

# BROWNSVILLE PARK MASTER PLAN



2020 Update

BROWNSVILLE, OREGON | 255 N. Main Street | 97327

# Park Master Plan

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## Acknowledgements

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### **Officials:**

Don Ware, Mayor

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Brandie Simon, Parks & Open Space Advisory Board Member

Betsy Ramshur, Parks & Open Space Advisory Board Member

Lynlee Bischoff, Parks & Open Space Advisory Board Member

### **City Staff:**

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Karl Frink, Public Works Superintendent

Elizabeth Coleman, Administrative Assistant

A special thanks to all the citizens of Brownsville who have donated their time and energy to participate in the public meetings and to all of those who have assisted in making Brownsville parks what they are today.



## Executive Summary

In late 2016, the City of Brownsville’s Parks & Open Space Advisory Board set out to review the goals and objectives of the Parks Master Plan as prepared by the Community Planning Workshop (CPS) in order to determine the effectiveness of the community vision, goals and objectives for the City’s park system. The Board was pleased to have realized nearly all the goals and objectives through 2009 and then through 2015. The Board’s focus is to maintain a Park Master Plan that is an active, useful document in tune with the community visioning process and includes a realistic perspective of City operations and financial conditions.

The City of Brownsville has a substantial community park system and the potential to further develop its park system. This plan provides a formal approach to addressing current and future park needs. The purpose of this Parks Master Plan is to create a long-term strategy for the City of Brownsville to adequately meet the needs of residents, to ensure a high quality of life and to maintain quality services currently being provided by the City.

The City would like the Parks Master Plan to meet community needs, goals and actions, and to develop a five-year improvements strategy for Brownsville’s parks that is consistent with the City’s Capital Improvement Program (CIP) which was initially completed in 2008 and updated in June 2019.

### Park Inventory

As of March 2020, Brownsville owns and maintains 39.8 acres of park land and open space. City parks offer a range of opportunities from open space connections between neighborhoods to community parks that provide amenities for everyone. City parks contribute an important component to the overall sense of place for residents. City park lands are classified as mini-parks, neighborhood parks, and community parks. Table ES-1 shows the parks inventory. These parks include those owned and maintained by the City of Brownsville, Linn County, the State of Oregon, and the **Central Linn School District**.

**TABLE ONE** (*Executive Summary*)

SUMMARY TABLE OF ALL AREA PARK FACILITIES			
<b>Site</b>	<b>Classification</b>	<b>Acres</b>	<b>Ownership</b>
Blakely Park	Mini Park	0.15	City
Kirk’s Ferry Park	Neighborhood Park	3.26	City
Library Park	Mini Park	0.32	City
Remington Park	Open Space	0.22	City
Washburn Property	Open Space	2.22	City
Pioneer Park	Main Park	25.14	City
Linn County Museum	Historical	-	County
Moyer House	Historical	-	County
McKercher Park	Regional Park	5.73	County
Pioneer Christian Academy	School Park	2.59	School
Pioneer Cemetery	Open Space	8.51	City

Future park improvements need to reflect identified community needs. The City engaged the community in an extensive public involvement process, which included park tours, public workshops and a work session with the Project Steering Committee throughout 2003. The Parks & Open Space Advisory Board have been stewards of these assets and vigilantly recommended improvements with very active members and an engaged City Council. Park needs in the Brownsville community were expressed through this process and are based on the location of parks, park use, demographic characteristics, activity





participation trends and public input. Brownsville residents indicated a need for numerous improvements, including:

- ★ Park amenities for all ages
- ★ Improvement of court and skate facilities
- ★ Historical and identification signage within parks and facilities
- ★ More picnic tables and landscaping in neighborhood and mini-parks

## **Park and Recreation Goals**

The Parks & Open Space Advisory Board identified goals for the next five years through 2015 and again through 2022 in this plan. Together with action steps, they provide a framework to plan for the future of Brownsville's parks. The goals provide objectives that the City should work towards to meet the community's current and future park needs. The goals respond to suggestions and concerns that arose through the process of developing this plan. The goals are:

### **Goal 1. *Park Maintenance & Preservation***

- ▶ Provide adequate park maintenance
- ▶ Maintain an active Capital Improvements Plan
- ▶ Consider park maintenance and operational costs when evaluating acquisitions and improvements

### **Goal 2. *Ensure Adequate Access***

- ▶ Ensure the parks are accessible to residents of all ages
- ▶ Provide effective directional signs to parks

### **Goal 3. *Increase Public Outreach***

- ▶ Maintain consistent, attractive signage for all parks in the system
- ▶ Develop park pamphlets that provide a map of all parks and describe opportunities and amenities
- ▶ Expand volunteer program to foster participation by all age groups addressing projects throughout the system, specifically including a youth volunteer program with teen-focused events

### **Goal 4. *Respect Historical Context***

- ▶ Ensure historic resources are protected
- ▶ Ensure development of any new facilities are designed appropriately
- ▶ Evaluate the continuance of camping in Pioneer Park
- ▶ Maintain a tree plan for Pioneer Park
- ▶ Identify critical natural areas including an inventory of native plants found within the park system



**Goal 5.      *Development & Service***

- ▶ Partner with school district to use school property
- ▶ Ensure parks serve a range of demographic ages

**Goal 6.      *Secure Long-Term Funding***

- ▶ Maintain a short and long-term financial plan
- ▶ Continue to develop partnerships – private, public & non-profit



# Chapter 1

## Introduction

Located in the southern Willamette Valley of western Oregon, the City of Brownsville is situated along the Calapooia River, twenty-four (24) miles north of Eugene and eighty-one (81) miles south of Portland. In the mid 1800's, the current site of Brownsville became home to pioneers traveling south from the Oregon Trail. Today, historic plaques mark places along Territorial Road near the Calapooia River, a natural amenity that runs through town. This town of approximately 1,720 people is a community that takes pride in their historic past and the tranquility of small-town life while planning to move confidently toward the future.

As one of Oregon's first settlements in 1846, Brownsville prospered in the retail, grain and lumber industries. Once a source of reliable power was supplied, the town set up mills along the north side of the river for flour and wool then later for a sawmill, furniture factory and tannery.<sup>i</sup> After the railroad was established in 1880, North Brownsville became a busy manufacturing and trade center.<sup>ii</sup> The City of Brownsville has one large community park and several smaller parks. The Brownsville Parks Master Plan provides a system-wide approach to address the park needs for the City of Brownsville over the next five years as well as overarching policy statements.

## The Planning Process

### *Why Plan for Parks?*

Park facilities are key services provided by cities or special districts that meet demand for recreational experiences and enhance a community's quality of life. Providing adequate park facilities is a challenge for many communities. Lack of resources — both staff and money — limits many communities' ability to develop and maintain adequate parks systems. Identifying system priorities and matching them with available resources requires careful planning and consideration. Many communities develop and adopt park system master plans to guide development of their park system.

As our country moves through the 21<sup>st</sup> Century, public agencies are being challenged to maintain and create livable communities in spite of the environmental challenges, economic pressures, and social trends that make planning increasingly complex. Planners must respond in a way that provides equitable, high quality parks and services.<sup>iii</sup>

Parks provide a variety of resources and opportunities for communities. These include passive and active recreation opportunities, preservation of open space and wildlife habitat that may include environmentally sensitive land such as wetlands or shorelines and preservation of historic, cultural, and natural resources.<sup>iv</sup> In addition, parks may serve as formal and informal meeting places in a community—drawing residents together and creating a sense of cohesiveness.

Local governments may prepare and adopt local parks master plans pursuant to *Statewide Planning Goal 8: Recreational Needs* and OAR 660-034-0040. These plans may be integrated with local comprehensive land use plans. Parks master plans help give a community direction in developing future parks and making improvements to existing parks that will meet community needs.



## ***Steps in the Planning Process***

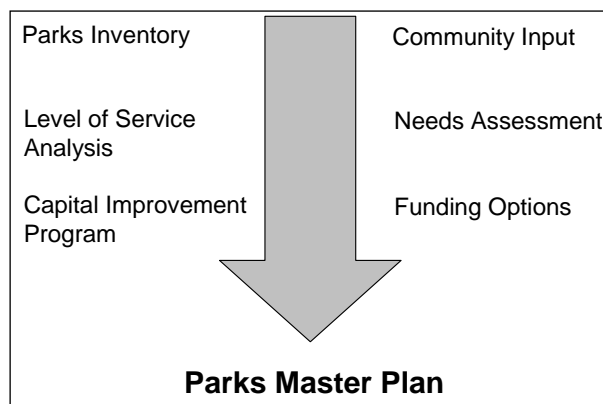
The National Recreation and Parks Association (NRPA) recommend a systems approach to parks planning. This approach “places importance on locally determined values, needs, and expectations... The systems planning approach is defined as the process of assessing the park, recreation, and open space needs of a community and translating that information into a framework for meeting the physical, spatial and facility requirements to satisfy those needs.”<sup>v</sup> NRPA provides guidelines that may be adapted by individual communities to best suit local needs. The systems plan can then be integrated into planning decisions and strategies that address other community needs such as housing, commerce, schools, environmental management, transportation, and industry.<sup>vi</sup>

As shown in Figure 1-1, the park planning process involves several steps. An inventory of the city’s current park facilities is one of the first steps. This involves looking at the amenities offered at each park and assessing the condition of the park itself and its amenities. Also, an important early step is obtaining community input. Public input assists planners in determining the appropriate level of service (LOS) provided by current and future facilities. The LOS approach is “based on the premise that parkland alone cannot meet the full range of recreation needs. Rather, the LOS is an expression of the instances of use of activity areas, and the facilities that are necessary to actually satisfy demand.”<sup>vii</sup>

These first three steps all feed into the community needs analysis. This analysis determines what improvements need to be made to current facilities and the type and size of additional facilities needed for the future. The needs analysis is then used to create a capital improvement program (CIP) in which policy-makers and planners make specific recommendations for improvements, land acquisition, determine the cost of each of these recommendations and prioritize them. This is followed by research on possible funding options for the community, allowing the CIP to be implemented.

All these components together make up the parks master plan for a community — giving the community direction and a plan to better accommodate the needs of current and future residents.

**Figure 1-1. The Parks Planning Process**



## ***Purpose of this Plan***

The purpose of the Parks Master Plan is to create a strategy for the City of Brownsville to provide the type of land and amenities for the scale and services of park space that the citizens of Brownsville desire. More specifically, the purpose of this plan is to:



- ▶ Inventory existing park facilities, including an analysis of appropriate park classifications and standards.
- ▶ Identify park needs based on current technical data.
- ▶ Present a capital improvement program, including potential acquisitions, that addresses specific standards for each park classification with estimated project costs and target completion dates within the constraints of local funding and planning.

## **Methods**

A variety of methods were used to create this plan. The general approach that CPW took involved the following steps:

- Background research on community demographics and park resources.
- An inventory of the condition and amenities of each of existing park, school facility, and other recreational facilities in the area.
- Facilitation of several public workshops to discussion issues, concerns and Parks & Open Space Advisory Board planning.
- Research on park standards and classifications to be a basis for developing standards and classifications specific to Brownsville.
- Research on costs for capital improvement projects.
- Research on possible funding options for capital improvement plan.

- 
- i Explore Brownsville One of Oregon's Original Settlements. Published by the Linn County Museum of Friends in *The Brownsville Times*, September 1994.
  - ii Ibid, *The Brownville Times* September 1994.
  - iii Mertes, James D. and James R. Hall. *Park, Recreation, Open Space And Greenway Guidelines*. National Recreation and Park Association (1995), (p. 11).
  - iv Mertes and Hall, (p. 58).
  - v Mertes and Hall, (pp. 12-14).
  - vi Mertes and Hall, (p. 14).
  - vii Mertes and Hall, (p.63).



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## Chapter 2

### Community Profile

Brownsville’s location and demographic characteristics present both opportunities and constraints for the community’s park system. This chapter describes socioeconomic characteristics of Brownsville and nearby areas. Demographic trends provide an understanding of present and future park need. Demographic trends should be considered when developing future park facilities.

#### *Demographic characteristics*

##### *Population*

Table 2-1 shows population trends between 2011 and 2015 for Brownsville, Linn County and Oregon. Brownsville grew at an average annual growth rate (AAGR) of 1.2% between 1990 and 2000. This growth rate is lower than the 1.4% AAGR of Linn County as well as Oregon’s growth rate of 2.0%.

**Table 2-1. Population trends of Brownsville, Linn County and Oregon, 2011-2015**

Year	Brownsville Population
2011	1767
2012	1524
2013	1605
2014	1474
2015	1561

Source: US Census

#### **2018 Population Estimates**

**1,801**

Source: Vintage 2018  
Population Estimates

Source: US Census

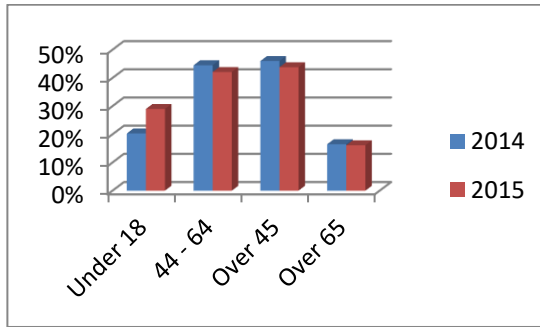
The U.S. Census Bureau estimated that Brownsville’s population in 2015 was 1,561 persons, an increase of 87 persons from its 2014 estimate of 1,474 persons. Portland State University declared that 1,720 persons was the population in the fall of 2019.

#### *Age characteristics*

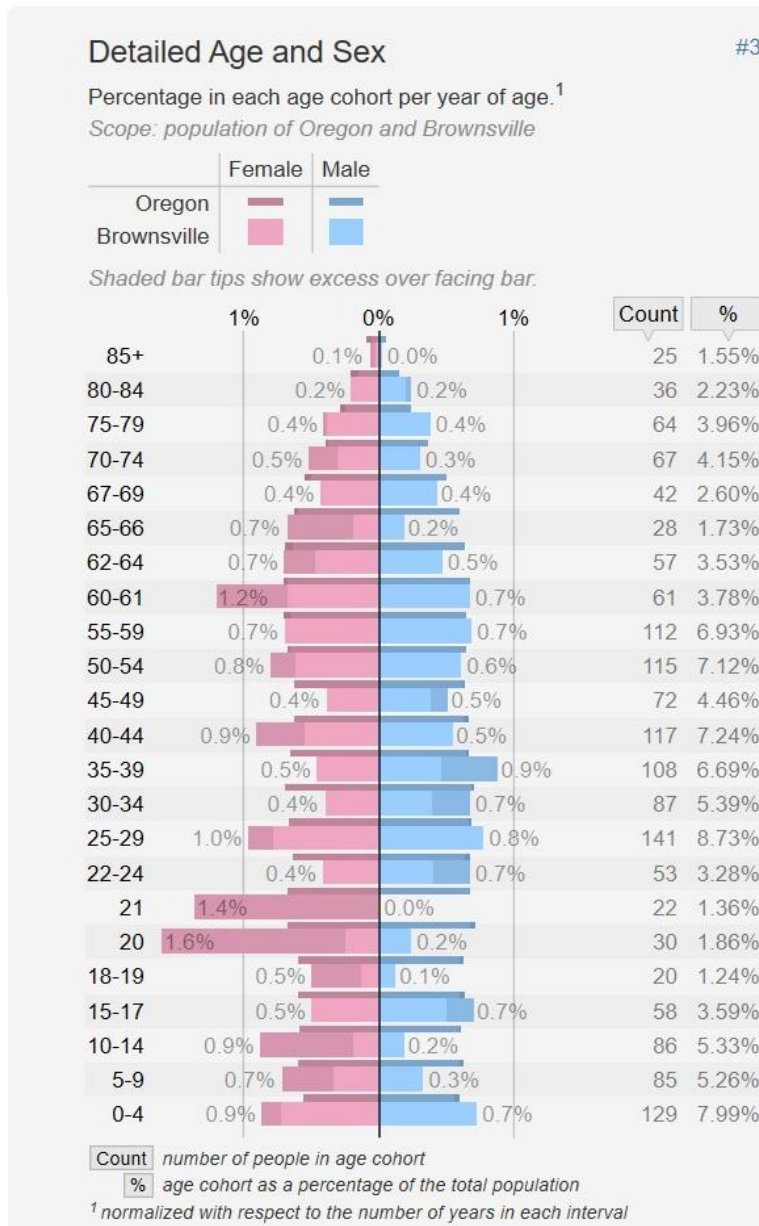
Age is an important factor in parks planning. Each age group has different recreational needs and desires. Current and future age distribution of a community should influence the facilities and amenities offered in parks. According to the U.S. Census, Brownsville’s median age was 41.2 in 2015, which shows an incremental decrease from 2014, but an overall increase from 2010 – 2015. The U.S. Census Bureau estimated 29% of residents to be under the age of 18 in 2015, nearly 8.7% more than the 2014 estimate. The percentage of residents ranging from 44-64 years of age has increased 1.06% since 2014. Approximately 43.8% of the Brownsville population is over the age of 45 and 16.1% are 65 years and older.



**Figure 2-2. Brownsville's Age Distributions in 2014/2015**



Source: US Census



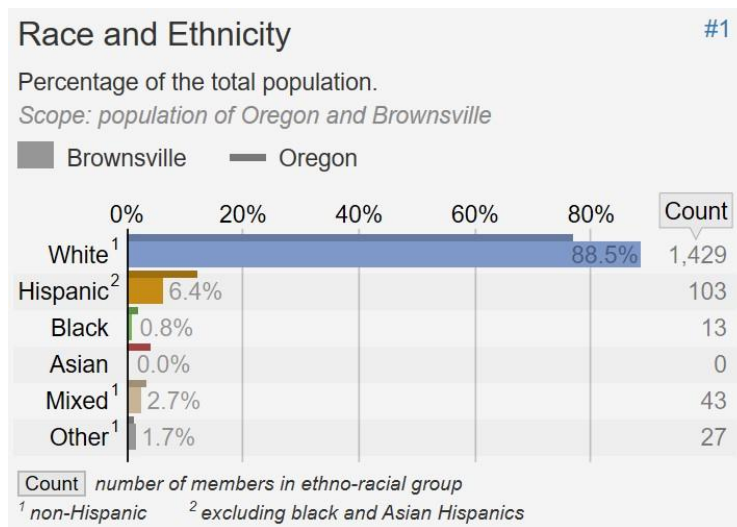


Source: Statistical Atlas 2018

In creating a parks master plan, all age groups should be considered so that their needs may be appropriately met; these trends can help the community decide what amenities future parks should include. The data indicates the City should focus its resources on services and amenities for children and older adults.

### Race and Ethnicity

According to the 2015 US Census, approximately 92.1% of Brownsville is Caucasian, followed by 1.2% of two or more races, 6.5% Hispanic, 2.0% Native American, 1.2% African American and less than one percent for the following races – Asian, and Pacific Islander.



Source: Statistical Atlas 2018

### School Enrollment – These numbers need to be verified

Brownsville school-aged children are bused to the Central Linn School District in Halsey, Oregon. The 2015-16 Oregon Department of Education (ODE) statistics indicates that K-6 has an enrollment of 337, middle school (Grades 7 & 8) has 109 students and High School (Grades 9 through 12) has 191 students. The US Census data shows that 6.9% are enrolled in Nursery School, 5.8% in Kindergarten, 16.6% are enrolled in High School (grades 9-12), and 30.3% are enrolled in College or graduate school.

### Housing trends

Housing characteristics provide information that can be useful for parks planning. The rate, type, and location of housing development are important variables that provide information on where future parks should be located. Moreover, this data is useful for parks planning because it gives insight into the potential funding base (e.g. property taxes and systems development fees).

The 2015 Census indicates the total housing units in Brownsville was 703 units, with 85.1% occupied and 14.9% vacant. Census data estimates a 5.1% homeowner vacancy rate and a 13.5% rental vacancy rate. With regards to housing tenure, of 598 occupied housing units, 77.4% are owner-occupied while 22.6% are





renter-occupied housing units. The average household size in 2015 for owner-occupied units was 2.37% and 3.43% for renter-occupied units.

