, but it certainly made local finances simpler and more reliable.

Proposition 13 added a new article to the California Constitution: Article XIII A. It took the power to impose property taxes away from local government agencies and set a statewide property tax rate of just 1 percent.² Before Proposition 13 was passed, the average statewide property tax rate was 2.7 percent.³ Proposition 13 therefore imposed an immediate 63 percent reduction in property taxes across the state.

Proposition 13 not only drastically reduced the average property tax rate, it also limited the rate at which property taxes would go up by restricting the increase in a property's assessed value. Before Proposition 13, properties were reassessed to market value on a two- or three-year cycle, which varied by county. Under Proposition 13, property is only reassessed to market value when it is sold, transferred, or newly constructed. Otherwise, the assessment cannot increase by more than 2 percent per year, far lower than the true average annual increase in property values over the years.⁴

Proposition 13 delegated the power to allocate the new 1 percent property tax revenues to the California Legislature.⁵ The Legislature decided that each agency would receive a share of the new tax revenue in proportion to that agency's share of all property tax revenue prior to Proposition 13. For example, if a local school district happened to have levied a higher property tax before Proposition 13, then its share of the new property taxes would be higher than other agencies' shares. If a city had relied on other funding sources, and therefore had lower property taxes, then its share would be lower.⁶

These percentages have been more or less locked in place. However, the Legislature has the power to change them, which it has done when it has faced specific revenue shortfalls. For example, in 1992 and 1993, the Legislature imposed the "ERAF shifts," which transferred property tax revenues from cities, counties, and special districts to schools.⁷ This helped the state by reducing the amount of other funding the state needed to provide schools. The effects of the ERAF shifts on special districts, which include park districts, were particularly drastic.

Lastly, Proposition 13 allowed “special taxes” to be imposed only with the approval of two-thirds of the electorate.⁸ A special tax is a tax imposed for a special purpose, and its revenues may be spent only for that specific purpose. This means that a tax intended to fund parks must be approved by a two-thirds vote of the electorate. A special purpose district, such as a park district, always requires the approval of two-thirds of the electorate for any tax, since its taxes are always special taxes (i.e., taxes levied for the single purpose of supporting parks).

Proposition 13 forced local agencies to seek other sources of revenue. So they began imposing various non-property taxes, such as taxes on utilities, hotels, parking, and the transfer of property.⁹ As long as these were “general taxes” – taxes imposed for general government purposes – and not special taxes, a city council or county board of supervisors could impose them without putting them to a popular vote. The Taxpayers’ Revolt movement responded in 1986 with Proposition 62, a statutory amendment that requires any new general taxes to be approved by a majority of the electorate.¹⁰

Local agencies also turned to fees and special assessments (charged to property owners for public services or improvements that benefit their property) for revenue. California has utilized special assessments for a long time, particularly for the construction, operation, and maintenance of public improvements. A local agency could impose an assessment after determining that the assessed properties would receive a special benefit from the improvements or services. The formation of an assessment district could generally be prevented if a majority of the affected property owners protested its creation, but such protests were rare. Fees for services, particularly water, sewer, and garbage services, had also been collected for years. Prior to Proposition 13, these services were often also supported by property taxes. With Proposition 13’s reduction in property tax receipts, however, utility service fees increased.¹¹

In 1996, the California voters passed Proposition 218,¹² which constitutionalized the majority voting requirement for general taxes and imposed restrictions on special assessments and property-related fees. Property-related fees were now subject to public approval, and could be no larger than the amount needed to provide a given service. (There could no longer be a profit component.) Special assessments were limited to the monetary value of the special benefit provided to each property, and had to be approved by a vote of the owners of the affected properties. The details of Proposition 218’s restrictions and procedures are still being worked out in the courts.¹³

Most recently, in 2010, California voters passed Proposition 26, which added further restrictions to Proposition 218.¹⁴ In particular, it stipulates that non-property-related fees cannot be larger than the amount necessary to provide the service, product, or benefit that the fee is attached to.

All of these voter-approved ballot initiatives have given rise to a complex regulatory maze that must be navigated in order to fund any public service in California.

Funding Mechanisms and Strategies

There remain many funding mechanisms that can be used for parks in California. However, most require some form of approval by those who will be providing the funding, and therefore can be implemented only to the extent that those who pay can be convinced of the need for park facilities. In addition, some of these funding mechanisms have complicated procedural requirements.

In general, obtaining funding to maintain and operate parks is more difficult than obtaining funding to create parks. One reason for this is that local agencies can require new development to include parks or pay an in-lieu fee to create parks in another part of the community. Another reason is that it is more glamorous to create a new park facility, and therefore relatively easy to acquire donations or grants for this purpose.¹⁵ Unfortunately, it is less glamorous to fund a park's ongoing maintenance.

The following sections will discuss the various funding mechanisms that exist to create and/or operate and maintain parks.

Funding Mechanisms that Can Be Used to Create or Improve Parks

USING DEVELOPMENT TO CREATE OR IMPROVE PARKS

Developers must obtain land use approval from a city or county. A city or county can require developers to contribute to the creation of new parks.

Dedications and In-Lieu Fees (The Quimby Act)

The Quimby Act¹⁶ provides a mechanism for requiring new residential development to provide park facilities for the residents of a new development. Under the Quimby Act, a city or county can require a developer to dedicate land or pay in-lieu fees to provide park facilities for a new subdivision. The dedication of land or the payment of fees is imposed as a condition of approval for the subdivision. If park services are provided by an entity other than the city or county (such as a park district), the Quimby Act is applied jointly by the city or county and the entity providing park services. The Quimby Act does not apply to commercial or industrial subdivisions.

The amount of land dedicated or fees paid is based on the number of residents in the new subdivision. In general, three acres of park area can be required per one thousand residents of a new subdivision.¹⁷ The Quimby Act provides details on how this density is to be calculated. If the city or county already has more than three acres of parks per one thousand residents, then up to five acres per one thousand residents can be required.

Generally, the city or county can decide whether to require a dedication of land or the payment of fees, although subdivisions of fewer than 50 parcels cannot be required to dedicate land. When fees, instead of land, are required, the fee is based on the money needed to obtain the land for a park. In addition to developing new parks, fees can be used to rehabilitate existing park facilities that will serve the subdivision. However, fees cannot be used for maintenance or operations.

Park facilities funded under the Quimby Act do not have to be located within the subdivision that is providing the land or fee, but there must be a reasonable relationship between the subdivision and the park facilities as well as a reasonable likelihood that the residents of the subdivision will use the facilities. In general, this means that the park facilities will be located in the same neighborhood as the new development. However, if the neighborhood already has sufficient parks (at least three acres per one thousand residents and not less than the citywide or countywide average), the fees can be spent in another neighborhood that has less than three acres of parkland per one thousand residents. This is permissible if the legislature determines that it is “reasonably foreseeable” that the residents of the new subdivision will use the park facilities in the neighborhood where the fees will be spent.¹⁸

If a developer improves parkland or provides recreational equipment, the value of the improvements and equipment must be counted as a credit toward the total fee or dedication. Fees collected under the Quimby Act must be used within five years or refunded.¹⁹

To implement the Quimby Act, the city or county must enact an ordinance, and have established policies and standards for parks and recreation facilities in a general or specific plan.²⁰

Development Impact Fees (The Mitigation Fee Act)

In addition to the Quimby Act, a local agency may condition development approvals on payment of “development impact fees” (also referred to as “developer fees”) under the Mitigation Fee Act,²¹ and use those fees to fund parks and recreation facilities serving the new development.

Under the Mitigation Fee Act, a developer may be required to pay fees to offset the impact of a new development on “public facilities,” which include parks.²² For parks, the primary impact of new development is crowding, and therefore impact fees are most often justified to reduce crowding by creating new parks or by increasing the capacity of existing parks. Development impact fees may be used to install or refurbish parks, but they typically cannot be used to fund maintenance or operations (there are limited exceptions).

Since development impact fees are intended to address the anticipated impacts of new development, they may not be used to address existing deficiencies and generally may not be used to reimburse local agencies for prior investments.²³ However, an agency may be able to justify using development fees to pay off bonds from prior investments if the agency can show that the investments were necessary to serve future development. These limitations

are consistent with the purpose of development impact fees: to offset the future impact of new development on public facilities, but not to remediate the impacts of past development on existing facilities. In theory, development impact fees will maintain the status quo so that existing residents continue to receive the same level of service, and residents of the new development will enjoy the same level of service as existing residents.