### Income and Poverty

In 2015, the median household income for Brownsville’s residents was \$48,158. The percentage of persons below the poverty level in Brownsville was 11.5% in 2015. Likewise, the same trend for average household income and per capita income is expected to grow from \$50,676 in 2003 to \$57,973 in 2008 and \$18,750 in 2003 to \$21,582 in 2008, respectively.<sup>viii</sup> The percentage of persons below the poverty level in Brownsville was 8.8% in 2000, which is below the State of Oregon’s percentage in 2000.<sup>ix</sup>

## Linn County, Oregon

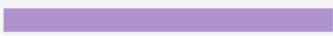
Individuals below poverty level


# 18.9%

Source: 2011-2015 American Community Survey 5-Year Estimates

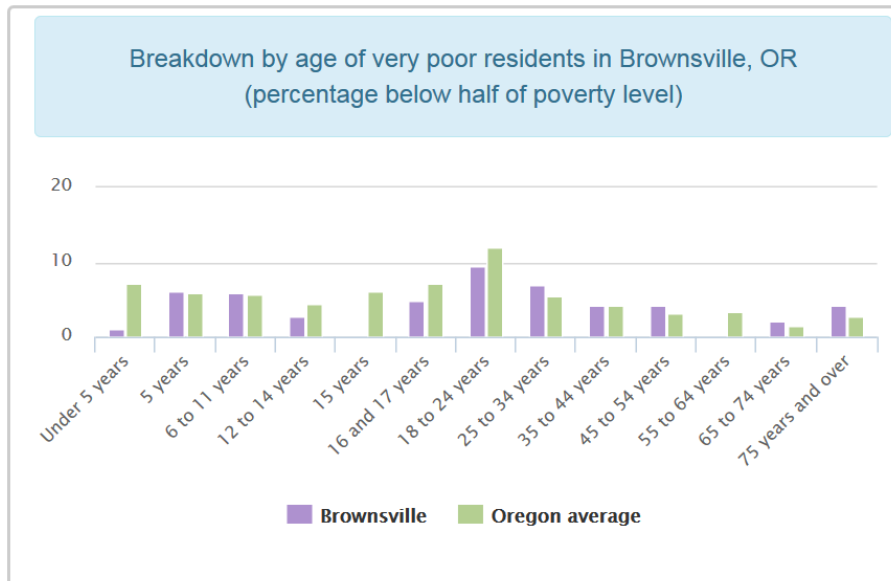
### 2013

Residents with income below the poverty level in 2013:

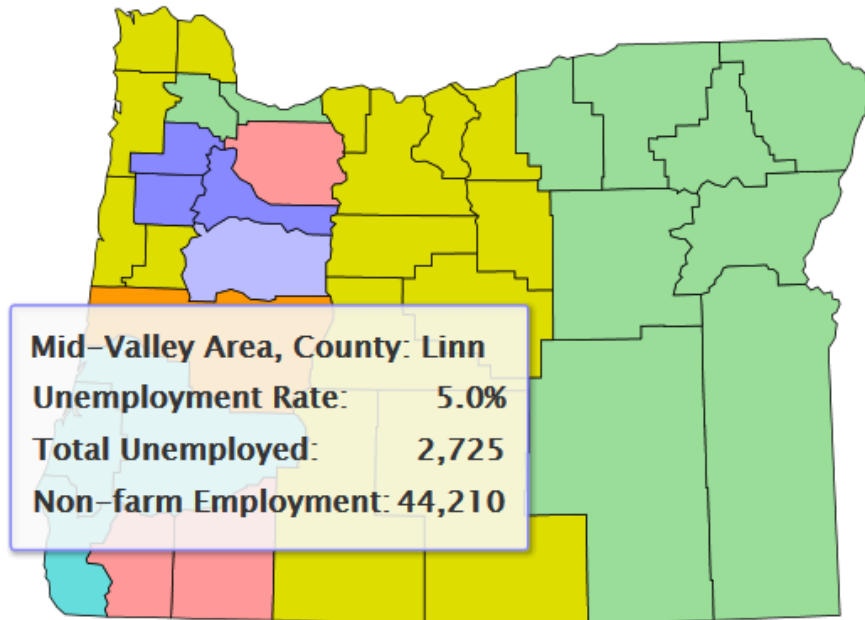
Brownsville:  20.7%

Whole state:  22.0%

Source: <http://www.city-data.com/city/Brownsville-Oregon.html>

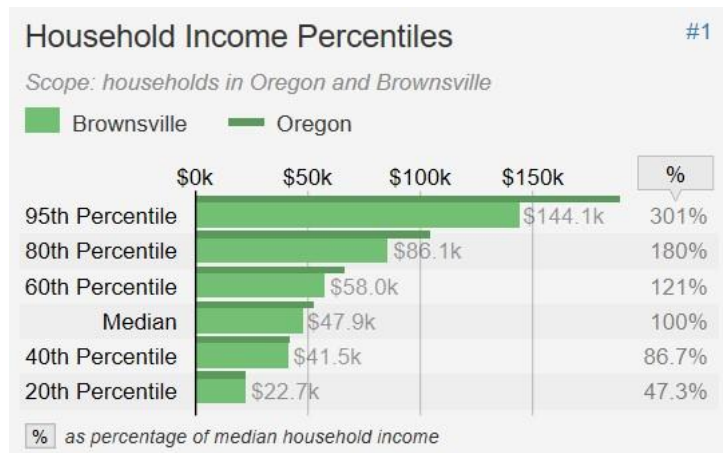


Source: <http://www.city-data.com/poverty/poverty-Brownsville-Oregon.html>



Source: <https://www.oregon.gov/ohcs/Pages/research-multifamily-economic-employment-data.aspx>

**2018**



Source: *Statistical Atlas 2018*

viii US Census, 2000

ix US Census 2000 and Oregon Economic & Community Development website accessed August 22  
 < <http://info.econ.state.or.us> >



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## Chapter 3

### Park Classifications

Park classifications serve as guidelines to evaluate the current park system and future needs. CPW used the National Recreation and Parks Association's (NRPA) classifications and definitions as a reference in creating a classification system that is specific to Brownsville's resources and facilities. CPW worked with Brownsville residents to modify the NRPA classifications to better reflect what is representative of Brownsville. Park properties owned by the Central Linn School District and the Linn County Parks Department are included within the classification system, representing the full range of recreation opportunities in and near Brownsville.

#### *Park Classifications*

The system includes six park classifications: (1) mini-parks; (2) neighborhood parks; (3) community parks; (4) regional parks; (5) school parks; and (6) trails, connectors, and open space. Each classification serves a specific purpose within the City's system, including a set of design characteristics.

#### *Mini-Parks*

Mini-parks are the smallest unit of the parks system. These offer limited recreational opportunities and they provide a balance between open space and residential development in neighborhoods. A Mini-park is a parcel of 0.75 acres or less. Brownsville has two mini-parks: Blakely Park and Library Park.

#### *Neighborhood Parks*

Neighborhood parks are considered the basic unit of a park system. These parks provide accessible recreation opportunities for residents of all ages. Neighborhood parks contribute to the neighborhood character and create a sense of place. These parks are usually 0.75 to 5 acres. Brownsville has one neighborhood park – Kirk's Ferry Park along Kirk Avenue.

#### *Community Parks*

Community parks serve a wide base of residents with recreational and social opportunities. These often include facilities for organized group activities and may serve as a community focal point while preserving open spaces and unique landscapes. Community parks are usually 5 to 50 acres in size. Brownsville has one community park – Pioneer Park.

#### *Regional Parks*

Regional parks are larger than community parks, and serve residents as well as people from outside the area. As such, they often offer overnight opportunities. Regional parks preserve large amounts of open space and are usually over 50 acres in size. Brownsville has no regional parks. Pioneer Park, however, functions in some respects like a regional park because of the types of amenities and events held at the park.

#### *School Facilities*

School facilities offer the potential for partnerships between the Central Linn School District and the City. School grounds may be made accessible to residents during non-school hours. This is an efficient and cost-effective way to expand recreational opportunities for residents, as they may serve many of the same



functions as neighborhood parks. Brownsville has one school facility on Blakely Avenue – the Community Gardens and playground, however, the Central Linn School Board is currently working on the redevelopment of this property.

**Update** | Pioneer Christian Academy purchased the property on Blakely Avenue from the School District. The City should consider talks with the Academy for use of facilities in conjunction with the Central Linn Recreation Association.

## Park Facility Inventory

A critical aspect of planning for the future of a City’s park system is to conduct an inventory and condition assessment of existing facilities and amenities. The inventory provides information on existing City parks, as well as parks and facilities owned by the City of Brownsville, the Central Linn School District, and Linn County Brownsville. The inventory also includes a condition assessment, including a list of concerns, for all city-owned facilities.

The following inventory establishes what amenities each park contains, what activities occur in each, as well as a condition assessment of the facilities and amenities. Some of the parks inventoried are not within Brownsville’s City Limits or the Urban Growth Boundary. However, these parks are included here because they serve residents by providing recreational opportunities and open space.

Table 3-1 shows park facilities in the City of Brownsville and Linn County area by classification, area, and ownership.

### City Parks

The City of Brownsville owns and maintains 39.8 acres of parkland. This parkland is classified as mini-parks, neighborhood parks, community parks, and open space. City parks offer a range of opportunities from open space as a connection between two neighborhoods to community parks that provide amenities for all groups. These parks contribute to the overall sense of place for residents and important to the character of the city.

The following sections provide a detailed description of each park facility owned and maintained by the City of Brownsville.

**Table 3-1. Summary of Brownsville Area Park Facilities**

Park & Recreation Site	Classification	Acreage	Ownership
<b>City Parks</b>			
Blakely Park	<i>Mini Park</i>	0.15	City
Kirk's Ferry Park	<i>Neighborhood Park</i>	3.46	City
Library Park	<i>Mini Park</i>	0.32	City
Pioneer Park	<i>Community Park</i>	25.14	City
Remington Park	<i>Open Space</i>	0.22	City
Washburn Property	<i>Open Space</i>	2.22	City
<b>Subtotal</b>		31.51	




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**County Park & Historic Sites**

Linn County Historical Museum	<i>Historical Site</i>	0.27	County
McKercher Park	<i>Regional Park</i>	5.73	County
Moyer House	<i>Historical Site</i>	0.61	County
		<b>Subtotal</b>	6.61

**Pioneer Christian Academy Parks**

District Office ( <i>Washington St.</i> )	<i>Mini Park</i>	0.40	Academy
Community Garden	<i>Open Space</i>	0.73	Academy
		<b>Subtotal</b>	1.13

**Other Facilities**

Averill/Stanard Parking Lot	<i>Open Space</i>	~	
Pioneer Cemetery	<i>Open Space</i>	8.51	
Calapooia River	<i>Open Space</i>	~	

<b>Total Acres of City Parkland</b>	<b>39.80</b>
<b>Total Acres of Parkland</b>	<b>47.54</b>

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**Source:** Community Planning Workshop, City of Brownsville, Linn County Parks Department, Linn County Assessment data.

**Baseline Level of Service**

The Level of Service (LOS) analysis is based on the park classification system, the City’s 2002 population and the 2020 coordinated population forecast. LOS, as used for this plan, is defined as acres of parkland per 1,000 residents. Table 3-2 shows the baseline (2016) LOS for each park classification, based on Brownsville’s 2016 population of 1,630 persons.

According to the City’s coordinated population forecast, Brownsville is expected to have 2,150 residents by the year 2020. At that population, the LOS will fall to 13.6-acres of parks per 1,000 residents if additional parkland is not acquired. The City has nearly triple the suggested parkland and open space. Acquisition must be based on available Public Works Staff or major volunteer effort in order to maintain any newly acquired park land.

**Table 3-2. Park Acreage & Level of Service**

<b>Park Classification</b>	<b>Park</b>	<b>Acreage</b>	<b>LOS (Acres/1,000 Residents)</b>
Mini Park	<i>Blakely</i>	0.15	
	<i>Library</i>	0.32	
	<b>Subtotal</b>	<b>0.47</b>	<b>0.29</b>
Neighborhood Park	<i>Kirk's Ferry Park</i>	3.46	
	<b>Subtotal</b>	<b>3.46</b>	<b>2.12</b>



Community Park	<i>Pioneer Park</i>	25.14	
	<b>Subtotal</b>	<b>25.14</b>	<b>15.42</b>
Open Space	<i>Pioneer Cemetery</i>	8.51	
	<i>Remington Park</i>	0.22	
	<i>Washburn Park</i>	2.22	
	<b>Subtotal</b>	<b>10.95</b>	<b>6.72</b>
	<b>Total</b>	<b>40.02</b>	<b>24.55</b>

**Source:** Community Planning Workshop, 2003; Update 2010; Update 2017

Brownsville has a very high level of service based on acreage for a community of its size. Table 3-3 shows a comparison of the level of service based on acreage provided by selected Oregon communities. Brownsville’s level of service based on acreage is triple that of the closest comparable community of Brookings (LOS 8.6 acres/1000 residents).

The key reason for Brownsville’s high level of service compared to other communities is Pioneer Park. More than 60% of the City’s useable park acreage is in Pioneer Park. The implication of this finding is that the city is well-served in the community park classification. By having additional land, it allows Parks & Open Space Advisory Board and Council to focus efforts on maintaining existing facilities and infrastructure that will serve the citizens well into the future. Expansive policies could potentially cause a major maintenance concern.

**Table 3-3. Level of Service Comparison**

City	Developed Park Acreage	Undeveloped Park Acreage	Population 2010	LOS (Acres/1,000 Residents)
Astoria	90.40	NA	10,250	<b>8.8</b>
Brookings	55.50	NA	6,470	<b>8.6</b>
Brownsville	40.02	2.22	1,780	<b>24.55</b>
Canby	76.40	NA	15,230	<b>5.0</b>
Lincoln City	37.00	177	7,930	<b>4.7</b>
Newport	20.00	70	10,600	<b>1.9</b>
Seaside	10.30	64	6,480	<b>1.6</b>
Sweet Home	21.60	NA	9,050	<b>2.4</b>

**Source:** Community Planning Workshop, 2003 – Updated 2010

### **Blakely Park**

Blakely Park is a 0.15-acre mini-park located on the northwest corner of Blakely and Washburn Streets. The park is the location of a historical site and monument as donated by the Linn County Pioneer Association. This park offers incidental recreational opportunities for the community and is within close



proximity to the downtown area and Calapooia River. Notably, Blakely Park is the only city park facility south of Highway 228.

Access to the park is available at two locations, one off Blakely Street and the other off Washburn Street. On-street parking accommodates approximately eight vehicles. The park currently has no designated handicapped spaces. While Washburn Street has two-sided parking available, Blakely Street has only one-sided parking. The entire park is accessible to handicapped persons. Highway-228 is located approximately one block north and as of 2001, had an average daily traffic count of 4,700 cars.<sup>vii</sup>

A medium-density residential neighborhood surrounds the park on all sides. Local residents report that a younger age demographic currently resides in this neighborhood. There is a fence buffer between the park and residential property to the north. A newly constructed play structure is available for use just three blocks east on the school district property. While water is available for irrigation, there currently is no irrigation or drainage system. The turf is in good condition. The tree is an Oregon Oak. Two cement sidewalks lead to all areas of the park.

### ***Amenities***

- ▶ Historic monument recognizing the original site of Brownsville's first store in 1852 and Territorial Road
- ▶ One large mature Oregon Oak tree
- ▶ One play structure & swings
- ▶ Flat topography
- ▶ Sidewalks on two sides
- ▶ Surrounded by neighborhood
- ▶ The only city park located on the south side of Brownsville

### ***Library Park***

Library Park is a 0.32-acre site located off Park Avenue adjacent to the Linn County Historical Museum. The Meneffee Walkway sign is located on the southwestern corner and provides a path leading to businesses on Spaulding. A mature Willow tree shades a portion of the day lighted mill race, which runs through the park.

- ▶ Library Park offers a picnic table, monument, memorial benches, new landscaping (2008) and a walking path.

### ***Kirk's Ferry Park***

Kirk's Ferry is a 3.46-acre neighborhood park located on the southeast corner of Kirk and Main Streets. The park is located near the entrance of Downtown Brownsville and offers many active and passive recreational activities to the community while preserving unique landscapes and open spaces.

While there is no on-street parking, a gravel parking lot can accommodate approximately 10-12 vehicles, none of which are designated handicapped spaces. The existing gravel parking area is not delineated and could be organized more efficiently. The park does not have any formal pedestrian access



and is not ADA accessible. There is no pedestrian access from the north. There are racks available for bicycle parking at Kirk's Ferry Park.

Residential neighborhoods surround the park on the north, east and across the Calapooia River to the south. Main Street is west and north of the adjacent residential property. A number of water features are associated with this park site including a small natural wetland area to the northeast, the mill-race outfall and day lighted waterway along the western border and the Calapooia River to the south.

There are two identifiable facilities in the park. These include: (1) a historic jailhouse structure and (2) a recreational facility. The recreational facility was originally designed as a tennis court. However, the court was not designed to regulation dimensions and was receiving little use according to City staff. The court area has been used for many years as a basketball court. Two basketball hoops are on-site, each one is less than regulation half court. There appears to be high use from the teenage population in Brownsville.

The turf appears matted down from vehicle parking, which has led to many turf problems that may require replacement rather than repair. The trees and plantings include several mature trees such as cottonwoods and a variety of orchard trees and blackberry bushes along the river path. Trees provide shade to all areas of the park, with the exception of the northwest corner. The area was inundated with water during the 1996 flood, just covering the basketball court. There is one green and white metal sign that designates the day use area and that the park closes at dusk.

### ***Amenities***

- ▶ Historic jailhouse
- ▶ Basketball Courts
- ▶ Picnic Table
- ▶ Water Fountain
- ▶ Visibility of teenagers
- ▶ Natural areas with wetland features and plenty of shade
- ▶ Mill-Race waterway and outfall
- ▶ Potential site for trail head and/or scenic byway kiosk
- ▶ Proximity to downtown region

### ***Pioneer Park***

Pioneer Park is a 25.14-acre community park, located between the Calapooia River and downtown Brownsville. The park offers active and passive recreational opportunities to the community while preserving a large open-space area adjacent to the Calapooia river. The park is composed of natural areas, active recreation areas, parking areas, gravel roadways, sidewalks, park facilities, water treatment facilities, and river paths.

Access to the park is available at two locations, one near a steep slope at Park Avenue from downtown and the other off of Fisher Street. The Fisher Street access is only open during Pioneer Picnic in the summer. A gravel roadway extends in a complete circle through Pioneer Park. The park accommodates approximately 200 cars during large seasonal events, yet varies throughout the year. Parking is not clearly delineated, with





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cars typically parking in the west and south portions of the gravel roadways. During major events, parking is allowed on the eastern field and not allowed near buildings. Vehicles must observe a five mph speed limit.

A sidewalk leading from downtown extends and connects to the grandstands near the park entrance. A sidewalk path extends to an approximate half a mile loop. All portions of the park are accessible to disabled persons. There are no racks available for bicycle parking at Pioneer Park.

Residential property surrounds the park to the north, east, and south. Private property to the north and south are designated rural residential. Farmland borders the park to the west. Signs for Pioneer Park on Main Street direct vehicle traffic to the park. Wood and metal signage at the park entrance, playground and ball fields are uniform. The park currently does not have an irrigation system in place.

There is grass turf throughout the park and sod on the ball fields. The trees include Douglass Fir, Big Leaf Maples, oaks, walnut and cottonwoods.

### ***Amenities***

- ▶ One covered pavilion with kitchen, dance hall and picnic tables
- ▶ One bench seated amphitheater
- ▶ Two permanent restroom facilities
- ▶ Two porta-potties
- ▶ Gravel parking areas
- ▶ Walking and river paths
- ▶ Three play areas that include swings, a major play structure that includes four slides, a rocket slide, tire structures, sandbox, and benches
- ▶ Three partially covered horseshoe pits
- ▶ Two water fountains
- ▶ Two baseball fields
- ▶ Basketball Courts
- ▶ An area for soccer and football
- ▶ Two historical plaques
- ▶ Four wellheads
- ▶ Brownsville's water treatment facility
- ▶ 30-50 dry campsites for tent camping and RV's

### ***Washburn Property (Open Space)***

The Washburn property is an undeveloped, 2.22 acre parcel of land located where North East Washburn Street meets the Calapooia River. Existing maple trees frame a paved and gravel path that leads north along Washburn Avenue to the river's edge. The city owns property on the northwest side of the gravel path, residential property is to the west, commercial property is to the east, and Pioneer Park lies directly to the north. The property has no formal public access.



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A portion of a stone bridge pylon remains on the property located west of the gravel path. The location and adjacent land uses limit the ability to develop the Washburn Property as a City park. The site has been cleared up to the edge of the riparian area and may present opportunities for stream bank restoration.

- ▶ The Washburn Property offers the following amenities and potential recreation opportunities:
- ▶ Open space
- ▶ Habitat and riparian area restoration

### ***Pioneer Christian Academy Facilities***

The Pioneer Christian Academy owns 2.59 acres of land that could potentially serve as parkland during non-school hours. The Old Brownsville School Property is a 2.59-acre site located between Blakely and Washington Avenue. The property is two-blocks east of Blakely Park and includes a playground. The Calapooia Food Alliance has an agreement with the Academy to operate community gardens on the north side of the property.

### ***County Park Sites***

Regional parks, often owned by the County or State, offer opportunities for large expanses of open space that draw both residents and visitors. These offer opportunities to attract tourists to the community while also benefiting residents. In the Brownsville area, this includes McKercher Park located approximately five miles east of Brownsville on Highway 228.

#### ***McKercher***

McKercher County Park is a 5.73 acre area about five miles east of Brownsville on Highway 228. McKercher County Park offers the following amenities and recreational opportunities:

- ▶ Fishing
- ▶ Hiking
- ▶ Swimming
- ▶ Picnicking



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## Chapter 4

### Park Classifications

This chapter describes park needs, park system goals, and capital improvements for existing and potential parks in Brownsville. CPW worked with City staff and Brownsville citizens to develop a set of goals that reflect the unique characteristics of Brownsville. CPW developed the needs analysis by evaluating the characteristics of present and future residents, level of service (LOS), the community survey and public input.

Park needs are based on demographic trends, evaluation of the location and facilities in the City's park system and input from residents. The National Recreation and Park Association (NRPA) and the Oregon Parks and Recreation Department (OPRD) provide a framework for evaluating park system adequacy. This framework emphasizes locally identified needs when determining park adequacy.

#### *Park Needs*

This section identifies park needs in Brownsville based on the location of parks, park use, demographic characteristics, activity participation trends, and public input. Blakely Park provides opportunity for limited recreational activities south of Highway 228. The park has upgraded landscaping and new, uniform signage.

Kirk's Ferry Park offers both active and passive recreational opportunities just three blocks from downtown Brownsville. Facilities include a basketball court featuring new hoops and backboards and an historical jailhouse structure. The park offers a casual parking design which allows users to park their cars in a large portion of the park. Parks & Open Space Advisory Board would like to upgrade the parking area with asphalt, create a nice landscaping feature to frame the parking lot and install electricity to the southwest corner of the park for a future gazebo. The Board would also like to resurface the existing asphalt to enhance the basketball court.

Pioneer Park offers the widest variety of activities for Brownsville residents and out of town visitors. Similar to other parks, the park allows flexibility for parking, camping, and picnicking with respect to location and frequency. The Parks & Open Space Advisory Board and Council are currently monitoring the Calapooia River as it impacts services provided at the location.

In January 2011, the City lost the restroom located in the northwest corner of the park. New restrooms were installed in a more centralized location near the basketball courts in June of 2012. The City worked extensively with the Calapooia Watershed Council, the Army Corps of Engineers, the State of Oregon and River Design Group to determine the best course of action regarding the erosion concerns in the park. Council determined that the capital infrastructure project that would be required to prevent the erosion was too cost prohibitive. The City would have had to bond a \$1.2 M project. Council and the Parks & Open Space Advisory Board decided to create a retreatment strategy to deal with the erosion problem.

### **System-wide Goals & Actions**

The Parks Master Plan identifies a series of goals and actions to define priorities and guide implementation. Together the goals and actions provide a framework to develop and maintain parks through 2030.



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## **Goals**

The plan goals provide objectives that the City should work towards to best meet the community's current and future park needs. The goals respond to suggestions and concerns that arose through the process of developing this plan.

## **Actions**

The actions are detailed recommendations for activities that the City should undertake to fulfill its goals. Following are the goals and action for the Parks Master Plan:

### **Goal 1. *Park Maintenance & Preservation***

- ▶ Provide adequate park maintenance
- ▶ Maintain an active Capital Improvements Plan
- ▶ Consider park maintenance when evaluating acquisitions and improvements

### **Goal 2. *Ensure Adequate Access***

- ▶ Ensure the parks are accessible to residents of all ages
- ▶ Provide effective directional signs to parks

### **Goal 3. *Increase Public Outreach***

- ▶ Maintain consistent, attractive signage for all parks in the system
- ▶ Develop park pamphlets that provide a map of all parks and describe opportunities and amenities
- ▶ Expand volunteer program to foster participation by all age groups addressing projects throughout the system – specifically including a youth volunteer program with teen-focused events

### **Goal 4. *Respect Historical Context***

- ▶ Ensure historic resources are protected
- ▶ Ensure development of any new facilities are designed appropriately
- ▶ Evaluate the continuance of camping in Pioneer Park
- ▶ Maintain a tree plan for Pioneer Park
- ▶ Identify critical natural areas including an inventory of native plants found within the park system

### **Goal 5. *Development & Service***

- ▶ Partner with school district to use school property
- ▶ Develop parks to serve a range of demographic ages



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## **Goal 6. Secure Long-Term Funding**

- ▶ Maintain a short and long-term financial plan
- ▶ Continue to develop partnerships – private, public & non-profit

## **Capital Improvements**

The Parks & Open Space Advisory Board and Council have coordinated the management of park assets into the overall Capital Improvements Program. The Parks & Open Space Advisory Board is responsible for identifying objectives and accomplishing them on an annual basis as the City budget allows. Unfortunately, there are many improvement projects that are top priority and the City finds itself in the unenviable position of trying to deal with projects on an emergency basis.