As with the Quimby Act, fees under the Mitigation Fee Act must be proportional to the development's impact. The fees may only be used for costs "attributable to the increased demand for public facilities reasonably related to the development project in order to (1) refurbish existing facilities to maintain the existing level of service or (2) achieve an adopted level of service that is consistent with the general plan."²⁴

In other words, if the number of residents served by a local park will increase by 25 percent based on the anticipated population of a new subdivision, funding from development impact fees could be used to improve the existing park facilities to meet a 25 percent increase in park usage while maintaining the current level of service. To take a very simple example using 25 percent as the benchmark, development impact fees could properly be used to fund adding a fifth swing to a four-swing swing set; however, these fees could not be used to replace the existing four swings with new or different swings, since that would not maintain the level of service relative to the population increase (unless the new swings somehow increase the capacity of the swing set by 25 percent).

Unlike a Quimby Act fee or dedication, an impact fee can be required of commercial or industrial development, if the agency can show that the commercial or industrial development will impact existing parks.

It is possible for both an impact fee and a Quimby Act dedication or fee to be required of the same development, but the government agency has to make sure the impact fee does not duplicate the Quimby Act fee or dedication. One way to ensure this is to have the Quimby Act fee or dedication provide neighborhood parks and use the impact fee to support larger communitywide parks.²⁵

The Mitigation Fee Act requires a specific notice and hearing process for the adoption of an impact fee, and it is advisable, although not legally required, to prepare a fee study that shows the need for the fee and how the amount of the fee is calculated and justified.²⁶

Development Agreements

A city or county can also seek to obtain land or funds for the creation of parks through a development agreement with a developer.²⁷

With a development agreement, the public agency agrees to freeze all of its current zoning and other land use regulations that apply to the developer's property.²⁸ Because development can be a long process, often requiring years from start to finish, this freeze provides security to the

developer by ensuring that even if the agency changes the zoning and land use regulations, the property under development will not be subject to the changes. In exchange for this security, the developer will agree to provide benefits to the agency, and these benefits can include land or funds for public parks. A developer may agree to dedicate land or fees in excess of the limits imposed under the Quimby Act or the Mitigation Fee Act.

Once the terms of a development agreement have been negotiated, there must be public notice and a hearing regarding the agreement.²⁹ The agreement must be approved by an ordinance and is subject to referendum.³⁰

CEQA Mitigation

The California Environmental Quality Act (CEQA) requires that the environmental impacts of new development be mitigated whenever feasible.³¹ If a new development will cause impacts to park facilities that are not being adequately mitigated, mitigation can be required. Mitigation can be achieved through the payment of fees, the dedication of land, or the improvement or refurbishment of park facilities. Using CEQA, a government agency that does not have approval authority over a development project (such as a park district) can seek to have the development contribute land or funds to mitigate the development's impact on parks. However, the city or county approving the development has the discretion to decide on the form of the mitigation; the impacted agency cannot demand a particular type of mitigation.³² Indeed, the lead CEQA agency even has relatively broad discretion to find that mitigation is not even feasible (though it would need to be careful in creating a record to support such a finding). Consequently, it is best to work out the terms of mitigation through negotiation.

BONDS

Bonds, which are sold to investors and repaid by the government over a period of time, are a way to turn a revenue stream into ready capital that can be used for the acquisition or improvement of parks. There are two kinds of bonds: (1) general obligation bonds that are secured by the full faith and credit of the agency issuing the bonds and which are paid off by an increase in the ad valorem property tax and (2) limited obligation bonds that are secured by a particular revenue source, often a special tax or assessment. Cities, counties, and some special districts can issue bonds.³³

General obligation bonds must be approved by two-thirds of the electorate.³⁴ The approval required for limited obligation bonds varies based on the statutory basis for the bonds and the source of revenue supporting the bonds. If the revenue source is a tax, approval by two-thirds of electorate may be required.³⁵ If the revenue source is an assessment or a fee, then the parties subject to the assessment or fee must approve.

If there is a realistic possibility of voter approval, a well-thought-out bond measure can provide a substantial amount of funding. In 2008, the East Bay Municipal Park District succeeded in obtaining the necessary two-thirds voter approval for a bond measure that authorized the District to issue up to \$500 million in general obligation bonds to fund the acquisition, development, and improvement of local and regional parks and facilities within the District's jurisdiction. The District prepared an informative pamphlet documenting its steps toward a successful bond measure, which is a useful reference for any agency considering general obligation bonds for funding parkland acquisition and improvement.³⁶ Between 2002 and 2013, California voters approved eight general obligation bonds for parks or recreation facilities out of the 14 proposed.³⁷

GIFTS AND BEQUESTS

Local government agencies can receive property as donations. Gifts and bequests from residents or charitable organizations to create public parks have a long history in California. These donations can range from open space to developed gardens to historic houses. Such donations often qualify as charitable donations for tax purposes.³⁸

Before accepting a donation of property, an agency should carefully consider the costs and liabilities that could be involved. It should evaluate the cost to operate and maintain the property. Any restrictions placed on the use of the property by the donor should also be considered. The property should be checked for environmental contamination. Federal and state laws pertaining to contaminated property impose liability without fault for cleanup costs on both present and former owners of property. Any structures should be inspected for safety, structural integrity, and, where appropriate, ADA compliance. A title search should be conducted to ensure that the title is free and clear of any liens. If the property contains any historic sites, any obligation to maintain the sites in a particular condition should be considered. The property should also be inspected for any latent dangerous conditions that have to be remedied.

Funding Mechanisms That Can Be Used Both to Create and to Operate Parks

SPECIAL TAXES

A special tax provides a relatively consistent and secure stream of revenue. This revenue stream can be used for operations and maintenance as well as to secure bonds that raise capital for park acquisition or improvements.

A tax is a special tax if its revenues can be spent only for a particular purpose that is specified in the tax law itself. This is in contrast to a general tax, the revenues of which can be spent for any valid governmental purpose. A tax imposed specifically to fund parks would always be a special tax. Therefore, any tax imposed by a special park district will always be a special tax because a park district's funds can be spent only for park purposes.

The main hurdle in levying a special tax is that it must be approved by two-thirds of the electorate.³⁹ In contrast, a general tax requires only a majority vote of the electorate.⁴⁰ If there is widespread community support, a special tax can be a reliable, durable, and flexible source of revenue for parks. A special tax can take several different forms, as described below.

Parcel Taxes

Special taxes for parks are commonly imposed as parcel taxes, which are imposed on property owners and collected along with property taxes by a county. Parcel taxes are often imposed through the creation of a community facilities district under the Mello-Roos Community Facilities Act of 1982 (the Mello-Roos Act).⁴¹ Any local agency that has the power to expend funds for park purposes can create a community facilities district under the Mello-Roos Act and then, subject to voter approval, impose a special tax on parcels within the district.⁴² A parcel tax created under the Mello-Roos Act can be tailored to fit the needs and political realities of a community, with the amount of the tax varying based on the use of the parcel of land, the size of a parcel, or any other distinction for which there is a reasonable basis for varying the application of the tax.

A regional park district can also impose a special parcel tax under the Regional Park District Act in the Public Resources Code.⁴³

Once enacted, a parcel tax is generally very secure; any legal challenge must be brought within a short period of time following the passage of the tax. A special parcel tax created under the Mello-Roos Act must be challenged within 30 days of the election approving the tax, and a special parcel tax imposed under the Regional Park District Act must be challenged within 60 days of the effective date of the tax.⁴⁴ Once the statutory time period to challenge the tax has passed, the tax cannot be challenged, and the future stream of revenues from the tax is legally quite secure.

The revenue from a parcel tax can be used for operations and maintenance. Moreover, both the Mello-Roos Act and the Regional Park District Act provide for the issuance of bonds, secured by a special tax created under those acts.⁴⁵ In both cases, voters must approve the bonds, which can be done at the same time as the approval of the special tax.⁴⁶ Such bonds can raise capital to acquire parkland or to improve existing parks.