Currently, the Parks & Open Space Advisory Board would like to apply for funding through the Oregon Parks & Recreation Department for a variety of projects. The Board and Council successfully moved of the Pioneer Park Restrooms to a new location, partnered with the Calapooia Watershed Council to make major improvements to the riverbank in Pioneer Park, implemented the Tree Succession Plan and continues the general maintenance to several structures in the parks including the Community Arts Building, Garden Building, Pavilion, Stage, Dance Hall and restrooms as well as grounds maintenance. The Parks & Open Space Advisory Board offers the following outlook:

### ***Projects 2017 – 2022***

- General Maintenance of Park Buildings (*See Updates Section on p. 29 & Appendix C*)
  - Roof
  - Structural Reviews & Improvements
- Calapooia Riverbank Erosion (*See Updates Section on p. 29 & Appendix C*)
- Relocate Existing Playground – Calapooia Riverbank (*See Updates Section on p. 29 & Appendix C*)
- New Playground – Pioneer Park (Back by Ball Diamonds)
- Reforestation of Pioneer Park
- Sidewalk for Library Park

## **Completed**

- Repaired fencing and backstop on west baseball/softball diamond
- Installed Electricity for the Northeast Corner of Pioneer Park
- Installed Electricity through the Prairie Area of Pioneer Park
- Uniform Signage for City Properties
- Relocate New Restrooms for Pioneer Park
- Policy for Liability for the Park System
- Redo “Kiddie” Area – 1970’s equipment (Pioneer Park)



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- Install New Entry Gates at All Entrances to Pioneer Park
  - Multiple Improvements to the Central Linn Recreation Center including a new roof, paint, water fountain, water heater and HVAC improvements
  - Landscaping Improvements at Library Park
  - Improved Basketball Court in Kirk's Ferry Park
  - Installation of Information Board in Pioneer Park
  - Maintained Playground Areas in Pioneer Park – installed curbing and engineered wood chips to meet fall safety standards
  - Developed agreements with the Brownsville Chamber of Commerce, the Linn County Pioneer Picnic Association, the Eugene Kennel Club, the Willamette Agility Group, the Willamette Valley Cycling Tour and several other groups to enhance the use of Pioneer Park and to increase events for the community

### **Eliminated**

- Big Archway Entry to Pioneer Park
  - Parks & Open Space Advisory Board decided that the project was impractical. Ground signage provided better visibility and was more user friendly. The Board could not justify the additional expense.
- Par Course for Pioneer Park
  - Interest for a par course is non-existent. Parks & Open Space Advisory Board decided to eliminate the project.
- Landscaping & Skateboard Park at Kirk's Ferry
  - Parks & Open Space Advisory Board decided to eliminate the conversation regarding a skate park. Skate parks are extremely costly to construct and difficult to maintain once the concrete begins to fail. The major reason the Board eliminated the skate board park was because it serves a very small percentage of the population. The demographic is too narrow to justify the public expenditure of funds.

### **Updates**

#### **General Maintenance of Park Buildings**

City Administrator Scott McDowell and Public Works Superintendent Karl Frink shared a presentation with Council on the state of facilities and future capital improvements in November 2016. One major component of the presentation included a plan and strategy for the buildings in Pioneer Park and the Central Linn Recreation Center. The Picture Gallery was also discussed. Staff asked for a professional review of the structures to determine future viability.

Council budgeted for a physical needs assessment study in FY 17-18. Upon release of the study, Council formed the Facilities Review Committee (FRC). Please see the Committee's report in



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Appendix C for more information. The FRC recommended a structural engineering review of the Central Linn Recreation Center among other things. In FY 18-19, Staff conducted a structural engineering review of the Rec Center. Results were shared with the Parks & Open Space Advisory Board and Council.

An ad hoc committee was then formed, with similar members from the FRC, to continue working on visioning, strategy and funding options.

### **Calapooia Riverbank Erosion**

Council approved Staff reviewing the erosion problem once again in 2019. Please see the report in Appendix C. The outcome of the review was much the same as it initially was in 2012. The cost associated with making the necessary repairs to the riverbank would be in excess of \$1.8M with no guarantee that it would prove to stand the test of time by fixing the erosion problem. General Fund cannot support such an endeavor and the State, and all funding agencies are not willing to grant funding to the City for this kind of project.

### ***Pioneer Park***

Pioneer Park is a 25-acre community park located west of downtown Brownsville between Park Avenue and the River. As Brownsville's largest park, Pioneer Park offers the largest variety of activities, including camping, swimming, sports and private parties. Pioneer Park also hosts many public events throughout the year including the annual Pioneer Picnic, Fourth of July Celebration, the Chamber of Commerce's Antique Faire and the Festival of Tents to name a few.

The Parks & Open Space Advisory Board should monitor Pioneer Park use and evaluate the present management system at least every five years to determine if modifications are needed. A modified management approach may include restoration of the river area, consolidating river access and establishing a wellhead and tree protection area. Opportunities for restoration of the riparian area can include consolidating access to the river by providing a designated pathway to the river, as well as planting willow trees for bank stabilization.

The City can protect its wellhead area by considering opportunities for restoration of the riparian area, limiting use near the area and planting native shrubs around the existing fenced in well equipment.

A Tree Protection Area is an area that is maintained for tree health and overall character of the park. These benefits would include less soil compaction and damage to the roots. As a result, a healthier and more enjoyable tree canopy will exist within the park. The City has adopted a Forest Management Plan and is in the process of removing dead trees and reforesting with native species that aim to improve the long-term health and care of trees in Pioneer Park.

Trees contribute to the environmental and economic health of a community by providing shade, cleaning the air and water and increasing property values. <sup>x</sup> Signs of unhealthy trees include discoloration of leaves, dead branches and disease such as root rot. Base compaction from vehicle parking can significantly contribute to the above tree abnormalities.

If the Parks & Open Space Advisory Board documents negative impacts to trees and other natural areas, potential solutions include restricting automobile access to the affected areas as well as restricting camping on the affected areas.



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Suggestions for native tree plantings in the Tree Protection Area include:

- ★ Big Leaf Maple (*Acer macrophyllum*)
- ★ Oregon white oak (*Quercus garryana*)
- ★ Flowering dogwood (*Cornus nuttallii*).

Suggestions for native tree plantings along the river include:

- ★ Red Alder (*Alnus rubra*)
- ★ Black cottonwood (*Populus balsamifera* ssp. *trichocarpa*)
- ★ Oregon ash (*Fraxinus latifolia*).

Suggestions for shrubs near the Wellhead Protection Area include:

- ★ Salal (*Gaultheria shallon*)
- ★ Snowberry (*Symphoricarpos albus*)
- ★ Nootka rose (*Rosa nutkana*)
- ★ Red-flowering currant (*Ribes sanguineum*)
- ★ Bracken fern (*Pteridium aquilinum*).

### ***Blakely Park***

Blakely Park is an 0.15-acre mini-park located on the corner of Washburn Street and Blakely Avenue. It is Brownsville's only park south of Highway 228. The park is home to a monument, a large shade tree, a picnic table and playground equipment suitable for the space.

### ***Kirk's Ferry Park***

Facilities include a basketball court that used to be a tennis court, an historical jailhouse structure and access to the River. The park offers a casual parking design which allows users to park their cars in a large portion of the park. Parks & Open Space Advisory Board have completed an upgrade to the basketball court, removed dangerous skate park equipment, replaced unsightly fencing with more functional fencing, and installed a drinking fountain over the last few years. Public Works plans on providing some landscaping that will make the park more useable. The Parks & Open Space Advisory Board would like to see the area become multi-use and is interested in possibly adding a gazebo to accommodate live music performances in the future.

### ***Washburn Property***

The Washburn Property is a 2.22 acre site located at the north end of Washburn Street. The site was undeveloped. The site may have historical significance to Brownsville. Prior to early settlement of the Willamette Valley, the point where the main north-south trail crossed the Calapooia River, was important to the movement of the Native Americans and later trappers in the area. In the mid-1800's, a ferry and bridge crossing near the Washburn site played a leading role in the establishment of Brownsville, being on the mainline of the Territorial Road. During this time frame, Brownsville was known as Kirk's Ferry.

Input from city residents regarding the Washburn property and its' potential to serve as a neighborhood park revealed the following concerns: safety, access, trespass, vandalism, restoration of the natural area, flooding potential and the cost to implement projects. Opportunities include creating a pedestrian or trail linkage on site, providing river access, the potential for tourist attraction, preservation of





a historical site and a safer route for children to access Pioneer Park. Funding would pose a problem to this project along with required maintenance and upkeep of additional facilities. Parks & Open Space Advisory Board eliminated this project due to development concerns expressed above and the sheer cost to construct improvements. Long-term maintenance would require too many resources from the general fund.

### ***Parkland Acquisition Criteria***

This section provides guidance on how to determine the suitability of potential parkland, when using both short and long-term strategies. The City shall assess the following criteria when they decide to acquire parkland:

- ★ The topography, geology, access to, parcel size, and location of land in the development available for dedication; and,
- ★ Potential adverse/beneficial effects on environmentally sensitive areas; and,
- ★ Compatibility with the Parks Master Plan in effect at the time of dedication; and,
- ★ Vehicular and pedestrian access to the site; and,
- ★ Availability of previously acquired property; and,
- ★ Parkland need based on priorities identified in this plan; and,
- ★ Future operational and maintenance liabilities.

The Parks & Open Space Advisory Board feels strongly that the City has more than ample park land. Adding land to the inventory is impractical due to the maintenance required. The Board has attempted to liquidate some of the inventory over the last five years, but legally were unable to do so. Council has been asked to purchase several parcels over the last several years as well, but due to the initial cost, development costs and maintenance costs, Council has had to decline these offers. The City of Brownsville already exceeds the national average for park space. Council has determined that adding land at the cemetery would be too costly to develop given current and foreseeable resources. Council is considering using non-profit and other groups to manage and care for parks when it is in the best interest of the public to do so.

<sup>x</sup> Oregon Department of Forestry website accessed December 1, 2003  
[http://www.odf.state.or.us/divisions/management/forestry\\_assistance/ucf/default.asp?id=3020108](http://www.odf.state.or.us/divisions/management/forestry_assistance/ucf/default.asp?id=3020108)



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## Chapter 5

### Funding Strategies & Sources

The previous chapter described park projects and acquisition priorities for Brownsville’s park system. Brownsville needs to pursue new and ongoing funding sources to fulfill identified capital improvement and maintenance goals. Brownsville should strive to have a diversified funding and support strategy that is comprised of short and long-term sources.

This chapter presents recommended funding and support strategies. This includes an evaluation of public (federal, state, and local) and private funding sources. Non-monetary support in the form of partnerships and volunteerism as well as monetary support are presented.

Key questions the City should ask as it pursues a funding and support strategy are:

- ★ How much funding is needed to maintain existing park and recreation facilities?
- ★ How much will be needed to maintain future park and recreation facilities?
- ★ What stable, long-term funding sources can be created for ongoing maintenance, land acquisition and capital improvement needs?
- ★ What long-term partnerships can be pursued?

Figure 5-1 summarizes the funding and support strategies. Contact information for each category is provided in Appendix A.

**[Next Page]**



**Figure 5-1. Funding and Support Sources**

Funding Source	Implementation Time	Duration	Pros	Cons
Partnerships	Short-Term	Varies	Builds cooperation	Requires ongoing coordination
			Increases ability to pursue projects through sharing of resources	No guarantee of success
Donations	Short-Term	Ongoing	Can be a win-win situation	
			May include land, financial, or materials	Requires continuous time and effort
Grants	Short-Term	Varies and limited	Good track record with grants often leads to more grants	Requires staff time for applications (with no guarantee or aware) and ongoing reporting
			Often support new, one-time expenditures	Often short-term and only for specific projects (not usually including staff time)
				Often require matching funds
Parks and Recreation District	Long-Term	Ongoing	Provides ongoing source of funds	Long-time to form
			All area park users (not only City residents) would pay for services	Some citizens may oppose
			Fund source would directly and only benefit parks	Could mean loss of revenue (control) for City
Land Trusts	Long-Term	Ongoing	Good way of working with landowners	Often have very specific projects in mind
				Lengthy process
				Land trusts may have limited resources
Bonds	Long-Term	Limited	Distributes costs over life of project	Debt burden must not be excessive
			Can generate substantial capital	May require voter approval
Levies	Long-Term	Limited	Can generate reduced-interest funding	Intergenerational inequity (levies are carried by current users, although future users will benefit.)
			Can provide substantial funding for short-term (under 10 year) projects	Requires voter approval (double majority)
System Development Charge	Long-Term	Ongoing	Development helps pay for the capital improvements, which will be necessary to provide residents with adequate park services.	Can only be used for capital improvements, not for deferred or ongoing maintenance needs.
			Ordinance in place	
Mandatory Dedication	Long-Term	Ongoing	Ensures parkland is located near or within future developments	Requires legally defensible methodology
			In conjunction with fee-in-lieu of dedication provides flexible way for City for provide parkland for new residents	
Local Improvement District	Short-Term	Varies	Can have a specific purpose	Must be abandoned if property owners provide written and signed objection
			Costs are paid by benefiting property owners	
			City or property owners can initiate	

Source: Community Planning Workshop

Each funding strategy has differing implementation time requirements. Staff can immediately act upon short-term strategies. However, before action is taken, staff should consider the time and effort necessary to proceed with each strategy. Long-term strategies will likely take five or more years to implement. In some cases, a funding strategy can be pursued immediately, and provide ongoing support. These sources have the advantage of providing support or funding over an extended period of time. In other cases, a funding strategy will provide support for a limited period. Some sources, such as grants last for only specified periods and require renewal.

The City’s only realistic means of funding park assets is through the general fund. Brownsville has many assets that require maintaining. The City is interested in providing the current level of service and continues to manage the park system to sustain this level into the future. Changes to recreational immunity will also dramatically impact services the City currently provides. The Parks & Open Space Advisory Board



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and Council have taken measures to manage future changes, but as case law defines financial impact and future standards the City will have to adjust quickly.

## ***Recommended Funding Strategies***

### ***Partnerships***

Partnerships can play an important role in the acquisition of new park and recreation facilities and in providing one-time or ongoing maintenance support. Public and private for-profit and non-profit organizations may be willing to partner with the City to fund outright, or work with the City to acquire additional parks and recreation facilities and services. Certain organizations may be interested in improving or maintaining an existing facility through a sponsorship.

This method is a good way to build cooperation among public and private partners. The specific partnering process used depends on who is involved. Potential partners include State agencies such as the Oregon Department of Fish and Wildlife (especially for acquisition of lands with habitat potential), local organizations, land trusts, and national organizations such as the Nature Conservancy.

Although partnerships may not yield monetary benefits, there are other important benefits including:

- ▶ Efficiencies involving the removal of service duplication or use of complementary assets to deliver services
- ▶ Enhanced stability because future service is more probable when multiple parties make a commitment to it
- ▶ Organizational legitimacy of one or more partners
- ▶ The ability to pursue projects that the City may not have the resources to complete
- ▶ Identification of opportunities through partner organizations
- ▶ The key problem with partnerships is that there is no guarantee of success.
- ▶ Developing projects with partners requires considerable time and energy.

### ***Donations***

Two key motives for donation are philanthropy and tax incentives. These benefits should be emphasized when collaborating with landowners. There are many strategies for courting donations including building public relations, creating a healthy community, boosting employee morale, and existing tax structures that have built in incentives for donating land. It is important to note that for some potential donors, tax considerations are the primary reason for contemplating a major land donation. Soliciting donations, like partnering, takes time and effort on the part of City staff, but can be mutually rewarding. Generally, donations are not stable sources of land or finances.

Pursuing donations through partnerships may provide advantages to all parties involved. For example, working a land transaction through a non-profit organization may provide tax benefits for the donor, can provide flexibility to the City, and can reap financial benefits for the non-profit.

### ***Grants***

Grants are a good strategy to supplement park acquisition and development funds. Many grant organizations throughout the country fund park acquisition and improvements, although few provide funds



for ongoing maintenance activities. Two factors that make grants challenging are (1) most grant organizations have lengthy processes that will require staff time and effort, and (2) grants usually have very specific guidelines and only fund projects that specifically address their overall goals. Moreover, grants should not be considered a long-term stable funding source.

Federal Land and Water Conservation Fund grants administered by the Oregon Department of Parks and Recreation, for example, require that the proposed project be consistent with the outdoor recreation goals and objectives contained in the State Comprehensive Outdoor Recreation Plan (SCORP). Because grants are usually highly competitive, staff time should be allocated carefully to apply for grants that are a good fit. It is also important to note the timing of the grant cycle. Often, the City will have to budget money over two fiscal years in order to be eligible for grants.

Because many grant agencies look favorably upon collaborative projects, a potential benefit of grant proposals is that they can foster partnerships between agencies, organizations, and the City. Appendix A outlines organizations' goals and provides contacts for state, regional, and federal grant opportunities. Grants are an unreliable source of funding projects. Grants create more assets that place an undue strain on maintenance efforts. The Parks & Open Space Advisory Board and Council must consider current assets and service levels before adding new capital infrastructure.

### ***Land Trusts***

Land trusts use many tools to help landowners protect their land's natural or historic qualities. Land in land trusts may provide open space for aesthetic, visual or recreation purposes. Tools used by land trusts include:

- ▶ Conservation easements (which allow land to be protected while a landowner maintains ownership)
- ▶ Outright land acquisition by gift or will
- ▶ Purchases at reduced costs (bargain sales)
- ▶ Land and/or property exchanges

A landowner can donate, sell, or exchange part of their land rights to a land trust, in cooperation with the City. There is a tax incentive to donate the land as a charitable gift, although it is the responsibility of the landowner to pursue the tax deduction.

Collaborating with land trusts and landowners takes considerable time and effort. Steps included in the process are:

- ▶ Determining the public benefit of a landowner's property for preservation.  
This step identifies the natural or historic values of the land
- ▶ Working with the landowner to develop goals and objectives for the land
- ▶ Gathering information including title and deed information, maps, photographs, natural resources information, structural features, and land management and mining history
- ▶ Conducting an environmental assessment for evidence of hazardous materials



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or other contaminants

- ▶ Determining whether a new survey is needed to establish easement boundaries
- ▶ Designing the terms of the easement
- ▶ Contact information for land trusts that operate in the area is in Appendix A.

## ***Bonds***

To issue long-term debt instruments (bonds), a municipality obtains legal authorization from either the voters or its legislative body to borrow money from a qualified lender. Usually the lender is an established financial institution, such as a bank, an investment service that may purchase bonds as part of its mutual fund portfolio, or sometimes, an insurance company.

Issuing debt is justified based on several factors:

- ▶ Borrowing distributes costs and payments for a project or improvement to those who will benefit from it over its useful life, rather than requiring today's taxpayers or ratepayers to pay for future use.
- ▶ During times of inflation, debt allows future repayment of borrowed money in cheaper dollars.
- ▶ Borrowing can improve a municipality's liquidity to purchase needed equipment for project construction and improvements.
- ▶ Debt issuance also does not exhaust current cash-on-hand, allowing such general fund revenues to be used for operating expenses.<sup>vii</sup>

The longer the maturity term, the higher the interest rate required to borrow for that period because borrowers must compensate investors for locking up their resources for a longer time.

Oregon law requires that all Unlimited-Tax General Obligation (ULTGO) bonds be authorized by a vote of the people. The *Oregon Bond Manual – 4<sup>th</sup> Edition*<sup>xi</sup>, recommends municipalities hire a bond counsel prior to the bond election to ensure that all requirements are met for a legal bond election.

The Bond Manual also notes that approval of an ULTGO bond requires considerable effort. Some examples of ways to gain public support include attitude polls, forming a bond issue citizens' committee, holding public meetings, leaflets, and door-to-door canvassing. Note that under Oregon law, no public resources may be used to advocate a pro or con position regarding a ballot measure. Accordingly, any printed materials must be purely explanatory in nature.

A fundamental rule associated with issuing long-term debt instruments is that they may not be issued for maturity longer than the project's useful life. People should not be paying for a major park or recreational facility after it is no longer in use.<sup>xii</sup> Furthermore, Brownsville should be very clear about the specific actions to be carried out with the bond revenue. Working with the community is an important aspect of passing a bond.

The key benefit of bonds for park acquisition is that the City can generate a substantial amount of capital. This capital can then be used to purchase parkland to accommodate needs far into the future. The current financial condition of the City makes this option very unlikely due to the Water and Wastewater



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incurred debts. The City refinanced Water and Wastewater Bonds in 2016 and agreed to a Bond Limit of \$2.4M through February of 2024.

### ***Levies***

A local option levy for capital improvements provides for a separate property tax levy outside the City’s permanent rate limit. This levy may be used to fund a capital project or a group of projects over a specified period, up to 10 years. Revenues from these levies may be used to secure bonds for projects or to complete one or more projects on a “pay as you go” basis.

The advantages of levies include reduced interest, increased flexibility, enhanced debt capacity, improved borrowing terms, and increased fiscal responsibility. The major disadvantages of this approach are insufficient funding, intergenerational inequity (if, for example, long-term facilities are paid for disproportionately by current users), inconsistency of funding requirements, and use of accumulated reserves. There are also legal requirements including property tax limitations imposed by Article XI, Section 11 of the Oregon Constitution. <sup>xii</sup>

Local option levies require voter approval and are subject to the double majority requirement. In addition, increases in the assessed valuation of each property are limited to three percent per year (Section 11(1)(b)), with special exemptions for property that is improved, rezoned, subdivided, or ceases to qualify for exemption. In combination with the fixed permanent rate, the limitation on the growth in assessed value will limit the growth of taxes on individual properties to an average of 3% per year. Due to these limitations, local option levies are not generally considered to be a good alternative to the use of general obligation bonds for large projects or groups of projects.

Property tax levies can be used for facility operations and maintenance, land acquisition, and capital improvements.