Government property is generally exempt from parcel taxes, presuming the property is being used for its governmental purpose. The principle of sovereign immunity prohibits the application of a special tax on a government entity for the purpose of funding other government entities.⁴⁷ However, if a public entity acquires land already subject to a Mello-Roos special tax, it may continue to be liable for the tax.⁴⁸

Transaction and Use Taxes

A transaction and use tax is essentially a sales tax that can be imposed by a city or county for local purposes, such as parks, recreation, and open space.⁴⁹ A transaction and use tax is collected along with sales tax by the California State Board of Equalization.⁵⁰ It is applied essentially the same way as a sales tax, calculated according to the sale price of a taxable item and applied when the item is put into use (usually when it is purchased).

A two-thirds vote of the city council or board of supervisors is required to put a transaction and use tax on the ballot; if it is for park purposes, it is considered a special tax, which must be approved by two-thirds of the voters.⁵¹ The rate of the tax must be in multiples of 0.125 percent, and the combined rate of all transaction and use taxes in a city cannot exceed 2 percent.⁵² The revenues can be used for any park purposes, including operations and maintenance. If capital is needed for park acquisition or improvements, the revenue stream can be used to secure bonds.

Utility User Taxes, Transient Occupancy Taxes, and Business License Taxes

Cities and counties can impose other kinds of special taxes and dedicate the revenues to parks. One type is a utility users tax, which is imposed on the use of a utility, such as electricity, natural gas, water, sewer, garbage, or telecommunications.⁵³ Another kind is a transient occupancy tax or hotel tax, which is imposed on people staying in a hotel for less than a month.⁵⁴ A third type is a business license tax, imposed on businesses for the privilege of operating a business in the jurisdiction.⁵⁵ A business license tax related to unhealthy activities or products, such as the sale of high-sugar-content beverages, high-fat food, or e-cigarettes could also logically be devoted to parks. As with other special taxes, the revenues from these taxes can be used for any park purposes.

SPECIAL ASSESSMENTS

Special assessments, also called “benefit assessments” or simply “assessments,” are charges imposed on property to pay for improvements or services that benefit the assessed properties. Traditionally, these were most often used for physical improvements, such as paving roads or building levees. But they can also be used for services, such as mosquito abatement, fire protection, and park maintenance. They are imposed through the creation of an assessment district, a localized geographic area that is a subset of the greater area a local agency administers.

Like a special tax, a special assessment provides a constant revenue stream, which can be used either for maintenance and operations or to secure bonds to raise capital for land acquisition or major improvements. Assessments are collected along with property taxes by the county.

Until the passage of Proposition 218, the requirements for special assessments were fairly mild. Because they are applied in addition to Proposition 13’s 1 percent general property tax levy, they became very popular as a supplemental revenue source after the passage of Proposition 13. This caught the attention of the anti-tax movement, and one of the main purposes of Proposition 218

(discussed earlier in the history/background section of this paper) was to restrict the availability of special assessments.

Proposition 218 imposes both procedural and substantive restrictions on assessments. One procedural restriction is a voting requirement. One substantive restriction is that the assessment amount is limited to the value of the improvement or service provided to each assessed property.⁵⁶

Before Proposition 218, most assessments were subject to a majority protest of the property owners; if a majority of the property owners subject to the assessment objected, the assessment could not be imposed. This was rare because it required the affirmative objection of a majority. Silence was, in effect, a vote in favor of the assessment. Proposition 218, however, requires that assessments be affirmatively approved by the owners of the property subject to the assessment. Voting is by mail, and a majority vote for approval is required. Each property owner's vote is weighted by the size of the assessment on that owner's property.⁵⁷

Because property owners vote on special assessments, a special assessment is most easily put in place when there are only a few property owners in the proposed assessment district. This situation occurs when a landowner is developing property and the city or county that is approving the development requires the creation of a funding mechanism, such as an assessment district, to support the parks that will serve the development. The developer, who owns all of the property in the proposed district, and therefore holds all the votes, will generally vote for the assessment.

Proposition 218 requires that a report be prepared by a certified engineer, determining the amount of special benefit each assessed property will receive.⁵⁸ The amount of the assessment cannot exceed the cost of the special benefit received by the parcel, which is defined as "a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large. General enhancement of property value does not constitute 'special benefit.'"⁵⁹ With respect to parks, calculating the special benefit can be complicated. One way to potentially measure it is using the percentage of park users that reside on the assessed properties versus the percentage that do not.

An assessment must be authorized by statute or charter city enactment. The statute most commonly used for assessments to fund parks is the Landscaping and Lighting Act of 1972.⁶⁰ Bonds can be issued under the Improvement Bond Act of 1915.⁶¹

Unlike taxes, assessments can apply to government entities (except for the federal government).

SHARED USE OF EXISTING FACILITIES

Park resources can be stretched further by sharing facilities with other agencies or by sharing a facility between uses. If two agencies share a park facility, they can both contribute to the cost of operations and maintenance. A school district's playing fields are a good example. In

urban areas, playing fields are scarce. Obtaining new fields in a developed, urban area is very expensive. Schools and community colleges, on the other hand, may have a large inventory of playing fields, but may be financially stretched to maintain them. While school playing fields are primarily used during the school week, recreational fields are needed on the weekends. Furthermore, a school's playing fields are often underutilized over the summer. Therefore, if a city or park district needs additional playing fields, the city or park district can enter into an agreement with the local school or community college district to make the school's or college's playing fields available to the public on weekends (instead of constructing new fields). In exchange, the city or park district can help pay to operate and maintain the field.

These types of shared use agreements are increasingly common in California. For example, the City of Piedmont, an affluent community completely surrounded by the City of Oakland, lacks sufficient playing fields, and the construction of new fields would be extremely expensive. Through an agreement with the school district, the Piedmont High School playing field, a durable artificial turf field, is made available to the public on Sundays. As a result, many people use the field and surrounding track for recreational games and exercise.

An agreement between two agencies to share a recreational facility should carefully spell out the obligations of each agency, including the frequency of facility usage by each agency; the financial contribution of each entity to the operation and maintenance of the facility; the responsibility of each entity for the maintenance, safety, and security of the facility; and each agency's responsibility for legal liability arising from the use of the facility (injuries to users or damage to the facility).

If two or more agencies will need to cooperate extensively, they can enter into a Joint Powers Agreement under the Joint Exercise of Powers Act.⁶² A Joint Powers Agreement can even create a new public agency, which can have any of the powers the creating agencies have in common. The new agency is usually governed by a board formed by the creating agencies.

In this way, multiple park districts, cities, a county, and other local agencies can pool their resources to maximize the provision of park resources to the public. For example, the Mountains Recreation and Conservation Authority is a Joint Powers Authority created by the Santa Monica Mountains Conservancy, the Conejo Recreation and Park District, and the Rancho Simi Recreation and Park District. It provides parklands and open space in the Santa Monica Mountains.⁶³

Another way to stretch the value of a facility is through dual use, particularly for open space activities. For example, protected watershed areas are often opened to the public for hiking and other open-space activities, although permits and other restrictions may be needed to protect water quality.

ChangeLab Solutions' has many shared use resources and publications. Visit www.changelabsolutions.org/shared-use to learn more.

Some public agencies have been exploring dual-use facilities by using flood control detention basins for public parks, ball fields, golf courses, and other open-space functions.⁶⁴ Flood control detention basins are designed to temporarily hold water from heavy rainstorms. They generally serve two related purposes. First, they prevent flooding by directing overflow into a large contained area. Second, they prevent stormwater, which may be contaminated with pollutants, from flowing into streams, lakes, or other bodies of water.⁶⁵

Under the right circumstances, a basin may be suitable for other uses during dry conditions. Clearly, a flood control detention basin will not be suitable for certain dual uses, particularly those that involve permanent improvements (e.g., structures, playground equipment, or lighting). But for uses that require only an open area, a dry detention basin can significantly increase available community open space.

PUBLIC-PRIVATE PARTNERSHIPS (P3s)

In some instances, public agencies will enter into contracts with private companies to operate park facilities or sponsor the creation of new facilities. These contracts are often referred to as Public-Private Partnerships (P3s). P3s are set up in various ways. In some cases, a public agency will enter into a contract with a private concessionaire, allowing the concessionaire to sell food or other goods and services at park facilities. The private company will pay the agency for this privilege, and the agency generally will use this additional stream of revenue to help fund park operations. In other cases, a public agency will contract out certain operations and maintenance functions (such as landscaping, tree-trimming, or waste removal) to a private contractor. Under a third, broader model, the public agency will contract with a private company to operate an entire park and all of its facilities, including the charging of market-based user fees that fund operations. The private operator may be either a for-profit or nonprofit company. For example, Central Park⁶⁶ and Bryant Park⁶⁷ in New York City have been operated by nonprofit organizations for decades, and many major urban zoos use a similar nonprofit P3 model.

There are many examples of P3 arrangements to operate park facilities in federal, state, and local parks. The recent budget crisis and resulting threat to park funding led the State of California to turn to P3s to keep open several parks that were slated for closure; currently, the state is home to more than a hundred U.S. Forest Service sites managed by private operators.⁶⁸ California developed an innovative model for private operation of some of its state parks that has been identified for potential use in other states.⁶⁹

Such innovation is, perhaps, more likely during times of crisis, when a public agency is faced with the potential closure of cherished parks. Use of P3s is not without controversy, and the feasibility of their widespread use on a local level is subject to some debate. Public employee unions and public interest organizations often oppose the “privatization” of public open space resources. As a political reality, local agencies may be more likely to use P3s either only on a limited basis (e.g., the private operation of concessions) or after all other options have been exhausted.

Where a local agency is weighing the possibility of having a private organization operate parks and recreation facilities, various factors should be considered:

- The length of the operation agreement. The longer the term, the more incentive the contractor has to invest in the property and make its operation profitable. However, a longer term limits the local agency's future oversight and control. Advocates of P3s typically argue in favor of terms of ten to 30 years, which may encourage the contractor to make larger capital expenditures to improve long-term profit.
- Whether to restrict the P3s to nonprofit organizations or to allow for-profit companies to operate park facilities.
- Provisions for local agency review and approval of any future fee increases.
- Specification of what authority the local agency retains (e.g., local agencies typically continue to provide law enforcement services, as private companies generally cannot serve that role).

P3s can also be used to fund the creation of parks facilities. For example, the City of Bakersfield has successfully negotiated and entered into numerous partnerships with private businesses to fund recreational facilities. In one partnership, four years ago, the city entered into a naming rights agreement with State Farm Insurance for the State Farm Sports Village, a master planned park of 170 acres to be built in stages. State Farm agreed to pay \$500,000 toward the construction of the park within the first two years of the approved agreement. The entire park is irrigated with tertiary water from the city's adjacent water treatment plant. This is one of many sponsorship agreements Bakersfield has successfully implemented

Funding Mechanisms that Can Be Used to Operate Parks

USER FEES

Park revenues can also be generated from user fees, which are fees paid for the use of park facilities or services. From a legal perspective, there are two main types of user fees: fees that are paid for the use of park property (e.g., renting a community center, a group picnic site, or a playing field) and fees for services (e.g., a class or a program). When a fee is imposed for a service or product, Proposition 26 requires that it not exceed the cost of providing the service or product, and it cannot be imposed if the service or product is provided to anybody for free.⁷⁰ However, a fee for the rental or use of property does not have any such limitation. Consequently, a user fee charged for renting a community center, playing field, or golf course can potentially provide a positive income stream. In contrast, a user fee for a program cannot be set high enough to provide an income stream, although it can be set high enough to cover the agency's cost to provide the service.

VOLUNTEERS

As this paper has shown, it has become increasingly difficult to obtain new revenues for parks, particularly revenues that can be used to operate and maintain parks. It is therefore becoming more important to turn to the public for help, and to engage volunteers where possible for park maintenance and operations. While volunteer efforts cannot come close to compensating for the funds needed to provide professional park services, they can certainly help existing revenues to be stretched further. Moreover, involving the public in park stewardship can increase awareness of the need for funds to maintain and operate parks, thereby helping to build the public support necessary to enact a revenue measure for park operations, whether that measure is an assessment or a special tax.

The East Bay Regional Park District, which operates an extensive network of parks in Alameda and Contra Costa County, makes extensive use of volunteers. In 2011, nearly 13,000 volunteers completed more than 125,000 hours of service for the park district.⁷¹ Volunteer activities include docent responsibilities, coastal cleanup, habitat restoration, trail maintenance, trail safety patrols (on foot, horseback, and bicycle), medical aid, and reserve police officer duties.

Volunteers can also be organized by partnering with nonprofit clubs and organizations. Hiking and bicycling clubs will often participate in trail maintenance. Ecological clubs will participate in habitat restoration and cleanups. Sports leagues will help maintain playing fields, filling holes and fertilizing and reseeding grass.

In the Oakland Hills, a group of volunteers, through a grassroots community association, built a park out of an illegal dump over the course of a decade.⁷² The park is also largely maintained with volunteer labor, although the City of Oakland provides valuable support, including debris and garbage removal. Another community group implemented a successful graffiti abatement project. Group members keep an eye out for new graffiti and notify other members, who immediately remove it.⁷³

When using volunteers, a local agency must be careful to protect itself from unexpected liabilities. Volunteers should be required to sign liability waivers, which will relieve the local agency from liability if a volunteer is injured while working. In general, a local agency is not liable for injuries caused to a third person by a volunteer.⁷⁴ Volunteers are not covered by Workers' Compensation, although a local agency can decide to add volunteers to its Workers' Compensation coverage.⁷⁵ Prevailing wage laws do not apply to volunteers.⁷⁶

Any area where volunteers are working - and any tasks volunteers perform - should be carefully inspected for dangerous conditions that could be sources of liability and for ADA (Americans with Disabilities Act) compliance where applicable. The local agency should also confirm that any potential liability arising out of a volunteer project is covered by the agency's insurance.

The use of volunteers is sometimes opposed by an agency's employee union, if the volunteers are perceived as reducing the employees' work. The memoranda of understanding with an agency's employees should be consulted to make sure the use of volunteers is not prohibited or restricted.

Looking Forward: Identifying New or Innovative Funding Sources

While the previous sections of this paper review known, existing funding sources for parks, those funding sources need to be augmented with newer and more creative funding streams. Two potential funding sources that have not traditionally been utilized for parks are discussed in this section: nonprofit hospital community benefit funds and Community Development Block Grants (CDBGs).

PRIVATE NONPROFIT HOSPITAL FUNDING FOR PARK INFRASTRUCTURE AND PROGRAMMING

In order to obtain and maintain tax-exempt status, private nonprofit hospitals within California must provide charitable care and other benefits to their communities. To fulfill this requirement, hospitals must work with public health agencies and other members of the community to assess the community's health needs and develop a plan for addressing those needs. As explained in more detail below, if hospital expenditures on park and playground infrastructure and programming are needed to advance the health of the community, those expenditures can qualify as community benefit activities. To obtain funding from hospitals for parks, cities, counties, and park advocates should work with their departments of public health and other community organizations to ensure that the hospital is aware of the critical importance of recreational facilities.

Federal Requirements to Provide a Community Benefit

Nonprofit (or tax-exempt) status offers qualifying hospitals substantial benefits, including exemption from paying federal corporate income taxes and the ability to accept tax-deductible charitable contributions from donors. In California, nonprofit corporations can qualify for exemptions from paying local and state property and sales taxes.⁷⁷ Nonprofit hospitals also benefit from being eligible for both federal research grants and private grants.⁷⁸

In exchange for receiving the benefits of tax-exempt status, a nonprofit hospital must provide some charitable care (care for those unable to pay) and other benefits to the community. The Affordable Care Act added new "community benefit" requirements for nonprofit hospitals; hospitals must assess and address community health needs and report to the IRS on the efforts and expenditures they make to address those needs.⁷⁹ The IRS has provided additional guidance on community benefit requirements in its new filing instructions for hospitals.⁸⁰

A nonprofit hospital must conduct a community health needs assessment (CHNA) at least every three years to identify the significant health needs of the community.⁸¹ The hospital must do the following:

1. Define the community it serves, including the geographic area served by the hospital facility, target populations served (regardless of ability to pay for care), and principal functions (for example, focus on a particular specialty area or targeted disease).⁸²
2. Assess the health needs of that community by
 - identifying the significant health needs of the community at large - particularly neighborhoods or populations facing disparities (including financial and other barriers to accessing care) - in order to prevent illness; ensure adequate nutrition; and/or address social, behavioral, and environmental factors that influence health in the community;⁸³
 - prioritizing those health needs; and
 - identifying resources (such as organizations, facilities, and programs in the community, including those run by the hospital facility) potentially available to address those health needs.⁸⁴
3. In assessing the health needs of the community, solicit and consider input from persons who represent the broad interests of that community, including input from at least one state, local, tribal, or regional government public health department.⁸⁵
4. Document the CHNA in a written report (CHNA report).⁸⁶
5. Make the CHNA report widely available to the public, including on a website.⁸⁷