### ***Dedications and Systems Development Charges***

A system development charge or SDC is a one-time fee imposed on new development to equitably cover the cost of facility capacity needed to serve new customers. The purpose of the system development charge is to impose a portion of the costs of capital improvements for water, wastewater drainage, streets, flood control, and parks upon the developments and redevelopments that create the need for or increase the demand on the specific capital improvement for which the SDC is being enacted. <sup>xiii</sup>

An SDC can consist of an “improvement fee” (for costs associated with capital improvements to be constructed) or a “reimbursement fee” (for costs associated with capital improvements already constructed or under construction). <sup>xiv</sup> The methodology used to establish the reimbursement or improvement fee are included in state statute guidelines (ORS 223.297-223.314). Since every community is different, each City establishes how they will apply the system development charge. Examples of how some local Oregon communities levy park SDC’s include the following:

- ▶ Non-residential and residential facilities (single family, multi-family, manufactured homes)
- ▶ Commercial development
- ▶ Industrial development



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The Parks & Open Space Advisory Board and Council are not interested in this option at this time due to the current economic conditions. If the economy picks up and the housing market begins to move steady, then this option should be revisited.

### ***Dedications***

Another option that the City should investigate to meet future parkland need is mandatory dedications. Local ordinance can specify that during development, a portion of land shall be dedicated for park and recreation purposes. Dedications can be done in a variety of ways. Dedication of land can be formulated based on (1) a percentage of the total development, (2) the number of proposed lots or units, or (3) the number of people per lot or per unit in a proposed development. Because the third option is based on the number of people who would potentially access the new parkland, it is the method most likely to provide enough recreation space.

Fee in-lieu of dedication is a strategy cities can use when dedication is not feasible due to the size, type, or location of a new development. Some communities write a minimum development size into their ordinance.

An acquisition plan and a local parks standard (number of acres/1,000 residents) are key components of a mandatory dedication policy. The acquisition plan should include a list of criteria for land parcel acceptance or rejection (See Chapter 4). The standard helps establish a legal nexus between mandatory dedication and the expected public welfare; however, measures should be taken to assure that the dedication policy is not too onerous for the developer. Mandatory dedications, if adopted, will only be one of the multiple strategies employed by the City to develop new parkland.

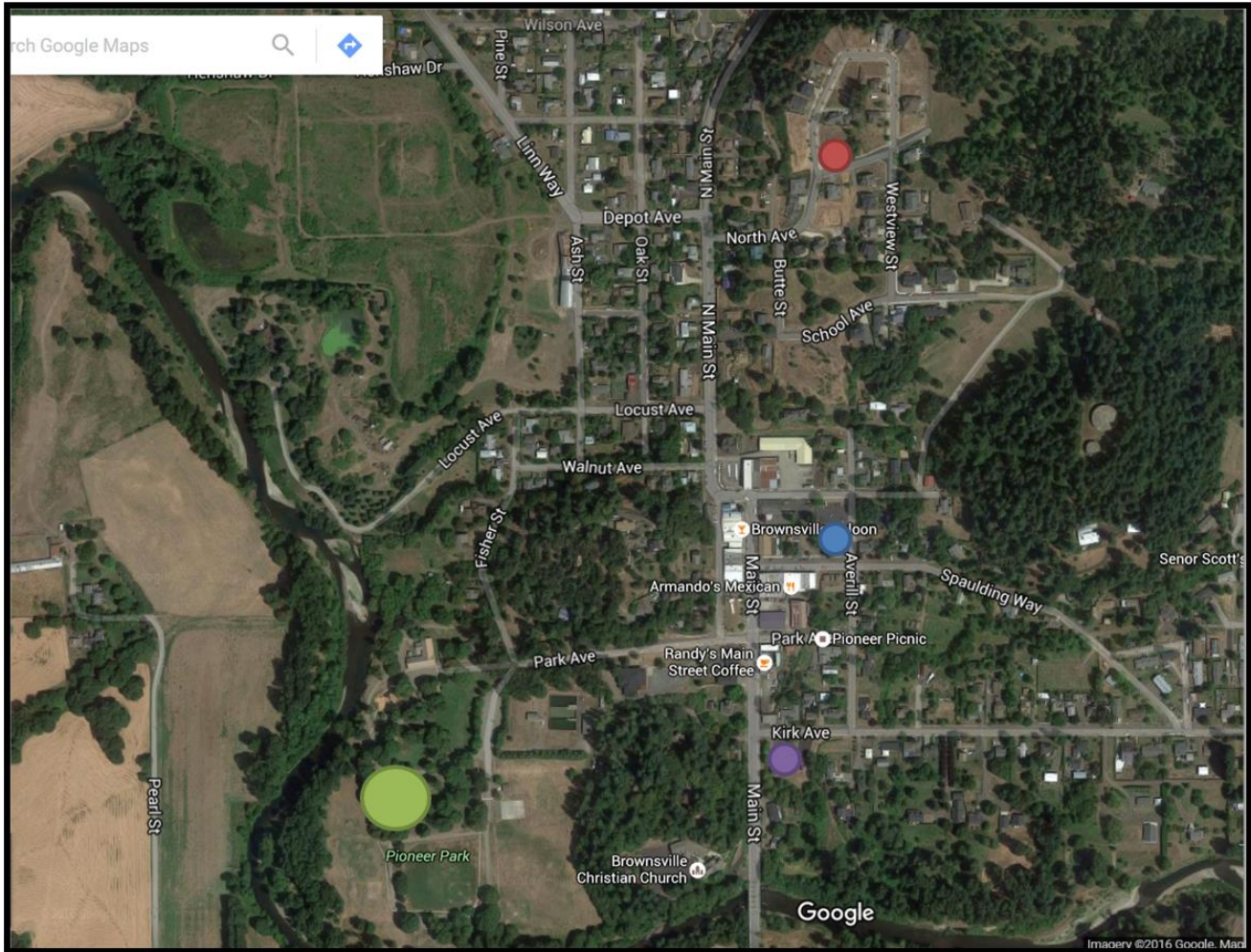


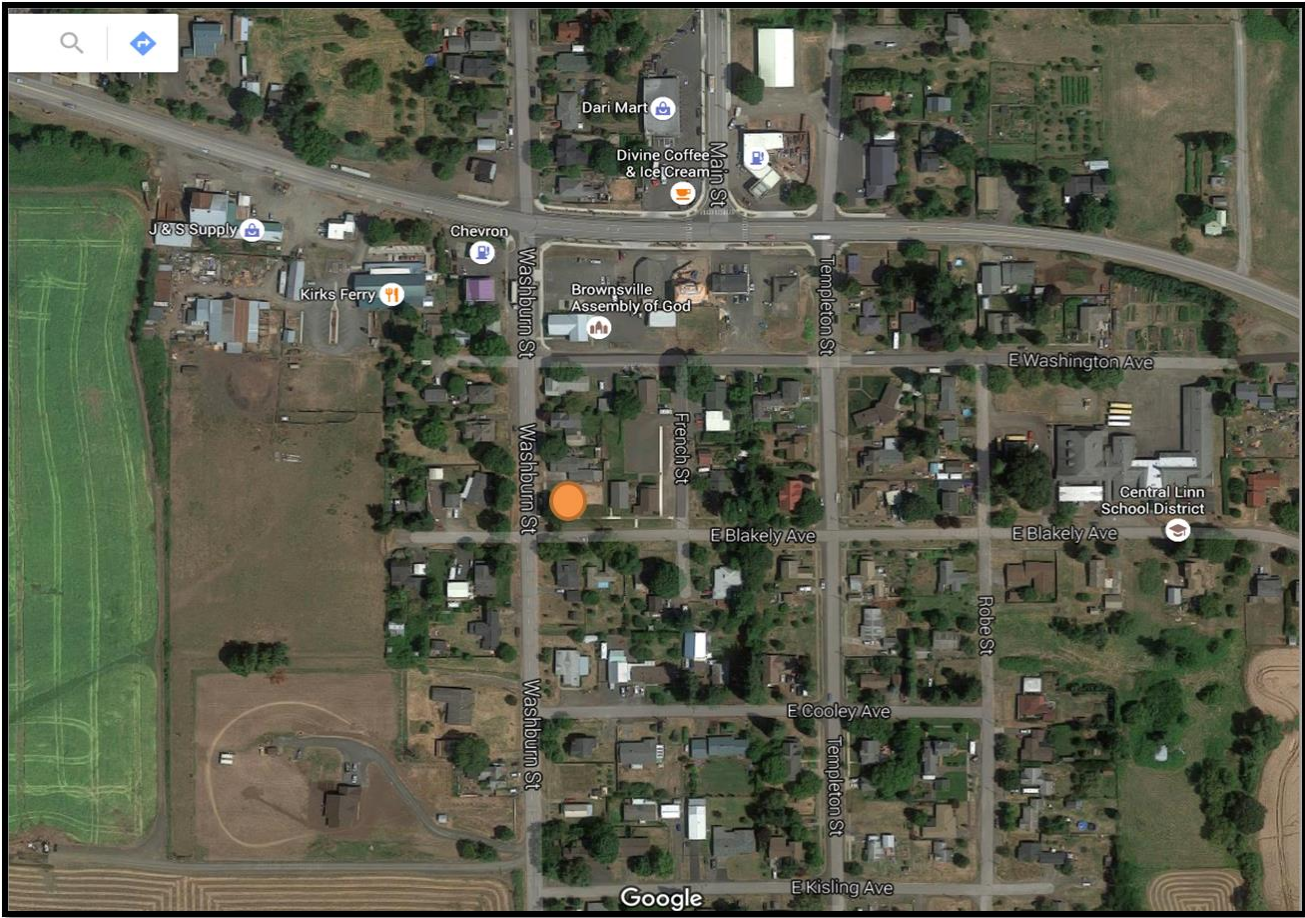


## Exhibit A

● Pioneer Park ● Kirk's Ferry Park ● Remington Park ● Library Park ● Blakely Park

### *Vicinity & Location Map*









# Pioneer Park



Entrance Sign



Pavilion



Pavilion Kitchen



Stage



Playground





**Prairie**



**Horseshoe Pits**



**Horseshoe Pits**



**Basketball Courts**



**Baseball/Softball East #1**



**Baseball/Softball East #2**





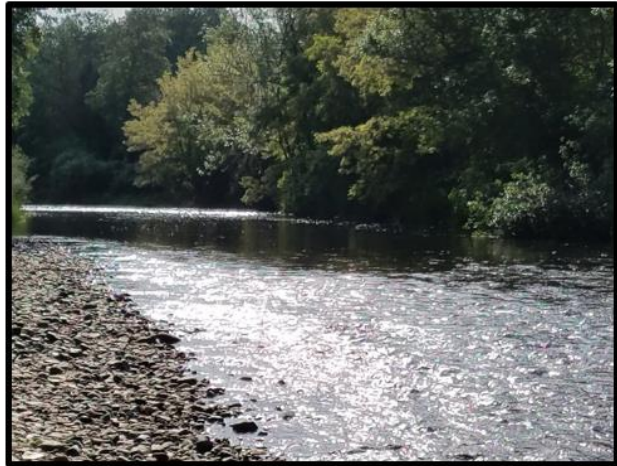
**Restroom**



**Picnic Tables**



**West Baseball/Softball**



**Calapooia River**



**Dog Off-Leash Area**





## *Library Park*







## ***Blakely Park***



## ***Kirk's Ferry Park***







## *Remington Park*









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## Appendix A

### ***Funding Information***

Appendix A provides brief descriptions and contacts for the funding strategies presented in Chapter 5.

### **Partnerships**

#### **Federal**

#### **Division of State Lands, Wetland Mitigation Banking**

##### ***Contact:***

Wetland Mitigation Specialist  
Department of State Lands  
775 Summer Street NE, Suite 100  
Salem, Oregon 97301-1279  
Phone: (503) 986-5238 or (503) 986-5229  
Dana Field or Dana Hicks  
Website: [www.statelands.dsl.state.or.us](http://www.statelands.dsl.state.or.us)

#### **Oregon Department of Fish and Wildlife**

##### ***Contact:***

Oregon Department of Fish and Wildlife  
3406 Cherry Avenue NE  
Salem, Oregon 97303-4924  
Phone: (503) 947-6000  
Website: [www.dfw.state.or.us](http://www.dfw.state.or.us)

#### **Oregon Parks and Recreation Department**

##### ***Contact:***

Oregon Heritage  
Oregon Parks and Recreation Department  
725 Summer Street NE, Suite C  
  
Salem, OR 97301  
Phone: (503) 986-0690  
Website: [www.oregon.gov/OPRD](http://www.oregon.gov/OPRD)

#### **Oregon Youth Conservation Corps**

Through assistance received from the Oregon Youth Conservation Corps (OYCC), communities receive needed services, and unemployed youth are placed in gainful activities. The program can provide an opportunity for youth to serve as role models for others, which instills a growing commitment to



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community. OYCC funding is distributed in equal amounts to each county in Oregon every summer. The program funds individual projects ranging from \$5,000 to \$10,000.

The OYCC program consists of grants of labor and capital financing. These grants generally support conservation or environment-related projects proposed by non-profit organizations. Youth corps members work on projects such as:

- ▶ Construction of trails, boat docks, disability access ramps, fences and picnic tables;
- ▶ Restoration/preservation of wetlands, stream banks, endangered species and other wildlife habitat, and historical and cultural sites;
- ▶ Maintenance of all of the above after wind, floods, fire or normal use;
- ▶ Plantings, water quality testing, removing non-native plants and weeds, watershed work, managing nurseries, landscaping, mapping, surveying and recycling and community service projects.

**Contact:**

Oregon Youth Conservation Corps  
530 Center St NE, Ste 300  
Salem, Oregon 97301  
Phone: (503) 373-1283  
Website: <http://ccwd.oregon.gov/oyccweb/>

**Local**

Public, private, and non-profit organizations may be willing to fund outright or join together with the City of Brownsville to provide additional parks and recreation facilities and services. This method may be a good way to build cooperation among public and private partners in the Brownsville area. A list of potential partners besides police and fire departments, utility providers, and the school district include:

- ▶ The Garden Club of Brownsville
- ▶ Brownsville's Historic Review Board
- ▶ Boy Scouts of America
- ▶ Girl Scouts
- ▶ Kiwanis Club
- ▶ Lions Club
- ▶ The Audubon Society
- ▶ 4-H

Local businesses may also be willing to partner with the city to provide park services. The Chamber of Commerce would be a good place to begin to form such partnerships.

**Contact:**



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Brownsville Chamber of Commerce  
PO Box 161, Brownsville OR 97327  
Tel: (541) 928-0831  
Website: [www.historicbrownsville.com](http://www.historicbrownsville.com)

## ***Not-for-Profit Organizations***

### **American Farmland Trust**

(For agricultural lands only)

#### ***Contact:***

American Farmland Trust  
1402 3<sup>rd</sup> Avenue, Suite 1325  
Seattle, WA 98101  
Phone: (206) 860-4222  
Website: <https://www.farmland.org/>

### **The Nature Conservancy**

#### ***Contact:***

The Nature Conservancy of Oregon  
821 S.E. 14th Avenue  
Portland, Oregon 97214  
Phone: (503) 802-8100  
Website: [www.nature.org](http://www.nature.org)

## ***Grants***

### **Private Grant-Making Organizations**

#### **National Grants**

### **American Greenways Dupont Awards**

This program is a partnership between Dupont, The Conservation Fund, and the National Geographic Society. The Conservation Fund forges partnerships to protect America's legacy of land and water resources. Through land acquisition, community initiatives, and leadership training, the Fund and its partners demonstrate sustainable conservation solutions emphasizing the integration of economic and environmental goals.

#### ***Contact:***

The Conservation Fund  
4039 N. Mississippi Ave, Suite 308  
Portland, OR 97227  
Phone: (503) 407-0301  
Website: [www.conservationfund.org](http://www.conservationfund.org)



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## ***State Grants***

### **Oregon Community Foundation Grants**

Proposals to the Oregon Community Foundation (OCF) are prioritized for funding based on their fit with a set of basic guiding principles and four specific funding objectives:

1. To nurture children, strengthen families and foster the self-sufficiency of Oregonians (40-50% of OCF Grants);
2. To enhance the educational experience of Oregonians (15-20% of OCF grants);
3. To increase cultural opportunities for Oregonians (15-20% of OCF grants);
4. To preserve and improve Oregon's livability through citizen involvement (10-15% of OCF grants);

Only about 5 percent of Community Grants are above \$50,000. Larger grants tend to be made only for projects that are an exceptionally good fit with OCF priorities, have a broad scope of impact, and address an area to which OCF's board has decided to give special attention.

#### ***Contact:***

Oregon Community Foundation  
1221 SW Yamhill, #100  
Portland, Oregon 97205  
Phone: (503) 227-6846  
Fax: (503) 274-7771  
Website: <http://www.oregoncf.org/>

### **Oregon Department of Forestry**

#### ***Urban and Community Forestry Assistance Grants Forestry Assistance Program***

2600 State Street  
Salem, Oregon 97310  
Phone: (503) 945-7200  
Website: [www.odf.state.or.us](http://www.odf.state.or.us)

### **The Collins Foundation**

The Collins Foundation's purpose is to improve, enrich, and give greater expression to the religious, educational, cultural, and scientific endeavors in the State of Oregon and to assist in improving the quality of life in the state. In its procedures, the Foundation has not been an "Operating Foundation" in the sense of taking the initiative in creating and directing programs designed to carry out its purpose. Rather, the

#### ***Parks Master Plan***



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trustees have chosen to work through existing agencies and have supported proposals submitted by colleges and universities, organized religious groups, arts, cultural and civic organizations, and agencies devoted to health, welfare, and youth.

**Contact:**

The Collins Foundation  
1618 SW First Avenue, Suite 505  
Portland, Oregon 97201  
Phone: (503) 227-7171  
Website: [www.collinsfoundation.org](http://www.collinsfoundation.org)

**Regional Grants**

**Paul G. Allen Forest Protection Fund**

The Paul G. Allen Foundation focuses its grant making on the acquisition of old growth and other critical forestlands. Priority is given to projects that protect forestlands with a strategic biological value that extend or preserve wildlife habitat, and, where possible, offer opportunities for public recreation and education. The foundation is particularly interested in landscape-scale projects that provide optimal potential for protection of ecological integrity, functional and intact ecosystems, connectivity, and biodiversity conservation.

**Contact:**

Grants Administrator  
PGA Foundations  
505 5th Ave South Suite 900  
Seattle, Washington 98104  
Email: [ValBu@PGAfamilyfoundation.org](mailto:ValBu@PGAfamilyfoundation.org)  
Website: [www.pgafamilyfoundation.org](http://www.pgafamilyfoundation.org)

**Bonneville Environmental Foundation**

Bonneville Environmental Foundation (BEF) watershed project grants to date have ranged from \$5,000 to \$40,000. Any private person, organization, local or tribal government, located in the Pacific Northwest (OR, WA, ID, MT) may submit a proposal to BEF. Proposals will only be considered, however, from applicants proposing to complete a watershed biological assessment or applicants operating within the context of a previously completed watershed biological assessment.

**Contact:**

Bonneville Environmental Foundation  
240 SW 1<sup>st</sup> Avenue,  
Portland, Oregon 97204  
Phone: (503) 248-1905  
Fax: (503) 248-1908  
Website: [www.b-e-f.org](http://www.b-e-f.org)



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## **Ben B. Cheney Foundation**

Washington and Oregon institutions are eligible for Cheney Foundation grants. Letters of inquiry outlining the proposed project are required. Full applications are accepted only from those whose inquiry letters are of interest to the foundation. There are no deadlines.

### ***Contact:***

Ben B. Cheney Foundation  
3110 Ruston Way, Suite A  
Tacoma, WA 98402  
Phone: (253) 572-2442  
Website: [www.benbcheneyfoundation.org](http://www.benbcheneyfoundation.org)  
Email: [info@benbcheneyfoundation.org](mailto:info@benbcheneyfoundation.org)

## **Public Grantmaking Organizations**

### ***Federal***

#### ***National Park Service***

#### **Urban Park and Recreation Recovery Program**

The National Park Service provides recreation grants for economically distressed urban cities. The Urban Park and Recreation Recovery (UPARR) program was established in November 1978 by Public Law 95-625, authorizing \$725 million to provide matching grants and technical assistance to economically distressed urban communities. The purpose of the program is to provide direct federal assistance to urban localities for rehabilitation of critically needed recreation facilities. The law also encourages systematic local planning and commitment to continuing operation and maintenance of recreation programs, sites, and facilities. Only cities and urban counties meeting established criteria are eligible for assistance.

### ***Contact:***

National Park Service  
Pacific West Region (AK, ID, OR, WA)  
Columbia Cascade Support Office  
909 First Avenue  
Seattle, Washington 98104-1060  
Phone: (206) 220-4126, Ext 4115  
Website: <http://www.nps.gov/uprr>

#### **Land and Water Conservation Fund**

This program uses federal dollars from the National Park Service that are passed down to the states for acquisition, development, and rehabilitation of park and recreation areas and facilities.

### ***Contacts:***

725 Summer Street NE  
***Parks Master Plan***



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Salem, OR 97301  
Phone: (503) 986-0708  
Fax: (503) 986-0794  
Website: [www.oregon.gov/oprd/grants](http://www.oregon.gov/oprd/grants)

## **U.S. Department of Transportation**

TEA-21 funding for parks and connections includes:

- ▶ Bicycle transportation and pedestrian walkways;
- ▶ Recreational trails program;
- ▶ National Scenic Byways Program;
- ▶ Transportation, Community and System Preservation Pilot

### **Contact:**

U.S. Department of Transportation  
1200 New Jersey Ave, SE  
Washington, D.C. 20590  
Phone: (202) 366-4000  
Website: [www.transportation.gov](http://www.transportation.gov)

## **State**

### **Oregon Department of Transportation (ODOT)**

State Pedestrian and Bicycle Grants

### **Contact:**

Sheila Lyons  
Phone: (503) 986-3555  
Fax: (503) 986-3290

### **Transportation Enhancement Program**

Funds are available from ODOT for projects that enhance the cultural, aesthetic and environmental value of the state's transportation system. Eligible activities include bicycle/pedestrian projects, historic preservation, landscaping and scenic beautification, mitigation of pollution due to highway runoff, and preservation of abandoned railway corridors. The application cycle is every two years.

### **Contact:**

Phone: (503) 986-3432

### **Transportation Safety Grants**

This ODOT program promotes transportation safety such as programs in impaired driving, occupant protection, youth, pedestrian, speed, enforcement, bicycle, and motorcycle safety.





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**Contact:**

Phone: (503) 986-3883

More ODOT funding information can be found on Oregon's Economic Revitalization Team website formerly:

<http://communitysolutions.state.or.us/funding/transpor.html>. A new site can be found at the Governor's website: <http://governor.oregon.gov>. This information includes a detailed table of available funding, program contacts, application cycles, and a description of who can apply. This website also contains specific information on Oregon.

**Wetlands Program**

The program has close ties with local wetland planning conducted by cities, providing both technical and planning assistance.

**Contact:**

Wetland Mitigation Specialist  
Division of State Lands  
775 Summer Street NE, Suite 100  
Salem, Oregon 97301-1279  
Phone: (503) 986-5200  
Website: <http://statelands.dsl.state.or.us/>

**Oregon Parks and Recreation Department**

The Oregon Parks and Recreation Department administers several grant programs including the Federal Land and Water Conservation Fund (described under "Federal Grant-Making Organizations" in this section), Local Government, and Recreation Trails grants.