CHNA Implementation Plan

The hospital must then develop a written Implementation Plan that describes how the hospital plans to address each significant health need identified in the CHNA. The plan must describe the actions the hospital intends to take in response to each health need and the anticipated impact of these actions; identify the resources the hospital plans to commit to address each health need; and describe any planned collaboration between the hospital and other organizations to address any of the health needs.⁸⁸ If the hospital does not intend to address a particular health need, the report must briefly explain why.⁸⁹

The State of California's Requirements

California law also requires nonprofit hospitals to prepare a community needs assessment that evaluates the health needs of the community served by the hospital. This assessment must be updated at least once every three years. The law also requires nonprofit hospitals to submit a community benefits plan each year to the Office of Statewide Health Planning and Development.⁹⁰ The assessment must include a process for consulting with community

groups and local government officials in identifying and prioritizing community needs that the hospital can address directly, in collaboration with others, or through other organizational arrangements.⁹¹ California recognizes a broad range of activities that constitute community benefits, including financial or in-kind support of public health programs; donations of funds, property, or other resources that further a goal identified in the needs assessment; health care cost containment; enhancement of access to health care or related services that contribute to a healthier community; and services, such as health promotion, health education, harm prevention, and social services.⁹²

Funding for Recreational Programming

Under the umbrella of community benefits, the IRS includes “community health improvement services” – activities or programs that are subsidized, supported, and/or carried out by the hospital for the purpose of improving community health.⁹³ These are the very activities or programs described in the hospital’s Implementation Plan that address the health needs identified in the CHNA. An activity qualifies as a community health improvement service (and, therefore, a community benefit) if the hospital demonstrates that both the community has a need for the activity and the activity furthers one of the community benefit objectives recognized by the IRS. Some of the IRS community benefit objectives are improving access to health services, enhancing public health, advancing general health knowledge, and relieving a government burden to improve public health.⁹⁴

The IRS would likely conclude that a hospital’s funding of a community recreational program is a community health improvement service, and therefore a community benefit, provided that

- There is a documented community need for recreational programming (i.e., if the need is identified in the CHNA or other documentation, the activity is requested by a public health agency or community group, or an unrelated nonprofit or government organization is a partner in the activity);
- The recreational programming is aimed at achieving a community benefit objective(it would likely be recognized as both advancing public health and relieving a government burden); and
- The program will not
 - o Generate an inpatient or outpatient bill (although a nominal or sliding scale fee may be charged);
 - o Be provided primarily for marketing purposes;
 - o Be more beneficial to the organization than to the community (e.g., it may not be designed primarily to increase referrals of patients); and
 - o Be restricted to individuals affiliated with the organization (employees and physicians).⁹⁵

Similarly, funding for recreational programming would fall within California's community benefit requirement. California law includes within its definition of community benefit the support of public health programs; donations of funds, property, or other resources that contribute to a community priority; and enhancement of access to health care or related services that contribute to a healthier community.⁹⁶ Provided that the recreational program is identified as a need in the community assessment and would meet a community benefit (i.e., contribute to making the community healthier), the expenditure of funds to support a recreational program would qualify as a community benefit.

Funding for Parks and Recreation Infrastructure

The IRS also recognizes "community-building activities," a category of activities that "protect or improve the community's health or safety."⁹⁷ Among the nine identified categories of community-building activities is "physical improvements and housing." As an example of this category, the IRS includes the "development or maintenance of parks and playgrounds to promote physical activity."⁹⁸

While the IRS recognizes that some of the community-building activities may also be considered community benefits, the IRS requires hospitals to report these activities separately and explain how they promote community health.⁹⁹ The IRS has stated that it believes more data and study are required to determine whether all community-building activities constitute community benefits.¹⁰⁰ At this point, it is unclear whether the separate reporting requirement is merely for purposes of data collection or because the IRS may choose not to consider some community-building activities community benefits.¹⁰¹

Hospitals may be concerned that some of these community-building activities may not be considered community benefits, since they must be reported separately. If, however, the community-building activities meet the requirements of a community health improvement service (as described above), the activity should qualify as a community benefit.¹⁰² Therefore, a hospital's expenditures toward developing or maintaining parks and playgrounds to promote physical activity should qualify as a community benefit, provided that (1) there is a documented community need for the infrastructure; (2) building or maintaining parks is aimed at achieving a community benefit objective, such as advancing public health or relieving a government burden; and (3) the parks or playgrounds will be open to the community at large (as opposed to employees only) for no fee.

Funding for recreational infrastructure would also likely qualify as a community benefit under California law. Providing funding or resources to a local government agency for the development or maintenance of a park or playground would likely constitute a community benefit, so long as the recreational program or park development addresses a priority need identified in the community needs assessment and contributes to a measurable objective in the community benefits plan.

Accessing Community Benefits Funding for Parks and Recreation

In order to access funding for park infrastructure and programming, cities, counties, park districts, and community members should be involved in the development of their community hospital's CHNA and Implementation Plan. As described above, the hospital is required to receive input from government officials; community members; and at least one state, local, tribal, or regional government public health department. Recreation officials should work with their local health department to ensure that the assessment and plan take park infrastructure and programming into account. They can do this by

- Collecting and sharing information about what parks, public recreation areas, open spaces, and recreational programming are available for active use in the communities and neighborhoods served by the hospital, as well as information about where such facilities and programming are lacking;
- Working with the health department to measure and compare rates of chronic disease in areas where physical activity opportunities are lacking;
- Collecting and sharing information about what financial and other resources are available for parks and recreation infrastructure and programming, what funding streams could match and extend hospital donations, and what additional resources are needed;
- Collecting and sharing information about health inequities that exist within the community served by the hospital (some hospitals might not realize how a lack of access to parks, recreational areas, and/or walkable/bikeable streets affects low-income populations, women, children, communities of color, and the elderly); and
- Collecting and sharing information about how to evaluate the hospital's Implementation Plan.

COMMUNITY DEVELOPMENT BLOCK GRANT FUNDING FOR PARK/PLAYGROUND INFRASTRUCTURE AND PROGRAMMING

Congress established the Community Development Block Grant (CDBG) Programs under Title 1 of the Housing and Community Development Act of 1974 ("Act").¹⁰³ The CDBG programs provide federal grants to cities and counties to develop "viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low- and moderate-income."¹⁰⁴ CDBG funds may be used to support a wide variety of activities, including those related to housing, public improvements, public services, and the local economy.¹⁰⁵ As the name suggests, CDBG awards are block grants, meaning that state and local jurisdictions are given flexibility in implementing the program. There are a range of programs under the CDBG umbrella; the relevant programs here are the Entitlement Communities Program, which allocates funding to 1,200 cities and urban counties, and the State-administered or "Small Cities" Program, which allocates funding to states to distribute to smaller cities.^{106,107}

The funding level for each jurisdiction is determined by one of two formulas, which take into consideration a community's need as reflected by its poverty level, age of housing stock, housing overcrowding, population growth or lag, and total population.¹⁰⁸ CDBG is an entitlement program, which means that jurisdictions do not compete for the funds, but rather are awarded funds on the basis of need. The formula is intended to provide larger grants to communities with relatively high community development needs and smaller grants to communities with less demonstrated need.

In order to receive funding, the entitlement cities and states must prepare and submit to the U.S. Department of Housing and Urban Development (HUD) a Consolidated Plan every three to five years.¹⁰⁹ The Consolidated Plan is an extensive planning and strategic document that describes the community's housing, economic, and community development needs, as well as the community's resources, priorities, and proposed activities to be undertaken with CDBG funding.¹¹⁰

The jurisdiction must also submit an annual Action Plan to HUD that describes the activities it will undertake with the year's CDBG funding.¹¹¹ In developing the Action Plan, the jurisdiction decides how much money to allocate to each activity and identifies the entity that will carry out the activity.