**Contacts:**

Oregon Parks and Recreation Department  
725 Summer Street NE, Suite C  
Salem, OR 97301  
Phone: (503) 986-0707  
Website: <http://www.oregon.gov/OPRD>

**Local Government Grants**

Local government grants are provided for the acquisition, development and rehabilitation of park and recreation areas and facilities. Eligible agencies include city and county parks and recreation departments, park and recreation districts, and port districts. The Local Government Grant program provides up to 50 percent funding assistance. For cities/park districts with populations less than 5,000 and counties with populations less than 30,000 the program provides up to 60 percent funding assistance. Projects that do not exceed \$50,000 total cost and a \$25,000 grant request, qualify as small grant requests.

**Contact:**

***Parks Master Plan***



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Grants Coordinator  
Mark Cowan  
(503) 986-0591

### **Oregon Watershed Enhancement Board**

The Oregon Watershed Enhancement Board (OWEB) administers a grant program that awards more than \$20 million annually to support voluntary efforts by Oregonians seeking to create and maintain healthy watersheds. Types of grants provided by OWEB include: upland erosion control, land and/or water acquisition, vegetation management, watershed education, and stream habitat enhancement.

#### ***Contacts:***

Grant Program Manager  
Oregon Watershed Enhancement Board  
775 Summer Street NE,  
Salem, Oregon 97301  
Phone: (503) 986-0178  
Fax: (503) 986-0199  
Website: <http://www.oregon.gov/oweb>

### **Oregon Department of Fish and Wildlife**

#### ***Sport Fish and Restoration Program Funds***

Cities, counties, park and recreation districts, port districts, and state agencies may receive funding from the Oregon Department of Fish and Wildlife. Funds are awarded at the start of each federal fiscal year to priority projects. This is a matching fund program of 75% federal and 25% by the State Marine Board. Eligible projects include acquisition and construction of public recreational motorized boating facilities, such as: boat ramps, boarding floats, restrooms, access roads, parking areas, transient tie-up docks, dredging and signs.

#### ***Contact:***

Realty Manager  
Oregon Department of Fish and Wildlife  
3406 Cherry Avenue NE  
Salem, Oregon 97303-4924  
Phone: (503) 947-6000  
Website: [www.dfw.state.or.us](http://www.dfw.state.or.us)

### **Park and Recreation District**

Special districts, such as a park and recreation district, are financed through property taxes or fees for services, or some combination thereof. A governing body elected by the voters directs all districts. A good source for information is the Special District Association of Oregon (SDAO).

SDAO was established in 1977 to pursue the common interests and concerns of special districts. SDAO has outlined to the process of forming a special district.



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**Contact:**

Executive Director  
Special Districts Association of Oregon  
PO Box 12613 , 727 Center street NE  
Salem, Oregon 97301  
Phone: (503) 371-8667; Toll-free: 1-800-285-5461  
E-mail: [sdao@sdao.com](mailto:sdao@sdao.com)  
Website: [www.sdao.com](http://www.sdao.com)

***Land Trusts***

There are local and national land trusts that may be interested in helping to protect land in the Brownsville area.

**The Wetlands Conservancy**

The Wetlands Conservancy (TWC) is a non-profit land trust. It was founded in 1981 and is dedicated to preserving, protecting, and promoting the wildlife, water quality and open space values of wetlands in Oregon.

**Contact:**

Executive Director  
The Wetlands Conservancy  
4640 SW Macadam #50  
Portland, Oregon 97239  
Phone: (503) 227-0778  
Fax: (971) 229-1968  
Email: [info@wetlandsconservatory.org](mailto:info@wetlandsconservatory.org)

**Land Trust Alliance**

**Contact:**

Program Director  
Land Trust Alliance  
4515 16<sup>th</sup> Avenue NE  
Seattle, Washington 98105  
Phone: (206) 638-4725  
Email: [ltanw@lta.org](mailto:ltanw@lta.org)  
Website: [info@lta.org](http://info@lta.org)

**Trust for Public Land**

**Contact:**

Oregon Field Office  
Trust for Public Land  
808 SW 3<sup>rd</sup> Avenue, Suite 570  
Portland, Oregon 97204



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Phone: (503) 228-6620  
Website: Oregon@tpl.org

### **Northwest Land Conservation Trust**

***Contact:***

Northwest Land Conservation Trust  
C/O Mark Wigg  
PO Box 831  
Salem, Oregon 97308  
Phone: (971) 600-6607  
Email: mark\_wigg@hotmail.com  
Website: www.lwlct.org

### **The Greenbelt Land Trust**

***Contact:***

The Greenbelt Land Trust  
PO Box 1721  
Corvallis, Oregon 97339  
Phone: (541) 752-9609  
Website: www.greenbeltlandtrust.org

Staff should always be able to research and stay abreast of other opportunities as they become available through these and other sources.

- xi *Oregon Bond Manual – 4<sup>th</sup> Edition*, 1998, Oregon State Treasury and Municipal Debt Advisory Commission.
- xii Ibid
- xiii Crompton, John L. 1999. *Financing and Acquiring Park and Recreation Resources*. Champaign, IL, Human Kinetics.
- xiv Section 11 was created via House Joint Resolution 85, 1997 and adopted by the people of Oregon, May 20, 1997 via Measure 50.



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## **Appendix B – Recreational Immunity**

**Summary:** The following documents are to serve as a living journal of the changes caused by the ruling on the Johnson v. Gibson Oregon Supreme Court case. Currently, the State Legislature is in the process of restoring Recreational Immunity, but nothing will be finalized until after the legislative session; if at all. The following pages are not numbered, but are in chronological order newest to oldest.



# **Park Master Plan**

## **Appendix B**

### Recreational Immunity



**May 2017**



## Recreational Immunity Fix Simple, Politics Less So

By Scott Winkels

When the Oregon Supreme Court ruled in *Johnson v. Gibson* that land owners were immune from tort liability but employees were not, the court noted that the Oregon Legislature knows full well how to write an immunity from liability but it did not specifically spell out that volunteers, employees or other agents should enjoy that same immunity. While the legislative intent was clear that a land owner, and by extension, their agents should be able to allow recreational access to their land without fear of liability, the court reasoned that plain language of the statute was apparently insufficient to do so.

With a clear indication in the court's ruling, the League, along with other local government associations and private land owners, has drafted bills that simply add employees, agents and volunteers into the recreational immunity statute. At the time of this writing, the legislative vehicle the League is focused on is SB 327, which is in the Senate Judiciary Committee, chaired by Senator Floyd Prozanski (D-Eugene).

While the language of the bill is simple, the daunting task will be to get through the legislative process. This will include: achieving a positive vote in committee, passage on the floor of the Senate, committee support in the House and an affirmative vote on the House floor with approval of the governor, can be a daunting task (and why lobbyists have jobs).

Absolving a party of liability from injuries is not an issue that the Legislature takes lightly, and the case must be made for its necessity. However, the active engagement of the LOC membership has resulted in significant support of the bill. City leaders presented on this issue during City Hall Week events in September, at City Day at the Capital in February, and through the passage of supportive resolutions over the past several weeks. Those efforts are bearing fruit.

The League anticipates that there will be some legislative activity on SB 327 by the publication date of this edition of *Local Focus*, but the conversation will by no means be complete. City leaders are encouraged to monitor the *LOC Bulletin* each Friday and the scheduled legislative webinars (see box below) for updates on this important issue.

Contact: Scott Winkels, LOC Intergovernmental Relations Associate – [swinkels@orcities.org](mailto:swinkels@orcities.org)



Every other Friday during session, the League will provide briefings on legislation of importance to cities. All webinars start at noon. To register for a webinar, or to watch past webinars, visit [www.orcities.org/legislative](http://www.orcities.org/legislative).

- April 14
- April 28
- May 12
- May 26
- June 9
- June 23
- July 7 (if necessary)



# LOC Recreational Immunity Survey Reveals Impacts to Cities

A survey of member cities revealed a high level of concern and uncertainty about the recreational immunity court decision. Twelve city facilities have been closed, accounting for 6 percent of cities that have already been effected. The qualitative results show that many cities are taking precautionary measures to reduce the effect of increased costs and liability concerns. However, these measures are stymied by a high degree of uncertainty and inability to predict the consequences of facility closures. The effect of the loss of recreational immunity, especially in areas dependent on tourist dollars, could be severe.

**On the Web:** Read the full Recreational Immunity Survey report in the Publications Library on the League's website, [www.orcities.org](http://www.orcities.org).

## Survey responses:

"The citizens of Ukiah are outraged that even some part of the park be closed down. We are a very small city and most of the recreation is at the City Park. We have many visitors traveling through Ukiah and **the park is the only recreation we have to offer them.**"

"We have heard employee reaction which could easily lead to **paranoia or even quitting of their job.**"

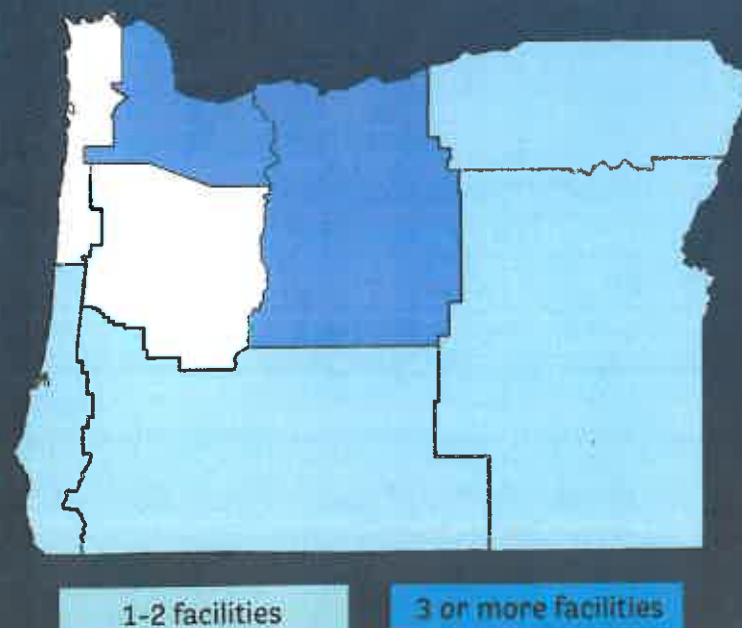
"The chamber wanted to install a slide at the city park, but **the council said no because of this new ruling.**"

"If there is not a change to the ruling, we'll have to look to possibly not offering tournaments and events at our sports park. This facility generates an average of \$12 million per year in economic impact to the city. **Sports tourism is essential to our area and without it there will be hundreds of jobs lost** in addition to the loss of growth in development of hotels and other related businesses."

## Recreational facilities closed:

- 3 parks
- 2 walking trails/bike paths
- 2 bike/skate parks
- 1 climbing wall
- 1 tennis court
- 1 playground
- 1 canoe/kayak portage
- 1 motocross area

## Facility Closures by Region



## Appendix B



# LOC Bulletin



## Recreational Immunity Bill Passes Out of Committee

On a unanimous vote Thursday, the Senate Judiciary Committee, chaired by Senator Floyd Prozanski (D-Eugene), approved a bill to restore recreational immunity, a League priority for this session. SB 327 now moves to the full Senate for a vote and then to the House for further consideration.

The bill would again extend immunity from tort liability to employees, agents and volunteers of a city for injuries resulting from recreational activities. Currently, a land owner who allows recreation on their property free of charge is immune from tort liability, but employees or volunteers who work on the property do not enjoy the same immunity.

Contact: Scott Winkels, Intergovernmental Relations Associate – [swinkels@orcities.org](mailto:swinkels@orcities.org)

## League Opposes Proposed Changes to Least-Cost Contracting

On Wednesday, the House Business and Labor Committee, chaired by Representative Paul Holvey (D-Eugene), held a public hearing on [HB 3203](#). The League testified in opposition to the bill and proposed amendments that would impose additional requirements on contracting agencies, including cities, when they use their own equipment and personnel on specified public improvement projects. The cities of Newport, Portland and Beaverton, along with the Oregon Water Utility Council, also testified in opposition. In addition, several cities submitted written testimony opposing the bill.

HB 3203, with the proposed amendments, would require contracting agencies to complete a detailed cost comparison if the contracting agency does work on a public improvement project

*April 7<sup>th</sup> Local News published by LOC*

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# Appendix B

## S. Scott McDowell

---

**From:** S. Scott McDowell <admin@ci.brownsville.or.us>  
**Sent:** Thursday, March 02, 2017 10:50 AM  
**To:** Betsy Ramshur; Brandie Simon; Elizabeth Coleman (assistant@ci.brownsville.or.us); Karl Frink (publicworks@ci.brownsville.or.us); Marilyn Grimes (marilynjeanthequeen@dr.com); Pat MacDermott (pat.macdermott@vsi.cc); Patty Linn (pattysulinn@centurytel.net); Rick Dominguez (sfcdom@centurytel.net); Sarah Glenn  
**Cc:** Tammi Morrow (finance@ci.brownsville.or.us); Elizabeth Coleman (assistant@ci.brownsville.or.us); Jannea Deaver (clerk@ci.brownsville.or.us)  
**Subject:** Brownsville, OR - Recreational Immunity Request  
**Attachments:** Recreational Immunity Points.docx; Recreational Immunity from SDAO.PDF; Recreational+Immunity+Webinar+Slides.pdf; LOC RI Article.pdf; R 2017.06.pdf

**Importance:** High

Good Morning Everyone,

I know I have talked a lot about Recreational Immunity last night, but here is more information for you because now is the time to start writing letters and making phone calls to the State Legislature. The City is asking all community partners to write a letter, send an e-mail or make a phone regarding this important issue.

Attached are four pdf documents that tell you a little more about the Recreational Immunity problem including Resolution 2017.06 passed by City Council on Tuesday evening. The Word document includes points to ponder and the two State Senators where letters, e-mail and phone calls should be directed. Hopefully, you guys feel you have enough information to write a paragraph or two on why you feel restoring Recreational Immunity is important to Oregon. The specific bills we are interested in passing are S.B. 327 and H.B. 2438. Thanks!!



**S. Scott McDowell**  
255 N. Main Street  
P.O. Box 188  
Brownsville, OR 97327  
541.466.5880  
[admin@ci.brownsville.or.us](mailto:admin@ci.brownsville.or.us)



## **Points to Ponder**

- Cities, Counties and Special Districts are all part of member insurance pools. Each entity will be paying for claims against their parks which further limits scarce resources for these vital community services.
- Entities will have to say 'no' to exposures and risks that have historically been allowed under the Recreational Immunity Law.
- Many community organizations hosting events on public land will have to decide whether to continue due to the additional liability to members of non-profit groups.
- A lot of land is offered protection under the former Recreational Immunity Law that will be made unavailable to the public due to this change.
- Due to future higher premium costs and risk exposure, taking away or limiting Recreational Immunity actually plays out like an unfunded mandate for local governments.

Unfairly affects and unduly burdens public employees and employment unions who are agents and assigns of their employer. With Recreational Immunity, the new law will hold employees personally liable for decisions that could be legally pursued as mistakes made by those same employees acting in good faith while discharging their employment duties.

Oregon as we know it will be forever changed. Recreational activities that we all love like hikes by waterfalls, cycling through the mountains and camping on public land will all be too risky in the near future for entities to offer to the public.

The absence of Recreational Immunity will cause many entities to close facilities to the public and not provide enriching programs that provide unique opportunities to Oregon citizens.

Mr. Prozanski is the Chair of the Senate Judiciary Committee:

**Senator Floyd Prozanski**

**Democrat - District 4 - South Lane and North Douglas Counties**

**Capitol Phone:** 503-986-1704 **District Phone:** 541-342-2447

**Capitol Address:** 900 Court St. NE, S-413, Salem, Oregon 97301

**District Address:** PO Box 11511, Eugene OR 97440

**Email:** [Sen.FloydProzanski@OregonLegislature.gov](mailto:Sen.FloydProzanski@OregonLegislature.gov)

**Website:** <http://www.oregonlegislature.gov/prozanski>



Ms. Thatcher is the Vice-Chair of the Senate Judiciary Committee:

**Senator Kim Thatcher**

Republican District 13 Keizer

**Capitol Phone:** 503-986-1713

**Capitol Address:** 900 Court St. NE, S-307, Salem, Oregon 97301

**Email:** [Sen.KimThatcher@state.or.us](mailto:Sen.KimThatcher@state.or.us)

**Website:** <http://www.oregonlegislature.gov/Thatcher>

*Provided to Council members and community partners on March 1<sup>st</sup>, 2017.*



## RESOLUTION 2017.06

### A RESOLUTION OF THE CITY OF BROWNSVILLE'S COUNCIL RECOMMENDING RESTORING RECREATIONAL IMMUNITY RIGHTS

**WHEREAS**, in 1995, the Legislative Assembly declared it to be the public policy of the State of Oregon to encourage landowners to make their land available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes, and;

**WHEREAS**, recreation purposes includes, but are not limited to, outdoor activities such as hunting, fishing, swimming, boating, camping, cycling, picnicking, hiking, nature study, outdoor educational activities, water sports, winter sports, viewing or enjoying historical, archaeological, scenic or scientific sites or volunteering for any public purpose project, including the above aforementioned activities, as well as: gardening, woodcutting and for the harvest of special forest products, and;

**WHEREAS**, the Public Use of Lands Act has increased the availability of land for free recreation by citizens and visitors alike by limiting liability to cities, counties, park districts, irrigation districts, schools and private landowners, including property-owner associations, farmers and timber companies that, by virtue of this act, allow members of the public to use or traverse their lands at no charge for recreation purposes, and;

**WHEREAS**, for twenty years, the Public Use of Lands Act has been broadly interpreted to extend this immunity from liability to apply not only to landowners but also to the landowner's employees agents, and volunteers, and;

**WHEREAS**, in *Johnson v. Gibson*, the Oregon Supreme Court held that when the Legislature passed the Public Use of Lands Act, it intended to immunize only the landowner, otherwise the Legislative Assembly would have included employees, agents and volunteers in the Act, and;

**WHEREAS**, this ruling effectively undermines a landowner's recreational immunity from tort liability under the Act because public employers are statutorily required to represent and indemnify their employees and most, if not all, landowners who allow access to their lands free of charge will ultimately be responsible for the negligence of their employees that results in injury to a member of the public or property, and;

**WHEREAS**, landowners will likely face substantially increased insurance premiums for this new risk exposure and/or have to close their property or amenities to Oregonians trying to recreate due to the result of this decision, and;



**WHEREAS**, cities and counties in Oregon are part of an insurance pool meaning that claims brought against those entities will have a negative impact on the tax paying citizens of Oregon and make it difficult for agencies to continue recreational activities.

**NOW, THEREFORE**, let it be known that the Brownsville City Council supports legislation in the 2017 Oregon Legislative Assembly promulgated to restore full recreational immunity to landowners and their officers, employees, agents or volunteers who are acting within the scope of their employment or duties so as to allow Oregonians to access their lands for recreational use and enjoyment; namely S.B. 327 and H.B. 2438.

**PASSED AND ADOPTED** by the Council of the City of Brownsville this 28<sup>th</sup> day of February, 2017.

Handwritten signature of S. Scott McDowell in cursive.

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S. Scott McDowell  
City Administrator

Handwritten signature of Don Ware in cursive.

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Don Ware  
Mayor





**RECREATIONAL  
IMMUNITY  
CALL TO ACTION**

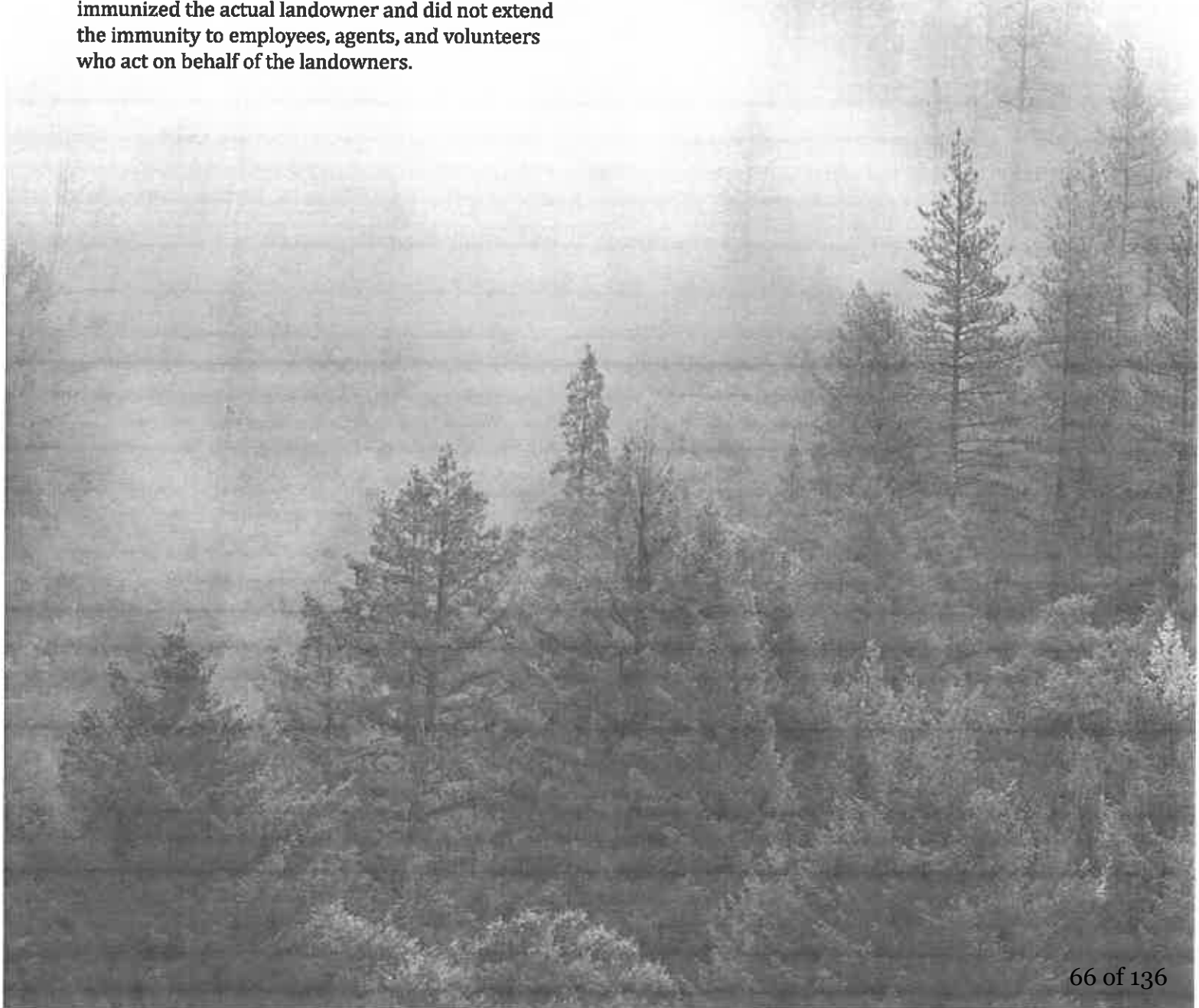
## Restore Recreational Immunity

In the July/August 2016 issue of *News and Risk Management Review*, we brought you information about a recent Oregon Supreme Court case (*Johnson v. Gibson*) that has threatened recreational immunity. Recreational immunity, derived from the Public Use of Lands Act, extends immunity from liability to landowners who make their lands available to the public free of charge. It was designed to protect landowners, both public and private, from liability should a person become injured while using the land for recreational purposes.