The community plays a major role in deciding how to allocate funding. Each jurisdiction that awards funding must develop a citizen participation plan that gives the public different ways to participate in the development of the Consolidated Plan.¹¹² The jurisdiction must encourage the participation of local and regional institutions, businesses, developers, nonprofit organizations, philanthropic organizations, community-based and faith-based organizations, and public housing agencies in the process of developing and implementing the Consolidated Plan.¹¹³ In addition to holding public hearings, the lead agency is required to consult with public and private agencies when developing the plans. The jurisdiction must also enable and encourage participation by low- and moderate-income people at all stages of the process, and there must be at least one hearing to obtain public input regarding needs and priorities before a proposed Consolidated Plan is published for comment. Local jurisdictions, in particular, must hold at least one more hearing to obtain public comments about proposed priorities and activities. Jurisdictions must accept written and oral comments on the plan, and attach to the final Consolidated Plan a summary of the jurisdiction's response to those comments.¹¹⁴

Use of CDBG Funding Generally

The jurisdiction can allocate funding by direct grants or as loans. Funds can be allocated to the jurisdiction, governmental agencies separate from the jurisdiction (such as a housing authority or special parks district), nonprofit organizations, or for-profit contractors.¹¹⁵ CDBG regulations do not require a jurisdiction to use a particular process to select who receives funding. Jurisdictions are not required to use a competitive process, although many do.¹¹⁶ HUD strongly recommends that jurisdictions undertake a "thoughtful pre-award assessment of potential sub-recipients."¹¹⁷ A jurisdiction can use a formal application or request-for-application (RFA)

process; a simplified or limited application process; a grantee survey of qualified organizations; unsolicited applications (when organizations contact the jurisdiction to seek funding); or a performance assessment to renew funding for current sub-recipients.¹¹⁸

CDBG Funding for Park and Playground Infrastructure and Programming

There are two main steps to determine whether CDBG moneys can fund a particular project or program. First, the project or program must fall within one of the 28 categories of “eligible activities” enumerated in the Act. Second, the project or program must further one of CDBG’s national objectives.

Eligible Activities

There are several categories of eligible activities that allow for the funding of parks and playground infrastructure:

- **Acquisition of property.** Acquisition of property for conservation of open spaces, natural resources, and scenic areas, and/or for the provision of recreational opportunities, is permitted.¹¹⁹
- **Acquisition, construction, reconstruction, or installation of public works, facilities, or other improvements.**¹²⁰ Public improvements to parks, playgrounds, and aesthetic amenities on public property, including trees, sculptures, pools of water and fountains, and other works of art, are allowed.¹²¹
- **Clearance, demolition, removal, reconstruction, and rehabilitation of buildings and improvements.**¹²² Demolition and rehabilitation activities that enable a jurisdiction to create a park or playground are allowed.¹²³
- **Interim assistance for limited improvements to a deteriorating area.** In some situations, HUD allows a jurisdiction to use funding for certain activities on an interim basis. HUD allows the use of funding to repair parks and playgrounds if an area exhibits signs of physical deterioration, if immediate action is needed to stop the deterioration, and/or if permanent improvements will be made as soon as practicable.¹²⁴

HUD also specifies certain activities that are ineligible for funding. CDBG funds may not be used for general maintenance and repair work of parks and playgrounds, such as filling pot holes, mowing recreation areas, and similar activities.¹²⁵

National Objectives

Next, to be eligible for funding, the particular program or project must further one of the CDBG programs' three "national objectives":

Objective 1: The activity benefits low- or moderate-income residents. HUD recognizes four subcategories of this criterion, two of which are relevant here:

- **Area benefit:** The activity must meet the identified needs of low- or moderate-income persons residing in an area where, generally, at least 51 percent of the residents are low- to moderate-income persons.¹²⁶
- **Limited clientele:** The activity provides benefits to a specific group of persons rather than everyone in an area generally, provided that at least 51 percent of the beneficiaries of the activity are low- or moderate-income persons. HUD generally considers the following groups to fall within this category: abused children, elderly persons, battered spouses, homeless persons, adults meeting the Bureau of Census' definition of severely disabled persons, illiterate adults, persons living with AIDS, and migrant farm workers.¹²⁷

Objective 2: The activity prevents or eliminates slums or blight. HUD recognizes three subcategories of this criterion, two of which are relevant here:

- **Area basis:** The activity addresses one or more of the conditions that contributed to the deterioration of an area that (1) is officially designated by the grantee as a slum or blighted area; (2) meets the definition of a slum, blighted, deteriorated, or deteriorating area under state or local law; and (3) exhibits physical signs of blight or decay with a substantial number of deteriorated or deteriorating buildings throughout the area.¹²⁸
- **Spot basis:** The activity consists of the acquisition, clearance, relocation, historic preservation, or limited rehabilitation of property to eliminate specific conditions of blight or physical decay outside of a designated slum area.¹²⁹

Objective 3: The activity meets an urgent community development need because existing conditions pose a serious and immediate threat to the health or welfare of the community and other financial resources are not available.

To summarize, a jurisdiction may spend CDBG funding to acquire property and construct or rehabilitate parks and playgrounds

- In areas where the majority of residents are low- or moderate-income;
- To serve a population with particular needs or challenges, the majority of whom will be persons of low- or moderate-income;
- In a designated slum or blight area, or where specific conditions of blight or physical decay are in evidence outside of a designated slum area; or

- To address conditions that pose a serious and immediate threat to the health or welfare of the community, when other financial resources are not available for this purpose.

Recreational Programming

Under certain conditions, recreational programming can be eligible for CDBG funding. CDBG allows use of funds to provide “enhanced” public services.¹³⁰ Under this category of activities, CDBG funds may be used to provide recreational services (including labor, supplies, materials, and costs) if the funding is for a new service or a quantifiable increase in the level of service.¹³¹ However, CDBG funds cannot be used to replace existing funding for recreational programming; it may be used only to supplement or enhance existing funding.

Also, funding under this category is capped. Funds per program year to support public service activities may not exceed 15 percent of the jurisdiction’s total CDBG grant award for the year, plus 15 percent of the total program income it received in the preceding program year.¹³² CDBG funds can also be used to pay the cost of operating and maintaining the portion of a facility where the qualifying public service is located.¹³³ Any funding for enhanced recreational services must also meet one of the national objectives listed above.

Accessing CDBG Funding for Parks and Recreation

In order to access funding for park infrastructure and programming, cities, counties, park districts, and community members should be involved in the development of their jurisdiction’s Consolidated and Action Plans. As described above, the lead agency is required to consult with public and private agencies when developing the plans. Recreation officials should work with the lead agency, the local health department, and community advocates to ensure that park infrastructure and programming are considered in the assessment and plan. They can do this by

- Collecting and sharing information about the parks, public recreation areas, open spaces, and recreational programming available for active use in the community;
- Identifying where facilities and/or programming are lacking, focusing on areas where the majority of residents are low- or moderate-income, facilities serving low- or moderate-income people, and designated slum or blight areas;
- Identifying any facilities that need interim improvements or pose an immediate risk to the community;
- Collecting and sharing information about what financial and other resources are available for recreational infrastructure and programming, what funding streams could match and expand CDBG funding, and what additional resources are needed; and
- Working with community organizations, community members, and other partners to advocate for the use of CDBG funding for park and recreation purposes.

Conclusion

While many local agencies are working to develop new park facilities, most agencies face the challenge of securing sufficient funding to adequately maintain the facilities they already have. Many facilities suffer from years of deferred maintenance, compounded by the recent budget crisis in the Great Recession that siphoned even more funds away from parks in favor of other community needs.

Perhaps the most promising strategy is to tap into community passion for maintaining and improving local parks and recreation resources. Many communities have had success engaging residents as volunteers and galvanizing their support for local revenue measures to preserve parks and recreation facilities. To be successful, however, this approach requires vision, time, and expertise.

It is also clear that parks and recreation must be prioritized in the minds of both decision makers and the general public, as most of the funding mechanisms discussed in this paper require the approval of either the local legislative body or the electorate; sometimes, both groups are required to approve a funding mechanism.