The Oregon Supreme Court ruled that when the Legislature passed the Public Use of Lands Act, it only immunized the actual landowner and did not extend the immunity to employees, agents, and volunteers who act on behalf of the landowners.

This ruling has a significant effect on special districts. Since public employers are statutorily required to represent and indemnify their employees, agents, and volunteers, it exposes them to an increased risk of liability. It means recreational immunity no longer exists for a district when an employee, board member, or other public official is named on a lawsuit which alleges damages resulting from a recreational activity.

Every member of SDIS provides valuable services to the people of Oregon. Our success directly affects individuals throughout the state. Together we must find a way to create a safe environment for the public while protecting the dollars that taxpayers have entrusted us with.





## How Your District is Affected

All 34 types of special districts are affected. More specifically, your district is affected if it owns property that you do not charge the public to access for recreational purposes. This could include areas like parks, playgrounds, recreational facilities, irrigation district easements, public docks, gifted or undeveloped property used for hiking, biking, hunting, etc., lakes/reservoirs used for boating and swimming, and more. As a result of this ruling, your district may face substantially increased insurance premiums for this new risk exposure; thereby resulting in reduced recreational opportunities or services, limiting access, or closing property to recreational use altogether.

## What SDAO is Doing

SDAO is a member of a coalition of public and private property owners who worked on a legislative proposal that has been introduced for the upcoming Legislative Session and will amend the Public Use of Lands Act.

## How You Can Help

We urge your board of directors to review the sample resolution we have developed (enclosed) and consider its adoption. After the resolution has been adopted, we would simply ask that you speak with your legislators explaining the need for fixing this decision and share the adopted resolution with them. Doing so will strengthen our voice on this important issue. If you need assistance locating your legislators, please visit [www.oregonlegislature.gov/findyourlegislator/leg-districts.html](http://www.oregonlegislature.gov/findyourlegislator/leg-districts.html).



## Frequently Asked Questions

### **What is recreational immunity?**

It is derived from the Public Use of Lands Act that was enacted by the Legislative Assembly in 1995. The driving policy behind this act was to provide more recreational opportunities to the citizens and visitors of Oregon. In order to accomplish this goal the Act extends immunity from liability to landowners, both public and private, who make their lands available to the public free of charge in the event a person is injured while using the land for recreational purposes.

### **What are recreational purposes?**

According to the Public Use of Lands Act, recreational purposes "include, but are not limited to, outdoor activities such as hunting, fishing, swimming, boating, camping, picnicking, hiking, nature study, outdoor educational activities, water skiing, winter sports, viewing or enjoying historical, archaeological, scenic or scientific sites or volunteering for any public purpose project, gardening, woodcutting and for the harvest of special forest products."

### **What has been the outcome of the Act?**

The Public Use of Lands Act has increased the availability of land for free recreation by limiting liability to cities, counties, parks, schools and a wide range of private owners, including farmers and timber companies that allow hunters, anglers, hikers, mountain bikers and other members of the public to use or traverse their lands at no charge.

### **What types of property does this decision impact?**

This decision impacts all public and private lands in Oregon that are available to the public free of charge to recreate on. This includes areas like state forests/parks, county parks, open space, playgrounds, recreational facilities, irrigation district easements, public docks, gifted or undeveloped property used for hiking, biking, hunting etc., lakes/reservoirs used for boating and swimming, as well as farms, ranches and private forest lands.

### **Why is a legislative fix needed?**

For more than twenty years the Public Lands Use Act had been broadly interpreted. However, a 2016 Oregon Supreme Court decision, *Johnson v. Gibson*, undermined the immunity by ruling that when the Legislature passed the Public Lands Act it only immunized the actual landowner and did not extend the immunity to employees, agents, volunteers and the like who act on behalf of the landowners.

### **What has been the result of this decision?**

This ruling effectively undermines a public land-owners recreational immunity from tort liability under the Act because public employers are statutorily required to represent and indemnify their employees, agents and volunteers who are acting within the course and scope of their duties. Second, it exposes private land owners to similar liability because they will likely be ultimately found responsible for their employees' negligence.

### **What are the consequences of not amending the Act?**

As a result of this ruling both public and private landowners will likely face substantially increased insurance premiums for this new risk exposure, thereby forcing them to reduce recreational opportunities or services or to limit access or entirely close their property to recreational use.

### **What about the Constitutional Remedies Clause?**

Article 1, section 10 of the Oregon Constitution provides that "every man shall have remedy by due course of law for injury done him in his person, property, or reputation."

Fixing recreational immunity for public and private property owners will also require modifying a landowner's duty of care toward members of the public who use land for recreational purposes. Specifically, the legislation will expressly state the landowner's duties owed to members of the public in order to satisfy the remedies clause and ensure that the immunity is not illusory.

### **How will the bill clarify the duties owed to the public?**

The bill clarifies that a landowner does not owe a duty to inspect and maintain the land in a safe condition for entry or use by the public for recreational purposes. Therefore, the landowner does not extend any assurance that the land is safe for any purpose and does not assume responsibility or incur liability for injury, death or loss to any person or property.

### **Will the public still be able to sue landowners?**

Yes. Landowners, both public and private, will still be liable for intentional acts.



# Sample Resolution

**RESOLUTION NO. \_\_\_\_**

**A RESOLUTION OF THE (Insert Name of Agency)**

**(Insert Governing body title, e.g Board of Directors, City Council)**

**RECOMMENDING RESTORING RECREATIONAL IMMUNITY RIGHTS**

**WHEREAS**, in 1995, the Legislative Assembly declared it to be the public policy of the State of Oregon to encourage landowners to make their land available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes, and;

**WHEREAS**, recreations purposes includes, but are not limited to, outdoor activities such as hunting, fishing, swimming, boating, camping, picnicking, hiking, nature study, outdoor educational activities, water sports, winter sports, viewing or enjoying historical, archaeological, scenic or scientific sites or volunteering for any public purpose project, including the above aforementioned activities, as well as: gardening, woodcutting and for the harvest of special forest products, and;

**WHEREAS**, the Public Use of Lands Act has increased the availability of land for free recreation by citizens and visitors alike by limiting liability to cities, counties, park districts, irrigation districts, schools and private landowners, including property-owner associations, farmers and timber companies that, by virtue of this act, allow members of the public to use or traverse their lands at no charge for recreation purposes, and;

**WHEREAS**, for twenty years, the Public Use of Lands Act has been broadly interpreted to extend this immunity from liability to apply not only to landowners but also to the landowner’s employees agents, and volunteers, and;

**WHEREAS**, in Johnson v. Gibson, the Oregon Supreme Court held that when the Legislature passed the Public Use of Lands Act, it intended to immunize only the landowner; otherwise the Legislative Assembly would have included employees, agents and volunteers in the Act, and;

**WHEREAS**, this ruling effectively undermines a landowner’s recreational immunity from tort liability under the Act because public employers are statutorily required to represent and indemnify their employees and most, if not all, landowners who allow access to their lands free of charge will ultimately be responsible for the negligence of their employees that results in injury to a member of the public or property, and;

**WHEREAS**, landowners will likely face substantially increased insurance premiums for this new risk exposure and/or have to close their property or amenities to Oregonians trying to recreate due to the result of this decision.

**NOW, THEREFORE**, let it be known that the (Insert Name of Agency) supports legislation in the 2017 Oregon Legislative Assembly promulgated to restore recreational immunity to landowners and their officers, employees, agents or volunteers who are acting within the scope of their employment or duties so to allow Oregonians to access their lands for recreational use and enjoyment.

**ADOPTED** by the Board of Directors of the (Insert Name of Agency) on (Insert Date).

\_\_\_\_\_  
(Insert Name), (Insert Title)

Attest:

\_\_\_\_\_  
(Insert Name), (Insert Title)

**Resolution URL:**

<http://ref.sdao.com/landuse/resolution.docx>



Toll Free: 800-285-5461

P.O. Box 12613  
Salem, OR 97309

S | D | A | O

SPECIAL DISTRICTS  
ASSOCIATION OF OREGON



## 2 Recreational Immunity Reform

### Priority

Ensure that employees, officers and other agents of landowners, including cities, are exempt from liability under Oregon's recreational immunity law.

### Background

Landowners in Oregon are immune from civil liability in the event a person is injured on their property provided that they were recreating and that the property owner did not charge a fee for access to their land. However, the Oregon Supreme Court has ruled that the employees or other agents of the landowner may be liable if a person is injured as a result of their actions. For public agencies that are required to indemnify and defend their employees against such claims, recreational immunity has been stripped away.

Without effective recreational immunity, cities will expose themselves to unwarranted risks if they expand recreational opportunities in their community. Indeed, some have been forced to close parks. Oregon's recreational opportunities are utilized to a high degree by its citizens, contribute to quality of life and should not be compromised by the possibility of such lawsuits.

### Outcome

Restore the civil immunity land owners and their employees had against tort actions for injuries sustained while recreating.

# Appendix B



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### Speakers

 Kirk Mylander, CIS General Counsel

 Scott Moss, CIS P/C Trust Director

 Jim McWilliams, CIS P/C Claims Manager

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### Agenda

The Story of the Case	Kirk
Discretionary Immunity	Kirk
Risk Management Recommendations	Scott
Claims Documentation & Preparation	Jim
Q & A	

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# Appendix B

**Johnson vs. Gibson: The Story**

**Question:**  
Does recreational immunity only apply to "owners" of recreational land?  
  
Or, does it also apply to individual employees who repair, maintain, or operate improvements on city owned recreational land?



The Plaintiff:  
Emily Johnson: legally blind jogger



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**Johnson vs. Gibson: The Story**

**The Defendants:**  
Scott Gibson:  
Maintenance employee who dug hole to fix sprinkler  
  
Robert Stillson:  
Supervisor who called Gibson away from sprinkler project



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**Johnson vs. Gibson: The Story**

- Judge denied motion to substitute City of Portland for individual employees
- But, the court did agree with City that recreational immunity applied to employees who maintain recreational land as part of their jobs – case over.
- Johnson appealed



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# Appendix B

**Personal Employee Liability**

- Oregon Supreme Court held that employees are no longer protected by recreational use immunity
  - Johnson can proceed with her lawsuit against the employees directly



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**Employees are Indemnified**

- Portland must indemnify its employees
  - City is still financially responsible for the claim



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**CIS Has You Covered**

- CIS still covers you and your city / county
- CIS expects a sharp increase in lawsuits filed against public employees who maintain or repair recreational areas
- Plaintiffs can make an end run around recreational immunity and go forward with cases that were completely blocked prior to Johnson v. Gibson



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# Appendix B

**Alternative?  
Discretionary  
Immunity**



PHOTO: COURTESY OF  
LAWRENCE

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**Discretionary Immunity**

**Oregon Tort Claims Act Provides:**  
**Discretionary Immunity: ORS 30.265(3)(c)**  
"...based upon the performance of or the failure to exercise or perform a discretionary function or duty, whether or not the discretion is abused."

PHOTO: COURTESY OF  
LAWRENCE

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**Discretionary Immunity**

One of the more succinct formulations of the distinction between immune and non-immune actions under the doctrine of discretionary immunity is this:

1. Discretionary immunity applies to a choice
2. Among alternative public policies (not day to day actions)
3. By persons with the authority to make such policies decisions.

Miller v. Grants Pass Irrigation District, 297 Or. 312, 316, 686 P.2d 324 (1984)

PHOTO: COURTESY OF  
LAWRENCE

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# Appendix B

**Applies when you exercise discretion to set policy (which path to take)**



City of Eugene Public Works Department

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**Exercise Discretion to Set Policy**

Decisions at the policy level of government, such as the design, location, and installation of traffic signals, or the make up of programs such as tree and sidewalk maintenance, are typically immune from liability.

- Morris v Oregon State Transportation Comm., 38 Or App 331 (1979)
- Gallison v City of Portland, 37 Or App 135 (1978)
- Bakr v Elliott, 125 Or App 1 (1993)

City of Eugene Public Works Department

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**Discretionary Immunity**

Does NOT apply when:

- Choosing to not follow policy
- Failing to implement established maintenance/inspection program

Discretionary immunity did not apply when city was negligent in implementation of traffic sign program. (Design of program would have been covered.)

- Tozer v. City of Eugene, 115 Or App 464 (1992)

City of Eugene Public Works Department

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# Appendix B

**Does NOT apply when you fail to go down the selected path**



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**Discretionary Immunity**

How to prove it applies:

1. Final decision at governing body level
2. Decision sets plan/program carried out by staff
3. Evidence that competing alternatives were investigated and considered
  - Staff Recommendations / Reports
  - Public Testimony
  - Experts or Consultants

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**Identification of all free facilities**



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# Appendix B

**Deferred Maintenance**



PHOTO BY JEFFREY BROWN FOR THE UNIVERSITY OF MICHIGAN

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**Appoint "Owners"**



PHOTO BY JEFFREY BROWN FOR THE UNIVERSITY OF MICHIGAN

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**Skateboard and BMX Parks**



PHOTO BY JEFFREY BROWN FOR THE UNIVERSITY OF MICHIGAN

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# Appendix B



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**Recommended Signage**

Park Hours: 6:30am to 10:00pm  
Use of this facility could result in serious physical injuries up to and including paralysis and/or death. Use at your own risk.  
Usage is intended for skateboards – BMX bikes prohibited  
Be responsible - this park is not supervised  
Safety first - helmets and other protective gear are recommended  
Be respectful of others - no fighting or foul language  
Clean up after yourself - do not leave trash on or around the skate park  
Report any damage or hazards discovered to the City at the number below  
Closed if wet  
All other City Rules apply  
For emergencies call 911  
To report damage call xxx-xxx-xxxx  
OREGON LAW (CHAPTER 105) LIMITS THE LIABILITY OF A GOVERNMENTAL UNIT FOR DAMAGES ARISING DIRECTLY FROM THE RECREATIONAL USE OF THIS PARK.

©2017 City of Eugene  
Eugene, OR

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# Appendix B

## Charging?



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## ERM Treatment



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## Natural Land



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# Appendix B

## Common Claims



APPLYING FOR A LICENSE  
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## Inspection



APPLYING FOR A LICENSE  
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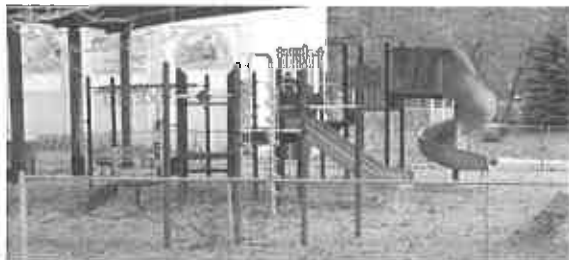
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## Documentation



APPLYING FOR A LICENSE  
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# Appendix B

How To Prepare for a Claim



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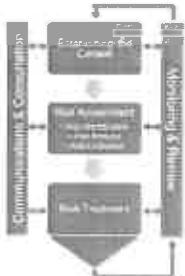
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Questions?



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## Free Areas

### Pioneer Park

- ▶ Baseball/Softball Diamonds.
- ▶ Soccer Fields.
- ▶ Parking Areas.
- ▶ Playground Equipment Areas.
- ▶ Swimming in the Calapooia River.
- ▶ Restrooms & Portable Toilets.
- ▶ Sidewalks & Trails.
- ▶ Picnic Areas.
- ▶ All park amenities.
- ▶ Horseshoe Pits.
- ▶ Use of bicycles, skate boards, scooters and all other like modes of transportation are done at the operator's risk and responsibility.
- ▶ Any recreational activities brought in by the public are done at the public's risk and responsibility.
- ▶ Logging Area.
- ▶ Designated Dog Park.
- ▶ Sand Volley Ball Court.
- ▶ Well Head Hills.
- ▶ Use of buildings that are not reserved also may be used by the public at the public's own risk & responsibility.
- ▶ Basketball Courts.
- ▶ Water Fountains and Spiggots.
- ▶ Open Space Areas.

### Kirk's Ferry

- ▶ Parking Areas.
- ▶ Basketball Court Areas.
- ▶ Sidewalks.
- ▶ Picnic Areas.
- ▶ All park amenities.
- ▶ Use of bicycles, skate boards, scooters and all other like modes of transportation are done at the operator's risk and responsibility.
- ▶ Any recreational activities brought in by the public are done at the public's risk and responsibility.
- ▶ Open Space Areas.



## **Blakely Park**

- ▶ Parking Areas.
- ▶ Playground Equipment Areas.
- ▶ Sidewalks.
- ▶ Picnic Areas.
- ▶ All park amenities.
- ▶ Use of bicycles, skate boards, scooters and all other like modes of transportation are done at the operator's risk and responsibility.
- ▶ Any recreational activities brought in by the public are done at the public's risk and responsibility.
- ▶ Open Space Areas.

## **Remington Park**

- ▶ Parking Areas.
- ▶ Playground Equipment Areas.
- ▶ Sidewalks.
- ▶ Use of bicycles, skate boards, scooters and all other like modes of transportation are done at the operator's risk and responsibility.
- ▶ Any recreational activities brought in by the public are done at the public's risk and responsibility.
- ▶ Open Space Areas.

## **Library Park**

- ▶ Parking Areas.
- ▶ Sidewalks & Menefee Trail.
- ▶ Use of bicycles, skate boards, scooters and all other like modes of transportation are done at the operator's risk and responsibility.
- ▶ Any recreational activities brought in by the public are done at the public's risk and responsibility.
- ▶ Open Space Areas.
- ▶ Picnic Areas.
- ▶ All park amenities.
- ▶ Use of Mill Race water is prohibited or done strictly at the risk of the public.

## **Pioneer Cemetery**

- ▶ Parking Areas.
- ▶ Any recreational activities brought in by the public are done at the public's risk and responsibility.
- ▶ Open Space Areas.



## **General Open Space Areas**

- ▶ Any recreational activities brought in by the public are done at the public's risk and responsibility.
- ▶ The City owns open space that is not improved for public use. Public is at its own risk in these areas.

## **Ownership Statement**

- ▶ All land, appurtenances and amenities are owned by the City of Brownsville. All employees, including the City Administrator, are considered agents and assigns of the City.

## **Facility Rentals**

- ▶ All facilities rented by the general public are "as-is" transactions. The City assumes no responsibility for the general public's use of any equipment, appurtenances or otherwise within the City Park system. The party renting the facilities assumes all liability.

## **Facility Agreements**

- ▶ All facilities rented through agreement by various civic organizations and other organizations are "as-is" transactions. The City assumes no responsibility for their use of any equipment, appurtenances, open space areas or otherwise within the City Park system. The party renting the facilities assumes all liability.

## **Camping Fees**

- ▶ All camping fees collected include all parties staying and associated with a camp site. The City assumes no responsibility for the general public's use of any equipment, open spaces areas, appurtenances or otherwise within the City Park system. The party renting the camp site assumes all liability.

# Appendix B

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### JOHNSON v. GIBSON

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United States Court of Appeals, Ninth Circuit.

Emily JOHNSON, Plaintiff-Appellant, v. Scott GIBSON; Robert Stillson, Defendants-Appellees.

No. 13-35087.

Decided: April 21, 2015

Before: RAYMOND C. FISHER, RICHARD A. PAEZ and SANDRA S. IKUTA, Circuit Judges. Thane W. Tienson and Christine N. Moore (argued), Landys Bennett Blumstein LLP, Portland, OR, for Plaintiff -Appellant. Harry Auerbach, Chief Deputy City Attorney, Office of City Attorney, Portland, OR, for Defendants -Appellees.

#### ORDER CERTIFYING QUESTIONS TO THE OREGON SUPREME COURT

#### ORDER

Pursuant to the parties' joint motion, we certify two questions to the Oregon Supreme Court. Plaintiff Emily Johnson filed this state law negligence action against Scott Gibson and Robert Stillson, two park maintenance employees of the City of Portland, after she fell and was injured while jogging in Portland's Tom McCall Waterfront Park. This appeal raises two questions that may be determinative of Johnson's cause of action: (1) whether city maintenance workers are "owners" of the park and hence entitled to immunity under the Oregon Public Use of Lands Act, ORS 105.672 to 105.700; and (2), if so, whether the Public Use of Lands Act violates the remedy clause, Art. I, section 10, of the Oregon Constitution. Because it appears to this court that there is no controlling precedent on these questions in the decisions of the Oregon Supreme Court and the Oregon Court of Appeals, we respectfully certify them to the Oregon Supreme Court.

#### I. Factual and Procedural History

The following facts are undisputed. See *W. Helicopter Servs., Inc. v. Rogerson Aircraft Corp.*, 311 Or. 364, 364-65, 611 P.2d 627, 630 (1991). Waterfront Park is owned by the City of Portland and maintained through the City's Parks and Recreation Bureau. It is generally open to the public for recreational use.

At all relevant times, defendant Scott Gibson was an employee of the City, employed as a park technician for the Parks and Recreation Bureau. As part of his duties, Gibson repaired and performed maintenance in City parks, including Waterfront Park. Waterfront Park was Gibson's primary responsibility. On July 15, 2009, while working at Waterfront Park, Gibson noticed a broken sprinkler head located near the Salmon Springs Fountain. To diagnose the problem with the sprinkler, Gibson dug a hole approximately a foot deep and 18 inches wide. After determining that the sprinkler head would have to be replaced with a part he did not have in stock at the location, Gibson placed a single cone on top of the sprinkler head to serve as a warning and left the site. At the time, Gibson expected to return with a replacement part the next day, but he did not do so. Gibson would have used a more permanent barricade to mark the hole if he had anticipated the delay in completing the repair.

At all relevant times, defendant Robert Stillson was an employee of the City working as a maintenance supervisor with the Parks and Recreation Bureau. As part of his duties, Stillson supervised a crew of park maintenance workers, including Gibson. Stillson testified that workers had three means for securing a temporary hole—a cone, a piece of plywood to cover the hole and a barricade, such as a sawhorse. He testified that the hole created by Gibson should have been marked at least by a cone. Stillson provided his employees no formal training about how best to mark a hazard like the one Gibson created on July 15.

In the middle of the day on July 16, 2009, plaintiff Emily Johnson was jogging in Waterfront Park when she stepped in the hole that Gibson had created and fell. The hole was not marked, by a cone or otherwise, at the time of Johnson's accident. Johnson alleges she suffered a severe and permanent disabling injury from the fall.

In April 2011, Johnson filed a civil complaint against Gibson and Stillson in the United States District Court for the District of Oregon. Her complaint asserts a single claim of negligence under Oregon law. Federal jurisdiction arises from the parties' diversity of citizenship. See 28 U.S.C. § 1332.

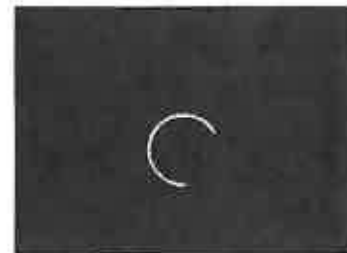


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In April 2012, the defendants moved for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. They argued they were immune from liability for Johnson's state negligence claim under the Public Use of Lands Act, ORS 105.672 to 105.700. That Act provides immunity from negligence liability to an "owner" that makes its land available to the public for recreational use:

an owner of land is not liable in contract or tort for any personal injury, death or property damage that arises out of the use of the land for recreational purposes, woodcutting or the harvest of special forest products when the owner of land either directly or indirectly permits any person to use the land for recreational purposes, woodcutting or the harvest of special forest products.

ORS 105.682(1) (2009). It further defines an "owner" as "the possessor of any interest in any land, including but not limited to possession of a fee title. 'Owner' includes a tenant, lessee, occupant or other person in possession of the land." ORS 105.672(4) (2009).

The defendants argued they were "owners" of Waterfront Park for purposes of the Public Use of Lands Act because they were "responsible for the maintenance, repair and operation of Waterfront Park." In making this argument, they relied on two decisions by the Oregon Court of Appeals.

In the first of these decisions, *Denton v. L.W. Vail Co.*, 23 Or.App. 28, 541 P.2d 511 (1975), the plaintiff was injured on land owned by the federal Bureau of Land Management (BLM) when he rode his motorcycle into a barbed wire fence stretched across a new section of highway that was under construction. See *id.* at 30, 541 P.2d at 512. The plaintiff brought a negligence action against the state Department of Transportation, the L.W. Vail Co. (the construction contractor), and the Peters and Wood Company (the subcontractor doing the grading work), alleging they were negligent in placing strands of barbed wire across the road knowing that it was used by vehicular traffic and without posting warnings. See *id.* at 31, 541 P.2d at 512-13. The court held that the defendant contractors were "persons in possession of the land," and hence were immune under the Public Use of Lands Act. *Id.* at 37, 541 P.2d at 515.

In the second of these decisions, *Brewer v. Department of Fish & Wildlife*, 167 Or.App. 173, 2 P.3d 418 (2000), a mother and daughter died while swimming in a creek below a fish migration dam owned and maintained by various defendants. See *id.* at 176, 2 P.3d at 420. The plaintiffs filed a wrongful death action against numerous state agencies and the Swackhammer Ditch Improvement District, alleging that the defendants were negligent because the dam was built in such a manner that it created a dangerous undertow. See *id.* at 176, 2 P.3d at 420-21. Relying on *Denton*, the court held that two of the defendants—the Oregon Department of Fish and Wildlife (ODFW) and the Swackhammer Ditch Improvement District—were "owners," and hence entitled to immunity, under the Public Use of Lands Act because they maintained and operated the dam:

In *Denton*, we found that those who were constructing improvements on land were "owners" within the meaning of the definition found in the Act. If those who merely construct improvements on land qualify as owners, certainly those who maintain and operate improvements on land also fall within the scope of that definition. The trial court correctly concluded that ODFW and Swackhammer come within the ambit of the Act for purposes of immunity.

*Id.* at 179, 2 P.3d at 422.

The defendants here contended that *Denton* and especially *Brewer* were controlling on the issue of immunity. They argued they were entitled to immunity because, "[a]s *Brewer* makes clear, those who maintain and operate improvements on the land fall within the definition of 'owners' for purposes of the Public Use of Lands Act."

The defendants also maintained that granting them immunity under the Public Use of Lands Act would not violate the remedy clause of the Oregon Constitution. That clause states that "every man shall have remedy by due course of law for injury done him in his person, property, or reputation," Or. Const. art. I, § 10, and is designed to preserve common law rights of action that existed when the Oregon Constitution was adopted in 1857. See *Howell v. Boyie*, 353 Or. 359, 369-70, 298 P.3d 1, 6-7 (2013).

The defendants' remedy clause argument once again relied on *Brewer*. After reviewing Oregon case law, *Brewer* concluded that the state legislature could abolish a common law right of action that existed in 1857 so long as the legislative enactment provided a countervailing benefit to those deprived of their common law cause of action. The court explained that

the Oregon Supreme Court's case law appears to recognize the legislature's ability to strike some sort of balance between competing interests by redefining rights, including rights of action, even when such a redefinition alters or abolishes a remedy under some circumstances. The key would appear to be that there indeed has to be some sort of "balance," or legitimate trade-off, involved.

*Brewer*, 167 Or.App. at 189-92, 2 P.3d at 428. The court held that the Public Use of Lands Act represented a permissible exercise of legislative authority under this detriment/benefit calculus:

The trade-off represented by this policy is manifest. The owner of land opened for recreational use in accordance with the Act gives up exclusive enjoyment of the land and, in return, is insulated from certain types of liability for injuries that may occur there. The users of recreational lands opened in accordance with the Act give up their rights to sue land owners for certain types of injuries but gain the benefit of using land for recreation that otherwise would not be available to them.

*Id.* at 188-89, 2 P.3d at 427. The court held that the Act "strikes an acceptable balance, by conferring certain benefits and certain detriments on both the landowners involved, and on the recreational users of that land," and therefore "does not violate Article I, section 10, of the Oregon Constitution." *Id.* at 190-91, 2 P.3d at 428.

## Appendix B

# Appendix B

In opposing summary judgment, Johnson contested both prongs of the defendants' arguments. First, she disputed the defendants' contention that they were "owners" under the Public Use of Lands Act. She maintained that the City of Portland was the sole owner of Waterfront Park. She argued that Danton and Brewer were distinguishable because they involved entity defendants rather than individuals, and because the defendants in Danton and Brewer exercised greater control over the premises than Stillson and Gibson did here. And she argued that treating Stillson and Gibson as "owners" of the park was contrary to the plain meaning of the statute.

Second, Johnson argued that, if the defendants were entitled to immunity under the Public Use of Lands Act, then that law, as applied to this case, would violate the remedy clause. She acknowledged Brewer's holding, but argued that Brewer was abrogated by the Oregon Supreme Court's subsequent decision in *Smothers v. Gresham Transfer, Inc.*, 332 Or. 83, 23 P.3d 333 (2001). *Smothers* "engaged in a wholesale reevaluation of [the court's] remedy clause jurisprudence . . . and established a new method of analysis of claims arising under it." Howell, 353 Or. at 369, 298 P.3d at 6. Under this new method of analysis:

in analyzing a claim under the remedy clause, the first question is whether the plaintiff has alleged an injury to one of the absolute rights that Article I, section 10 protects. Stated differently, when the drafters wrote the Oregon Constitution in 1857, did the common law of Oregon recognize a cause of action for the alleged injury? If the answer to that question is yes, and if the legislature has abolished the common-law cause of action for injury to rights that are protected by the remedy clause, then the second question is whether it has provided a constitutionally adequate substitute remedy for the common-law cause of action for that injury.

*Smothers*, 332 Or. at 124, 23 P.3d at 356–57. *Smothers* also expressly rejected Brewer's understanding that the legislature could altogether abolish a cause of action that existed at common law without providing a substitute remedy, "disavow[ing] the court's holdings "that the legislature can abolish or alter absolute rights respecting person, property, or reputation that existed when the Oregon Constitution was drafted without violating the remedy clause." *Id.* at 119, 23 P.3d at 353.

The district court rejected Johnson's contentions, found the defendants' arguments persuasive and granted the defendants' motion for summary judgment. See *Johnson v. Gibson*, 918 F.Supp.2d 1075 (D.Or.2013). It first held that Stillson and Gibson were "owners" for purposes of the Public Use of Lands Act because they "were responsible for the maintenance and/or repair of the sprinkler system in the Park." *Id.* at 1085. In the district court's view, this placed the defendants "in the same position as Swackhammer, who maintained and operated the dam" in *Brewer*. *Id.*

The court also agreed with the defendants that granting them immunity under the Public Use of Lands Act would not violate the remedy clause of the Oregon Constitution. See *id.* at 1086–88. The court concluded that Brewer was directly on point and, significantly, that Brewer remained good law. With respect to the latter holding, the court recognized that Brewer and *Smothers* were in some tension. It also recognized that the Oregon Court of Appeals, in *Schlesinger v. City of Portland*, 200 Or.App. 593, 600 n. 4, 116 P.3d 239, 243–44 n. 4 (2005), had called Brewer's continuing validity into question. See *Johnson*, 918 F.Supp.2d at 1086–87. The court concluded, however, that Brewer retained its precedential value because the Oregon Supreme Court had not specifically disavowed Brewer in subsequent decisions and had denied review in Brewer itself, even after *Smothers* was decided. The court reasoned:

Had the Supreme Court been concerned about the ultimate rulings in *Brewer*, including the detriment/benefit calculus applied to Swackhammer to support the finding that the Act, as applied to a private landowner, did not violate the [Remedy Clause], it clearly could have addressed those rulings in *Smothers* or *Storm v. McClung*, 334 Or. 210, 47 P.3d 476 (2002) ] or by granting review in the appeal of *Brewer*. The fact that the Oregon Supreme Court has seen fit to allow the rulings in *Brewer* to remain unquestioned in at least two cases in which it expressed concern with some of the tangential issues addressed in *Brewer*, and denied review of the ultimate rulings in *Brewer* after discussing the Remedy Clause in detail, supports a conclusion that the detriment/benefit calculus on which the *Brewer* court relied in finding that the application of the Act to a private landowner does not violate the Remedy Clause is still good law.

*Id.* at 1088.

Johnson timely appealed the adverse judgment, and in January 2014, the parties filed a joint motion to certify two questions to the Oregon Supreme Court:

1. Whether individual employees responsible for repairing, maintaining, and operating improvements on City-owned recreational land made available to the public for recreational purposes can each properly be considered an "owner" of land, as that term is defined in the Oregon Public Use of Lands Act, Oregon Revised Statutes §§ 105.672 to 105.696, and therefore immune from actions against them for their own negligence?
2. If employees can be considered to be "owners" under the Public Use of Lands Act, does the Act, as applied to them[,] violate the Remedy Clause of the Oregon Constitution, Article I, section 10?

The parties argued that "[t]his case raises important questions of Oregon statutory and constitutional law that are unresolved by previous decisions of the Supreme Court or intermediate appellate courts of Oregon" and "determinative of the case before this Court." They asserted that "[t]his case reduces to the issues left unresolved in *Schlesinger*, namely whether the Oregon Court of Appeals was correct in its holdings in *Brewer*, that the Recreational Use of Lands Statute immunizes those who maintain the land on behalf of the owner, and that the Oregon Constitution permits it to do so."

## II. Grounds for Certification

Under Oregon law:

The Supreme Court may answer questions of law certified to it by the Supreme Court of the United States, a Court of Appeals of the United States, a United States District Court, a panel of the Bankruptcy Appellate Panel Service or the highest appellate court or the intermediate appellate court of any other state, when requested by the certifying court if there are involved in any proceedings before it questions of law of this state which may be determinative of the cause then pending in the certifying court and as to which it appears to the certifying court there is no controlling precedent in the decisions of the Supreme Court and the intermediate appellate courts of this state.

ORS 2B.200. See *W. Helicopter Servs.*, 311 Or. at 364, 811 P.2d at 630; *Fields v. Legacy Health Sys.*, 413 F.3d 943, 968 (9th Cir.2005). We conclude that this standard is satisfied here.

First, we are aware of no controlling precedent addressing whether an individual employee responsible for repairing, maintaining and operating improvements on City-owned recreational land made available to the public for recreational purposes can properly be considered an "owner" of land as that term is defined in the Oregon Public Use of Lands Act. Brewer held that "those who maintain and operate improvements on land fall within the scope of [the statutory] definition" of owner. 167 Or.App. at 179, 2 P.3d at 422. The defendants here, however, may not be comparable to the Swackhammer Ditch Improvement District. They are individual city employees, not an entity, and they may not exercise the same degree of control over the park that Swackhammer exercised over the dam. Under Oregon law, moreover, "there is no more persuasive evidence of the intent of the legislature than the words by which the legislature undertook to give expression to its wishes." *State v. Gaines*, 346 Or. 160, 171, 206 P.3d 1042, 1050 (2009) (internal quotation marks omitted). Thus, the first step in interpreting a statute is "an examination of text and context." *Id.* Here, neither the Oregon Supreme Court nor the Oregon Court of Appeals has carefully examined the operative words of ORS 105.672 (4)—"owner," "occupant" and "person in possession"—or applied them to a city maintenance worker.

Second, we likewise are aware of no controlling precedent addressing whether the Public Use of Lands Act violates the remedy clause of the Oregon Constitution as applied to the owners of public land. Although Brewer is on point, neither the Oregon Supreme Court nor the Oregon Court of Appeals has yet addressed whether Brewer has been abrogated by *Smothers*. *Schlesinger* called Brewer into question without deciding the issue. The Oregon Supreme Court denied review in Brewer, but this is not dispositive. See 1000 Friends of Or. v. Bd. of Cnty. Comm'rs, Benton Cnty., 284 Or. 41, 45, 584 P.2d 1371, 1373 (1978) (explaining that denial of review by the Oregon Supreme Court "may not be taken as expressing even a slight sign that this court approves the decision or the opinion of the Court of Appeals"); accord *In re Marriage of Boite*, 349 Or. 289, 294, 243 P.3d 1187, 1189 (2010) ("[A] denial of review carries no implication that the decision or the opinion of the Court of Appeals was correct." (quoting 1000 Friends of Oregon, 284 Or. at 44, 584 P.2d at 1372)). Another Oregon Court of Appeals decision applied Brewer, but was later reversed on other grounds, and thus does not constitute controlling precedent on the continuing validity of Brewer. See *Liberty v. State, Dep't of Transp.*, 200 Or.App. 607, 619–20, 116 P.3d 902, 909, opinion adhered to as modified on reconsideration, 202 Or.App. 355, 123 P.3d 95 (2005), and *rev'd*, 342 Or. 11, 148 P.3d 909 (2006). Accordingly, certification is appropriate to determine whether Brewer remains good law and, if not, whether the Public Use of Lands Act violates the remedy clause of the Oregon Constitution as applied to Johnson's claim.

### III. Questions Certified

We respectfully certify the following questions to the Oregon Supreme Court:

1. Whether individual employees responsible for repairing, maintaining and operating improvements on City-owned recreational land made available to the public for recreational purposes are "owners" of land, as that term is defined in the Oregon Public Use of Lands Act, ORS 105.672 to 105.700, and therefore immune from liability for their negligence?
2. If such employees are "owners" under the Public Use of Lands Act, whether the Act, as applied to them, violates the remedy clause of the Oregon Constitution, Article I, section 10?

We respectfully ask the Oregon Supreme Court to exercise its discretionary authority to accept and decide these questions. Our phrasing of the questions should not restrict the court's consideration of the issues involved. The court may reformulate the relevant state law questions as it perceives them to be, in light of the contentions of the parties. See *Howell v. Boyle*, 673 F.3d 1054, 1058 (9th Cir.2011); *W. Helicopter Servs.*, 311 Or. at 370–71, 811 P.2d at 633–34. We agree to abide by the decision of the Oregon Supreme Court. If the court decides that the questions presented are inappropriate for certification, or if it declines the certification for any other reason, we request that it so state, and we will resolve the question according to our best understanding of Oregon law.

The Clerk of this court shall file a certified copy of this order with the Oregon Supreme Court under ORS 2B.215. This appeal is withdrawn from submission and will be submitted following receipt of the Oregon Supreme Court's opinion on the certified questions or notification that it declines to answer the certified questions. The panel shall retain jurisdiction over further proceedings in this court. The parties shall notify the Clerk of this court within one week after the Oregon Supreme Court accepts or rejects certification. In the event the Oregon Supreme Court grants certification, the parties shall notify the Clerk within one week after the court renders its opinion.

CERTIFICATION REQUESTED; SUBMISSION VACATED.

RICHARD A. PARZ, United States Circuit Judge, Presiding.

Appendix B

IN THE SUPREME COURT OF THE  
STATE OF OREGON

Emily JOHNSON,  
*Plaintiff,*

*v.*

Scott GIBSON  
and Robert Stillson,  
*Defendants.*

(US Court of Appeals Ninth Circuit 1335087;  
SC S063188)

On certified questions from the United States Court of Appeals for the Ninth Circuit; certification order dated April 24, 2015; certification accepted June 4, 2015.

Argued and submitted November 13, 2015.

Thane W. Tienson, Landye Bennett Blumstein LLP, Portland, argued the cause and filed the brief for plaintiff. With him on the brief was Christine N. Moore.

Harry Auerbach, Chief Deputy City Attorney, Portland, argued the cause and filed the brief for defendants. With him on the brief was Denis M. Vannier, Deputy City Attorney.

Kathryn H. Clarke, Portland, argued the cause and filed the brief for *amicus curiae* Oregon Trial Lawyers Association. With her on the brief was Shenoa L. Payne, Haglund Kelley LLP, Portland.

Thomas W. McPherson, Mersereau Shannon, LLP, Portland, filed the brief for *amici curiae* League of Oregon Cities, Association of Oregon Counties, Citycounty Insurance Services, Oregon School Boards Association, Special Districts Association of Oregon, and The International Municipal Lawyers Association.

Janet M. Schroer, Hart Wagner LLP, Portland, filed the brief for *amicus curiae* Oregon Association of Defense Counsel.

Cite as 358 Or 624 (2016)

625

Before Balmer, Chief Justice, and Kistler, Walters,  
Landau, Baldwin, Brewer and Nakamoto, Justices.\*

WALTERS, J.

The certified questions are answered.

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\* Linder, J., retired December 31, 2015, and did not participate in the decision of this case.



**WALTERS, J.**

This case is before the court on two certified questions from the United States Court of Appeals for the Ninth Circuit. See ORS 28.200 - 28.255 (providing for certification of certain questions of Oregon law from specified federal courts and appellate courts of other states to Oregon Supreme Court). As framed by the Ninth Circuit, the questions are (1) whether individual employees responsible for repairing, maintaining, and operating improvements on City-owned recreational land made available to the public for recreational purposes are “owner[s]” of the land, as that term is defined in the Oregon Public Use of Lands Act, ORS 105.672 to 105.700,<sup>1</sup> and therefore immune from liability for their negligence; and (2) if such employees are “owner[s]” under the Act, whether the Act, as applied to them, violates the remedy clause of Article I, section 10, of the Oregon Constitution.<sup>2</sup> We conclude that the individual employees in this case do not qualify as “owner[s]” under the Act, and that we need not address the second certified question.

This case arose when plaintiff, who is legally blind, was injured when she stepped into a hole while jogging in a public park in the City of Portland (the City). Plaintiff filed a complaint against the City and defendants Gibson and Stillson. Defendant Gibson had created the hole to fix a malfunctioning sprinkler head; he was a park technician with primary responsibility for maintenance of the park. Defendant Stillson was the maintenance supervisor for all westside parks in the City.

<sup>1</sup> ORS 105.672(4), which defines “owner” for purposes of the Act, was amended in 2009, and those changes went into effect January 1, 2010. Or Laws 2009, ch 532, § 1. Plaintiff alleges that her injuries occurred in July 2009. We therefore assume, as do the parties, that the Ninth Circuit’s questions refer to the version of the statute in place at the time plaintiff’s injuries occurred. That statute is ORS 105.672(4) (2007).

The current version of ORS 105.672(4) provides: “Owner’ means the possessor of any interest in any land, such as the holder of a fee title, a tenant, a lessee, an occupant, the holder of an easement, the holder of a right of way or a person in possession of the land.”

<sup>2</sup> The remedy clause provides: “[E]very man shall have remedy by due course of law for injury done him in his person, property, or reputation.” Or Const, Art 1, § 10.

Plaintiff filed her complaint in federal district court, invoking federal claim and supplemental jurisdiction. Plaintiff alleged, under federal law, that the City had violated Title II of the American's with Disabilities Act (ADA), 42 USC sections 12131 to 12165, and, under state law, that all three defendants were liable for negligently causing her injuries. The City filed two motions: A motion to substitute itself as the sole defendant, pursuant to the Oregon Tort Claims Act (OTCA), ORS 30.260 to 30.302; and a motion for summary judgment.

The district court denied the City's motion for substitution. *Johnson v. City of Portland*, CV No 10-117-JO (D Or Feb 10, 2010) ("*Johnson I*"). The court reasoned that substitution of the City would violate the remedy clause in Article I, section 10, of the Oregon Constitution, because the City was immune from liability under the Public Use of Lands Act. Had the court substituted the City as the sole defendant in the case, the only defendant would have been immune and entitled to dismissal, leaving plaintiff without a remedy for her injury. *Id.*

The district court granted the City's motion for summary judgment, in part. The court granted the City summary judgment as to plaintiff's federal ADA claim, leaving plaintiff's negligence claim as her only remaining claim. The district court declined to retain supplemental jurisdiction over that state law claim and dismissed the case. *Id.*

Plaintiff then filed a new complaint in federal court invoking diversity jurisdiction. Plaintiff again alleged a state law negligence claim against defendants Gibson and Stillson, and those defendants again filed a motion to substitute the City as the sole defendant under the OTCA. In *Johnson II*, the district court agreed with the prior ruling in *Johnson I* that substitution of the City was not appropriate. *Johnson v. Gibson*, 918 F Supp 2d 1075, 1082 (D Or 2013). Then, the individual defendants filed a motion for summary judgment, contending that they were immune from liability under the Public Use of Lands Act. *Id.* at 1083. The district court agreed, reasoning that employees who maintain land qualify as "owner[s]" under that Act, and that defendants Gibson and Stillson were therefore immune from liability.

*Id.* at 1085. The court also held that the Public Use of Lands Act does not violate the remedy clause. *Id.* at 1088. The court granted defendants' motion for summary judgment. *Id.* at 1089. Plaintiff appealed to the United States Court of Appeals for the Ninth Circuit, and the Ninth Circuit certified to this court the two questions now before us.

We begin with the first question posed and the text of the Oregon Public Use of Lands Act, which provides, in part:

"Except as provided by subsection (2) of this section, and subject to the provisions of ORS 105.688, an owner of land is not liable in contract or tort for any personal injury, death or property damage that arises out of the use of the land for recreational purposes \*\*\* when the owner of land either directly or indirectly permits any person to use the land for recreational purposes \*\*\*. The limitation on liability provided by this section applies if the principal purpose for entry upon the land is for recreational purposes \*\*\*."