References

1. Carter A. Case Study: California's Budget Transformation, 2007-08 to 2013-14. <http://cacs.org/pdf/25.pdf>. Updated February 19, 2013. Accessed July 1, 2015.
2. Cal. Const. art. XIII A.
3. California Secretary of State. California Voters Pamphlet, Primary Election. http://repository.uchastings.edu/cgi/viewcontent.cgi?article=1845&context=ca_ballot_props. June 6, 1978.
4. Subsequent amendments to Proposition 13 allow property to be transferred within a family without reassessment and enable persons over 55 to transfer the assessed value of their current home to a newly purchased home. Cal. Const. art. XIII A, § 2.
5. Ca. Const. art. XIII A, § 1.
6. Smith RT. Constitutional Reform Gone Awry: The Apportionment of Property Taxes in California after Proposition 13. *Loyola of Los Angeles Law Rev.* 1990. 23: 829-918.
7. Cal. Rev. & Tax. Code § 97.2 (West 2015).
8. Cal. Const. art. XIII A, § 4.
9. Koyama JK. Financing Local Government in the Post-Proposition 13 Era: The Use and Effectiveness of Nontaxing Revenue Sources. *Pacific Law J.* 1991. 22: 1333-1369.
10. Cal. Gov. Code §§ 53720-53730 (West 2015).
11. Koyama JK. Financing Local Government in the Post-Proposition 13 Era: The Use and Effectiveness of Nontaxing Revenue Sources. *Pacific Law J.* 1991. 22: 1333-1369.
12. Cal. Const. arts. XIII C, XIII D.
13. See, e.g. Bighorn-Desert View Water Agency v. Verjil, 138 P.3d 220 (2006) (holding that Proposition 218 "does not grant local voters a right to impose a voter-approval requirement on all future adjustments of water delivery charges.")
14. Cal. Const. Art. XIII C, § 1(e).
15. National Recreation and Park Association. Revitalizing Inner City Parks: New Funding Options Can Address the Needs of Underserved Urban Communities. www.nrpa.org/uploadedFiles/nrpaorg/Grants_and_Partners/Recreation_and_Health/Resources/Issue_Briefs/Urban-Parks.pdf. Accessed July 1, 2015.
16. Cal. Gov. Code § 66477 (West 2015).
17. Cal. Gov. Code § 66477(a)(2) (West 2015).
18. Cal. Gov. Code § 66477(a)(3)(B)(iv) (West 2015).
19. Cal. Gov. Code § 66477(a)(6)(A) (West 2015).
20. Cal. Gov. Code § 66477(a)(4) (West 2015).
21. Cal. Gov. Code §§ 66000-025 (West 2015).
22. Cal. Gov. Code § 66001 (West 2015).
23. Cal. Gov. Code § 60001(g) (West 2015).
24. Cal. Gov. Code § 66001(g) (West 2015).
25. Homebuilders Ass'n of Tulare/Kings Counties, Inc. v. City of Lemoore, 112 Cal. Rptr. 3d 7, 18-19 (2010).
26. Cal. Gov. Code § 66017 (West 2015).
27. Cal. Gov. Code § § 65864-69.5 (West 2015).
28. See Santa Margarita Area Residents Together v. San Luis Obispo County Board of Supervisors, 100 Cal. Rptr. 2d 740 (2000) (finding constitutional and statutorily valid an "Agreement [that] freezes zoning on the Project property in return for the developer's commitment to submit a specific plan for construction in compliance with County land use requirements.").

29. Cal. Gov. Code § 65867 (West 2015).
30. Gov. Code § 65867 (West 2015).
31. Cal. Pub. Res. Code § 21002.1 (West 2015).
32. *City of Marina v. Board of Trustees of the California State University* 138 P. 3d 692, 705 (2006).
33. Cal. Gov. Code § § 43602 (cities), 29900 (counties) (West 2015); Cal. Pub. Res. Code § 5568 (regional park districts) (West 2015).
34. Cal. Const. art. XIII A, § 1(b)(2).
35. Cal. Const. art. XVI, § 18.
36. Boyer M. Measure WW: A Case Study and Reference. Oakland, CA: East Bay Regional Park District; 2010. www.ebparks.org/Assets/_Nav_Categories/Park_Planning/EBRPD+Measure+WW+Booklet.pdf.
37. California Local Government Finance Almanac. An Overview of Local Revenue Measures in California Since 2001. www.californiacityfinance.com/LocalMeasuresSince01.pdf. Accessed July 1, 2015.
38. 26 U.S.C. § 170 (2012).
39. Cal. Const. arts. XIII A §4, XIII C §2(d).
40. Cal. Const. art. XIII C, § 2(b).
41. Cal. Gov. Code §§ 53311-368.3 (West 2015).
42. Cal. Gov. Code § 53316 (West 2015).
43. Cal. Pub. Res. Code § 5566 (West 2015).
44. Cal. Civ. Proc. Code § 860 (West 2015); Cal. Gov. Code § § 50077.5 53359 (West 2015); Cal. Pub. Res. Code § 5566 (West 2015).
45. Cal. Gov. Code §§ 53345-53365.7 (West 2015) (Mello-Roos Act bonds); Cal. Pub. Res. Code §§ 5544-5545.3 (West 2015) (Region Park District Act bonds).
46. Cal. Gov. Code § 53353.5 (West 2015); Cal. Pub. Res. Code § 5545.3 (West 2015).
47. See *Bame v. City of Del Mar*, 104 Cal. Rptr. 2d 183, 189-95 (2001).
48. Cal. Gov. Code § 53317.3 (West 2015).
49. Cal. Code Regs. tit. 18, § 1821 (West 2015).
50. Cal. Code Regs. tit. 18, § 1821 (West 2015).
51. Cal. Rev. & Tax. Code §§ 7285.5, 7285.91 (West 2015).
52. Cal. Rev. & Tax. Code §§ 7251.1, 7285.5, 7285.91 (West 2015).
53. Cal. Rev. & Tax. Code § 7284.2 (West 2015).
54. Cal. Rev. & Tax. Code § 7280 (West 2015).
55. Cal. Rev. & Tax. Code § 7284 (West 2015).
56. Cal. Cosnt. art. XIII D, §4(a).
57. Cal. Const. art. XIII D, § 4(c-e).
58. Cal. Const. art. XIII D, §4(b).
59. Cal. Const. art. XIII D, § 2(i).
60. Cal. Sts. & High. Code §§ 22500-509 (West 2015).
61. Cal. Sts. & High. Code § 8570 (West 2015).
62. Cal. Gov. Code § 6502 (West 2015).
63. Mountains Recreation and Conservation Authority Joint Exercise of Powers Agreement. November 19, 2004.

64. The Town of San Anselmo, CA is in the early stages of developing such a dual-use facility at one of its parks. Memorial Park Detention Information. Town of San Anselmo Website. www.townofsananselmo.org/index.aspx?nid=669. Accessed May 27, 2015.
65. U.S. Environmental Protection Agency. Dry Detention Ponds. <http://water.epa.gov/polwaste/npdes/swbmp/Dry-Detention-Ponds.cfm>. Accessed July 1, 2015.
66. About Us. Central Park Conservancy Website. www.centralparknyc.org/about/about-cpc/. Accessed June 30, 2015.
67. Company Overview. Bryant Park Website. www.bryantpark.org/about-us/management.html. Accessed June 30, 2015.
68. Gilroy L. California Pioneers Public-Private Partnerships for Private Operation of State Parks. May 31, 2013. <http://reason.org/news/show/apr-2013-state-parks-privatization#sthash.FKgERQKc.dpuf>. Accessed July 6, 2015.
69. Gilroy L., Kenny H., Morris J. *Parks 2.0: Operating State Parks Through Public-Private Partnerships*. Los Angeles, CA: Reason Foundation; 2013. http://reason.org/files/state_parks_privatization.pdf. Accessed June 30, 2015.
70. Cal. Const. art. XIII, § 1(e).
71. Volunteer in the Parks. East Bay Regional Park District. www.ebparks.org/about/getinvolved/volunteer. Accessed July 1, 2015.
72. Shepherd Canyon. Friends of Sausal Creek Website. www.sausalcreek.org/#!shepherd-canyon/cwpt. Accessed July 6, 2015.
73. Yamamoto M. Homeowners association works to preserve Shepherd Canyon. *Inside East Bay*. April 16, 2010. www.insidebayarea.com/piedmont-montclair/ci_15031924. Accessed July 6, 2015.
74. *Munoz v. City of Palmdale*, 89 Cal. Rptr. 2d 229 (1999) (holding that volunteer at city-run senior center who spilled hot coffee on plaintiff was not a city agent for liability purposes).
75. Cal. Lab. Code §§ 3352(i), 3363.5 (West 2015).
76. Cal. Lab. Code § 1720.4 (West 2015).
77. Cal. Rev. & Tax. § 23701 (West 2015).
78. Berg, JW. Putting the Community Back into the "Community Benefit" Standard. *U. Georgia Law Rev.* 2010; 44:375-431.
79. 26 U.S.C. § 501(r) also sets forth new requirements relating to the hospital's provision of financial and emergency assistance and practices relating to fees for services and billing.
80. Each nonprofit hospital must file annually with the IRS a Schedule H attachment to their Form 990 reporting to the IRS the hospital's activities and expenditures relating to the provision of financial assistance and other community benefits. Treas. Reg. § 1.6033-2(a)(2)(ii)(I) (2015).
81. Treas. Reg. §1.501(r)-3 (2015).
82. Treas. Reg.. § 1.501(r)-3(b)(3) (2015).
83. Treas. Reg. § 1.501(r)-3(b)(4) (2015).
84. Treas. Reg. § 1.501(r)-3(b)(4) (2015).
85. Treas. Reg. § 1.501(r)-3(b)(5) (2015). In addition, the hospital must solicit input from members of medically underserved, low-income, and minority populations in the community; a broad range of persons located in or serving its community, including, but not limited to, health care consumers and consumer advocates, nonprofit and community-based organizations, academic experts, local government officials, local school districts, health care providers and community health centers, health insurance and managed care organizations, private businesses, and labor and workforce representatives; and receive written comments on the hospital facility's most recently conducted CHNA and most recently adopted implementation strategy.

86. Treas. Reg. § 1.501(r)-3(b)(6) (2015).
87. Treas. Reg. § 1.501(r)-3(b)(7) (2015).
88. Treas. Reg. § 1.501(r)-3(c)(1),(2) (2015).
89. Treas. Reg. § 1.501(r)-3(c)(3) (2015). Reasons for not addressing the health need may include resource constraints, that other facilities or organizations in the community addressing the need, that the hospital lacks expertise or competency to effectively address the need, that the need is a relatively low priority, and/or a lack of identified effective interventions to address the need.
90. Cal. Health & Safety Code §§ 127345, 127350 (West 2015).
91. Cal. Health & Safety Code §§ 127345, 127350 (West 2015).
92. Cal. Health & Safety Code § 127345 (West 2015).
93. Instructions for Schedule H (Form 990). Washington, DC: Dept. of Treasury, Internal Revenue Service; 2014. www.irs.gov/pub/irs-pdf/i990sh.pdf.
94. Instructions for Schedule H (Form 990). Washington, DC: Dept. of Treasury, Internal Revenue Service; 2014. www.irs.gov/pub/irs-pdf/i990sh.pdf.
95. Barnett K, Somerville MH. Hospital community benefits after the ACA: Schedule H and hospital community benefit—Opportunities and challenges for the states. Baltimore, MD: The Hilltop Institute; 2012. www.hilltopinstitute.org/publications/hospitalcommunitybenefitsaftertheaca-schedulehissuebrief4-october2012.pdf.
96. Cal. Health & Safety Code § 127345 (West 2015).
97. Instructions for Schedule H (Form 990). Washington, DC: Dept. of Treasury, Internal Revenue Service; 2014. www.irs.gov/pub/irs-pdf/i990sh.pdf.
98. Instructions for Schedule H (Form 990). Washington, DC: Dept. of Treasury, Internal Revenue Service; 2014. www.irs.gov/pub/irs-pdf/i990sh.pdf.
99. Instructions for Schedule H (Form 990). Washington, DC: Dept. of Treasury, Internal Revenue Service; 2014. www.irs.gov/pub/irs-pdf/i990sh.pdf.
100. Form 990 Redesign for Tax Year 2008 Schedule H, Hospitals—Highlights. Washington, DC: Dept. of Treasury, Internal Revenue Service; 2007. www.irs.gov/pub/irs-tege/highlights_schedule_h.pdf.
101. Barnett K, Somerville MH. Hospital community benefits after the ACA: Schedule H and hospital community benefit—Opportunities and challenges for the states. Baltimore, MD: The Hilltop Institute; 2012. www.hilltopinstitute.org/publications/hospitalcommunitybenefitsaftertheaca-schedulehissuebrief4-october2012.pdf.
102. Barnett K, Somerville MH. Hospital community benefits after the ACA: Schedule H and hospital community benefit—Opportunities and challenges for the states. Baltimore, MD: The Hilltop Institute; 2012. www.hilltopinstitute.org/publications/hospitalcommunitybenefitsaftertheaca-schedulehissuebrief4-october2012.pdf.
103. 42 U.S.C. §§ 5301-21 (2012).
104. 42 U.S.C. § 5301(c) (2012).
105. 42 U.S.C. § 5305 (2012).
106. The two relevant programs here are the Entitlement Communities Program, which allocates funding to larger cities and urban counties and the State-administered or “Small Cities.” Program, which allocates funding to states, which then distributes funding to the state’s smaller cities. Community Development Block Grant Program - CDBG. U.S. Department of Housing and Urban Development Website. http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/programs. Accessed June 30, 2015.
107. 42 U.S.C. § 5306 (2012).
108. 42 U.S.C. § 5306(b)(1).

- 109.** 24 C.F.R. § 91.15 (2015).
- 110.** 24 C.F.R. § 91.1 (2015).
- 111.** 24 C.F.R. § 91.220 (2015).
- 112.** 42 U.S.C. § 5304(a)(2) (2012); 24 C.F.R. § 91.105 (2015).
- 113.** 42 U.S.C. § 5304(a)(2) (2012); 24 C.F.R. § 91.105 (2015).
- 114.** 42 U.S.C. § 5304(a)(2) (2012); 24 C.F.R. § 91.105 (2015).
- 115.** 24 C.F.R. §570.200(f); Managing CDBG: A Guidebook for CDBG Grantees on Subrecipient Oversight. Washington, DC: HUD Office of Community Planning and Development; 2005. https://portal.hud.gov/hudportal/documents/huddoc?id=DOC_17086.pdf.
- 116.** Managing CDBG: A Guidebook for CDBG Grantees on Subrecipient Oversight. Washington, DC: HUD Office of Community Planning and Development; 2005. https://portal.hud.gov/hudportal/documents/huddoc?id=DOC_17086.pdf.
- 117.** Managing CDBG: A Guidebook for CDBG Grantees on Subrecipient Oversight. Washington, DC: HUD Office of Community Planning and Development; 2005. https://portal.hud.gov/hudportal/documents/huddoc?id=DOC_17086.pdf.
- 118.** Managing CDBG: A Guidebook for CDBG Grantees on Subrecipient Oversight. Washington, DC: HUD Office of Community Planning and Development; 2005. https://portal.hud.gov/hudportal/documents/huddoc?id=DOC_17086.pdf.
- 119.** 42 U.S.C. § 5305(a)(1) (2012); 24 C.F.R. § 570.201 (2015).
- 120.** 42 U.S.C. § 5305(a)(2) (2012).
- 121.** 4 C.F.R. § 570.201(c) (2015).
- 122.** 42 U.S.C. § 5305(a)(4) (2012).
- 123.** 24 C.F.R. § 570.201(d) (2015).
- 124.** 24 C.F.R. § 570.201(f)(1) (2015).
- 125.** 24 C.F.R. § 570.207(b)(2)(i) (2015).
- 126.** 24 C.F.R. § 570.208(a)(1) (2015).
- 127.** 24 C.F.R. § 570.208(a)(2) (2015). There are two additional subcategories relating to funding for housing and employment. 24 C.F.R. § 570.483(b)(3-4) (2015).
- 128.** 24 C.F.R. § 570.208(b)(1) (2015).
- 129.** 24 C.F.R. § 570.483(b)(2) (2015). The third slum and blight elimination subcategory encompasses activities necessary to complete an existing Urban Renewal Plan within an Urban Renewal project area or Neighborhood Development Plan (“NDP”) action area where funded activities were authorized under an Urban Renewal Loan and Grant Agreement or an annual NDP Funding Agreement, pursuant to Title I of the Housing Act of 1949. 24 C.F.R. § 570.483(b)(3) (2015) (2015).
- 130.** 42 U.S.C. § 5305(a)(8) (2012).
- 131.** 24 C.F.R. § 570.201(e) (2015).
- 132.** 24 C.F.R. § 570.201(e)(1) (2015).
- 133.** 24 C.F.R. §570.207(b)(2) (2015).



ChangeLab Solutions
Law & policy innovation for the common good.

changelabsolutions.org