ORS 105.682(1). "Land" is defined as "all real property, whether publicly or privately owned." ORS 105.672(3). "Owner" is defined as follows:

"'Owner' means the possessor of any interest in any land, including but not limited to possession of a fee title. 'Owner' includes a tenant, lessee, occupant or other person in possession of the land."

ORS 105.672(4) (2007).

From that definition of "owner," defendants make a three-step argument: First, that the definition of the term "owner" is ambiguous and is not limited to those with a legal interest in the land; second, that, considered in its proper context, the term includes owners' employees and agents; and third, that as City employees, defendants are entitled to recreational immunity.

Defendants' argument focuses on the second sentence of the definition of "owner." Defendants recognize that they do not qualify as "owner[s]" under the first sentence of that definition because they do not have legal title to, or a legal right in, the property where plaintiff was injured. However, they contend, the second sentence in the definition

is broader, and it includes both persons who have a legal right in property—specifically, “tenant[s]” and “lessee[s]”—and those who do not—specifically, “occupant[s]” and those who are “in possession of the land.” *Id.* According to defendants, the dictionary definitions of those latter terms demonstrate that “owner[s]” include persons without legal or equitable title to, or interest in, land.

A “possessor” is “one that possesses: one that occupies, holds, owns, or controls.” *Webster’s Third New Int’l Dictionary* 1770 (unabridged ed 2002). A “possessor” is also “one that holds property without title—called also *naked possessor*; contrasted with *owner*.” *Id.* (emphasis in original). “Possession” means “the act or condition of having in or taking into one’s control or holding at one’s disposal”; “actual physical control or occupancy of property by one who holds for himself and not as a servant of another without regard to his ownership and who has legal rights to assert interests in the property”; “something owned, occupied, or controlled.” *Id.* “Occupy” means “to hold possession of”; “to reside in as an owner or tenant.” *Id.* at 1561. An “occupant” is “one who takes the first possession of something that has no owner”; “one who occupies a particular place or premises”; and “one who has the actual use or possession of something.” *Id.* 1560.

Like defendants, we surmise, from those definitions, that the terms “occupant” and “person in possession of the land” may include persons without legal or equitable title to, or interest in, the land. But that is not the only lesson we take from those definitions. Like plaintiff, we conclude that those terms describe persons who do more than take up space on the land. Under those definitions, an “occupant,” or a “person in possession of the land” must have some control over the space, and, given the context in which those terms are used, it is likely that the control that the legislature intended is the ability to decide who may use the space or what use may be made of it. The terms “occupant” and “person in possession of the land” are used in the same sentence as the terms “tenant” and “lessee.” ORS 105.672(4) (2007). Tenants and lessees have the ability to decide who may use the space that they control and for what purposes. Under *noscitur a sociis*, a maxim of statutory construction that

tells us that the meaning of an unclear word may be clarified by the meaning of other words used in the same context, it is likely that the legislature intended that “occupant[s]” and “person[s] in possession of the land” have the same type of control as tenants and lessees. See *State v. McCullough*, 347 Or 350, 361, 220 P3d 1182 (2009) (so describing *nosci-tur a sociis*). Under that interpretation, only persons with authority to control and exclude from the land qualify as “owner[s]” of the land.

Further support for that interpretation is found in the context in which the term “owner” is used in the Act. The Legislative Assembly enacted the Public Use of Lands Act in 1971 “to encourage *owners* of land to make their land available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes.” Or Laws 1971, ch 780, § 2, codified as *former* ORS 105.660 (1971), now codified as amended as ORS 105.676 (emphasis added). The immunities provided by the Act apply only if “[t]he *owner* makes no charge for permission to use the land.” *Former* ORS 105.688(2)(a) (2007), *renumbered as* ORS 105.688(3) (2010) (emphasis added). An individual without a right to exclude others from the land or to otherwise control use of the land does not have the decision-making authority that the statute contemplates—the authority to make the land available to the public or to charge for permission to use the land.

Defendants do not point us to any statutory context or legislative history that indicates that the legislature understood the terms “occupant” or “person in possession of the land” in ORS 105.672(4) (2007) to support the unbounded meaning that defendants ascribe to those terms.<sup>3</sup> In fact, a case that defendants cite for a different proposition supports

<sup>3</sup> Defendants do argue that the main sponsor of the bill that led to the current version of the Act stated that it was “designed to be very broad” and to “guarantee [landowners] that they [would not] be paying out of pocket for \*\*\* allowing their property to be used.” Tape Recording, House Committee on Natural Resources, Subcommittee on Agriculture and Forestry, HB 2296, Jan 30, 1995, Tape 4, Side A (statement of Rep Kevin Mannix). However, we do not find that general statement of purpose to be of assistance in determining the meaning of defined terms in the statute. See *State v. Gaines*, 346 Or 160, 171, 206 P3d 1042 (2009) (“[I]t is not the intent of the individual legislators that governs, but the intent of the legislature as formally enacted into law[.]”).



plaintiff's narrow interpretation of those terms. In *Elliott v. Rogers Construction*, 257 Or 421, 433, 479 P2d 753 (1971), the court considered the standard of care that applied to a contractor that was building a road for its principal. In discussing that issue, the court observed that “[c]ases from other jurisdictions and legal writers do not treat a contractor as an occupier of land.” *Id.* at 432. In that case, the court was not interpreting the definition of “owner” in the Public Use of Lands Act, but its observation about the legal meaning of the word “occupant” is consistent with our interpretation of that word as being limited to individuals with a right to control and exclude from the land.

In this case, defendants do not argue that they had a right to exclude others from the land or to otherwise control the use of the land. Rather, they argue that the definition of “owner” is so ambiguous that it requires us to look beyond the words of the definition to the context surrounding ORS 105.682, particularly the pre-existing common law. See *Fresh v. Kraemer*, 337 Or 513, 520-21, 99 P3d 282 (2004) (context includes pre-existing common law). Defendants contend that an examination of that pre-existing common law shows that the legislature must have intended “owner” to include persons who are employed by, or are agents of, persons who are more classically denominated as owners.

Defendants argue that where land and property are concerned, the common law rule has long been that employees and agents have the same privileges and immunities as their principals. Defendants contend that, insofar as the legislature enacted and amended the Act in the context of that common law rule, it intended that that rule apply. Consequently, defendants assert, the legislature was not required to say explicitly what the common law already provides.

For the common law rule on which they rely, defendants point to two Oregon cases—*Herzog v. Mittleman*, 155 Or 624, 632, 65 P2d 384 (1937); and *Elliott*, 257 Or at 432-33. In the first of those cases, *Herzog*, the court examined a guest passenger statute that provided that a guest in a vehicle would have no cause of action against the owner or operator for damages unless the accident was “intentional on the

part of [the] owner or operator or caused by his gross negligence or intoxication or his reckless disregard of the rights of others." *Id.* at 628. The question presented was whether a vehicle owner's guest, who was operating the vehicle in question at the owner's invitation, would be protected by the same rule on the theory that he was acting as the owner's agent while driving the vehicle. The court looked to the *Restatement (First) of Agency* (1933) for assistance and began with section 343, which provides:

"An agent who does an act otherwise a tort is not relieved from liability by the fact that he acted at the command of the principal or on account of the principal, except where he is exercising a privilege of the principal, or a privilege held by him for the protection of the principal's interest."

*Id.* at 631 (internal quotation marks omitted). The court also looked to section 347 of the *Restatement*, which provides: "An agent who is acting in pursuance of his authority has such immunities of the principal as are not personal to the principal." *Id.* (internal quotation marks omitted). Finally, the court quoted comment a to that section:

"a. Persons may have a personal immunity from liability with respect to all persons and for all acts, as in the case of a sovereign, or for some acts, as in the case of an insane person, or as to some persons as in the case of a husband to a wife. \*\*\* Unlike certain privileges such immunities cannot be delegated. On the other hand where an immunity exists in order to more adequately protect the interests of a person in relation to his property, the agent may have the principal's immunity. Thus, the servant of a landowner while acting in the scope of his employment is under no greater duties to unseen trespassers than is the landowner[.]"

*Id.* at 631-32 (internal quotation marks omitted) (omission in original).

Reasoning from those provisions, the court explained that although "it is well settled that an agent who violates a duty which he owes to a third person is answerable for the consequences thereof," if the agent is "acting within the authority, and pursuant to the direction of the principal, the agent is entitled to the same immunities as the principal would be had the principal done the same act

under the same circumstances and such immunities were not personal to the principal.” *Id.* at 632. Applying that legal authority to the facts at hand, the court concluded that the standard of care set out in the statute was not personal to the principal—the car owner—but that it also extended to the agent—a guest that the owner had authorized to drive the car. *Id.* at 633. The court further concluded that the plaintiff could not recover from the defendant-agent without a showing that the defendant-agent was grossly negligent. *Id.*

In the second of the Oregon cases that defendants cite, *Elliott*, the court considered whether a contractor working on a landowner’s property had the same limited duty of care to trespassers and licensees as did the landowner. 257 Or at 431-33. In that case, an employee of a construction company that was building a road for the State Highway Department accidentally injured a pedestrian who was crossing a portion of the road that had not yet been opened to the public. *Id.* at 424. The court explained that, “[b]eing ‘clothed with the rights of the owner,’ [the construction company] was only under a duty to the plaintiff’s decedent to abstain from inflicting injury willfully or by active negligence.” *Id.* at 433. Because the plaintiff had alleged that the company’s employee had acted with wanton misconduct, however, the court held that the lawsuit could proceed. *Id.* at 434-35. Thus, without discussing the issues in the same terms used in the *Restatement (First) of Agency*, the court implicitly concluded that the standard of care applicable to the landowner was not personal to the landowner, but that it also extended to the landowner’s agent.

In this case, defendants’ reliance on *Herzog* and *Elliott* is misplaced. Defendants draw general conclusions from the results in those cases without recognizing the distinction that is explicit in *Herzog* and implicit in *Elliott*—that is, the distinction between immunities that are personal to the principal and those that may extend to a principal’s agent. Immunities provided to a principal may, but do not always, extend to the principal’s agents. That is clear not only from the comment to the *Restatement* quoted above, but also from a line of Oregon cases to which plaintiff calls our

attention. In those cases, this court considered whether the sovereign immunity of governmental landowners precluding their liability for defective conditions on their streets extends to agents responsible for the repair of those streets. The first case in which the court contemplated that issue was *Mattson v. Astoria*, 39 Or 577, 65 P 1066 (1901).

In *Mattson*, the plaintiff was injured as a result of the city's failure to keep a public street in repair and suitable for travel. *Id.* at 578. The plaintiff challenged a clause of the city charter that exempted the city and members of its council from liability for such failure. *Id.* The court said the following:

"That it is within the power of a legislature to exempt a city from liability to persons receiving injuries on account of streets being defective or out of repair, is unquestioned. \*\*\* But in such case the injured party is not wholly without remedy. He may proceed personally against the officers to whom the charter delegates the duty of keeping the streets in repair, and from whose negligence the injury resulted."

*Id.* at 579. Since *Mattson*, the court has consistently recognized that the liability of a local government as landowner is distinct from the liability of employees and agents of the government. For instance, in *Gearin v. Marion County*, 110 Or 390, 396-97, 223 P 929 (1924), the court explained:

"The constitutional guaranty that 'every man shall have remedy by due course of law for injury done him in his person, property or reputation' we think is self-executing and operates without the aid of any legislative act or provision. \*\*\* It has, however, no application to an action sounding in tort when brought against the state or one of the counties of the state. In strict law neither the state nor a county is capable of committing a tort or lawfully authorizing one to be committed. Counties, as well as the state, act through their public officials and duly authorized agents. The officers, agents, servants and employees of the state or a county, while in the discharge of their duties, can and sometimes do commit torts, but no lawful authorization or legal justification can be found for the commission of a tort by any such officer, agent, servant or employee. When a tort is thus committed, the person committing it is personally liable for the injury resulting therefrom. The

wrongful act, however, is the act of the wrongdoer and not the act of the state or county in whose service the wrongdoer is then engaged. For the damages occasioned by the wrong thus committed it is within the power of the legislature to impute liability against the state or the county in whose service the wrongdoer is then engaged, or to exempt the state or county from such liability, but in either event the wrongdoer is himself personally responsible. It is the remedy against the wrongdoer himself and not the remedy which may or may not be imposed by statute against the state or county for the torts of its officers or agents to which the constitutional guarant[*y*] applies.”

*See also Rankin v. Buckman, et al.*, 9 Or 253, 259-63 (1881) (city employees liable even when city is not).

From those cases, it appears that whether a principal’s immunity is personal to the principal or may extend to an agent is a matter of legislative choice subject to constitutional bounds. We presume that the legislature was aware of that existing law. *Blachana, LLC v. Bureau of Labor and Industries*, 354 Or 676, 691, 318 P3d 735 (2014). In addition, the *Restatement (Second) of Agency* section 347(1) (1958), which had been published by the American Law Institute when the Legislative Assembly enacted the Oregon Public Use of Lands Act in 1971, is in accord. It provides that “[a]n agent does not have the immunities of his principal although acting at the direction of the principal.” *Id.* *Restatement* section 347 comment a clarifies: “Immunities exist because of an overriding public policy which serves to protect an admitted wrongdoer from civil liability. They are strictly personal to the individual and cannot be shared.” Subject to constitutional limitations, the legislature must determine as a matter of public policy how broadly to extend immunities.

Consequently, we conclude that when the Legislative Assembly enacted the Public Use of Lands Act, legislators would not necessarily have assumed that granting immunity to landowners would also grant immunity to their employees and agents. The legal principles that the court had previously applied, as well as the common law rules reflected in the restatements, recognized that the grant of immunity to a principal, particularly to a governmental principal, would not necessarily extend to the employees and agents of the

principal. Whether a court would imply such an extension could depend, for instance, on whether the court considered the grant of immunity personal to the principal, or whether extension of immunity to an agent would eliminate a remedy that the Oregon Constitution requires.

In this case, in deciding whether to imply an extension of the immunity granted to "owner[s]" of land to their employees and agents, we first consider the statute's text. Significantly, that text indicates that the legislature intended to extend the immunity of those who hold legal title to land to some others who stand in their stead—the owners of other lesser interests in land, including tenants and lessees, and those who qualify as "occupant[s]" or "person[s] in possession" of the land. The text does not, however, disclose a legislative intent to extend the immunity of owners to additional persons who stand in their stead, such as employees and non-employee agents.

Second, we look to the statute's context and legislative history and note that, when it was originally enacted in 1971, the Act was supported by owners of forestland who wished to open their lands to the public for recreational uses such as hunting and fishing. Testimony, Senate Committee on State and Federal Affairs, SB 294, March 1, 1971 (written statement of Sam Taylor, a proponent of the bill). When originally enacted, the Act provided that "[a]n owner of land owes no duty of care to keep the land safe for entry or use by others for any recreational purpose or to give any warning of a dangerous condition, use, structure or activity on the land to persons entering thereon for any such purpose." Or Laws 1971, ch 780, § 3. Thus, it appears that the legislature's original intent was to relieve those who control the use of their land from responsibility to take affirmative steps to make their property safe for use by others; the legislature did not express an intent to benefit those who do not have the ability to make decisions about the use of land, or to relieve non-owners who commit negligent acts from responsibility for injuries caused by such acts.

The legislature amended the Act in 1995 to make it expressly applicable to public landowners. Or Laws 1995, ch 456, § 1. However, neither that change nor other changes



in the wording of the statute disclose an intent to change the purpose of the statute or to benefit additional classes of persons. Importantly, the legislature did not materially change the definition of owner in 1995. The 1971 Act provided that an “owner” is “the possessor of a fee title interest in any land, a tenant, lessee, occupant or other person in possession of the land.” Or Laws 1971, ch 780, § 1. In 1995, the legislature broke the definition into two sentences and changed the phrase in the first sentence from “possessor of a fee title interest in any land” to “possessor of any interest in any land.” Or Laws 1995, ch 456, § 1. However, the legislature did not change the categories of persons to whom it granted immunity; in 1995, the legislature exempted the same persons from liability that it had exempted in 1971. When the legislature made the Public Use of Lands Act expressly applicable to public landowners in 1995, it did not demonstrate an intent to broaden the Act to benefit those who do not have the ability to make decisions about the use of land, or to relieve non-owners who commit negligent acts from responsibility for injuries caused by such acts.

Defendants argue, however, that other statutory context points in that direction. Defendants call our attention to the fact that just four years earlier, in 1991, the legislature had amended the OTCA to provide that a claim against a public body is the sole remedy for the torts committed by employees of that public body. Or Laws 1991, ch 861, § 1. Defendants contend that, in light of that amendment, the Public Use of Lands Act must be read to shield governmental employees and agents; otherwise, the immunity it grants to governmental landowners would mean nothing. We disagree. The Public Use of Lands Act applies not only to public landowners, but also to private landowners. Just as it did before the amendment of the OTCA, the Public Use of Lands Act protects all “owner[s]” from liability in their capacity as “owner[s].” Just like private owners, public owners are exempt from liability for their own acts. The fact that public owners are not, in addition, exempt from liability for the acts of their employees or agents does not make the immunity granted by the Public Use of Lands Act illusory. The fact that public owners, like private owners, are not shielded from liability if they employ non-owners who

cause injury to others in the negligent performance of their duties does not mean that the Public Use of Lands Act has no purpose.

The legislature knows how to extend immunity to governmental employees and agents when it chooses to do so. *See* ORS 368.031 (immunizing counties and their officers, employees, or agents for failure to improve or keep in repair local access roads); ORS 453.912 (immunizing the state and local government and their officers, agents and employees for loss or injury resulting from the presence of any chemical or controlled substance at a site used to manufacture illegal drugs); ORS 475.465 (immunizing the state, DEQ, EQC, and their officers, employees, and agents from liability to a person possessing chemicals at alleged illegal drug manufacturing site).<sup>4</sup> The legislature did not make that express choice in the Public Use of Lands Act. Should the legislature wish to extend the immunity provided to “owner[s]” to governmental employees and agents, it is free to do so, within constitutional bounds. However, we are unwilling to insert into the definition of “owner” in ORS 105.672(4) (2007) terms that the legislature did not include. *See* ORS 174.010 (office of judge is to ascertain what is contained in statute, not to insert what was omitted or to omit what was inserted).

We answer the Ninth Circuit’s first certified question as follows: Individual employees responsible for repairing, maintaining, and operating improvements on City-owned recreational land made available to the public for recreational purposes are not “owner[s]” of the land, as that term is defined in the Oregon Public Use of Lands Act. They are therefore not immune from liability for their negligence. We do not reach the second certified question concerning Article I, section 10, of the Oregon Constitution.

The certified questions are answered.

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<sup>4</sup> Another example, although enacted after the Public Use of Lands Act, is a 2011 statute that grants immunity relating to public trails. ORS 105.668(2) immunizes a “city with a population of 500,000 or more” and its “officers, employees, or agents” from liability for injury or damage resulting from the use of a trail or structures in a public easement or an unimproved right of way.

## SB 327 A STAFF MEASURE SUMMARY

Carrier: Sen. Prozanski

### Senate Committee On Judiciary

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**Action Date:** 04/06/17

**Action:** Do pass with amendments. (Printed A-Eng.)

**Vote:** 5-0-0-0

**Yeas:** 5 - Dembrow, Linthicum, Manning Jr, Prozanski, Thatcher

**Fiscal:** Fiscal impact issued

**Revenue:** Has minimal revenue impact

**Prepared By:** Whitney Perez, Counsel

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#### WHAT THE MEASURE DOES:

Extends recreational immunity to employees, agents and volunteers of land owner when acting within scope of duties and certain others with an ownership interest in an entity that is a land owner. Declares emergency, effective on passage.

#### ISSUES DISCUSSED:

- Johnson v. Gibson, 358 Or. 624, (2015)
- Safety of children in parks and playgrounds
- -1 amendment and duty of care

#### EFFECT OF AMENDMENT:

Removes provision eliminating duty of care to maintain land.

#### BACKGROUND:

Senate Bill 327-A modifies the definition of owner for purposes of civil liability of land used by the public for recreational purposes. Owner would include the holder of any legal or equitable title; officers, employees, volunteers or agents of possessors of any interest in land while these persons are acting within the scope of assigned duties; and the director, partner, general partner, shareholder, limited liability company member, limited liability partner or limited partner of possessors of any interest in land.

## SB 327 A STAFF MEASURE SUMMARY

Carrier: Rep. Barker

### House Committee On Judiciary

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**Action Date:** 05/25/17

**Action:** Do Pass the A-Eng bill.

**Vote:** 11-0-0-0

**Yeas:** 11 - Barker, Gorsek, Greenlick, Lininger, Olson, Post, Sanchez, Sprenger, Stark, Vial, Williamson

**Fiscal:** Fiscal impact issued

**Revenue:** Has minimal revenue impact

**Prepared By:** Whitney Perez, Counsel

---

#### WHAT THE MEASURE DOES:

Extends recreational immunity to employees, agents and volunteers of land owner when acting within scope of duties and certain others with an ownership interest in an entity that is a land owner. Declares emergency, effective on passage.

#### ISSUES DISCUSSED:

- *Johnson v. Gibson*, 358 Or. 624 (2015)
- Measure applies to public and privately owned land
- Concerns with recreational immunity for public sector entities

#### EFFECT OF AMENDMENT:

No amendment.

#### BACKGROUND:

Senate Bill 327-A modifies the definition of owner for purposes of civil liability related to land used by the public for recreational purposes. Owner would include the holder of any legal or equitable title; officers, employees, volunteers or agents of possessors of any interest in land while these persons are acting within the scope of assigned duties; and the director, partner, general partner, shareholder, limited liability company member, limited liability partner or limited partner of possessors of any interest in land.

***Only Impacts on Original or Engrossed  
Versions are Considered Official***

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Prepared by: Nick Herrera  
Reviewed by: Matt Stayner, Gregory Jolivet, Paul Siebert, Steve Bender  
Date: 4/6/2017

---

**Measure Description:**

Provides recreational immunity to owner of land.

**Government Unit(s) Affected:**

Judicial Department, Department of State Lands, Oregon Department of Transportation (ODOT), Oregon Department of Fish and Wildlife (ODFW), Oregon Parks and Recreation Department (OPRD)

**Summary of Expenditure Impact:**

**Analysis:**

SB 327-1 provides recreational immunity to officers, employees, volunteers, and other agents of an organization providing recreational services, while acting within the scope of their assigned duties. In *Johnson v. Gibson*, 358 Or 624 (2016), the Oregon Supreme Court ruled that officers, employees, volunteers, and other agents of the owner, working within the scope of their assigned duties, were not considered "owners" for recreational purposes. This ruling, poses a significant risk to state agencies and their employees' engaging in recreational activities such as the Oregon Department of Fish and Wildlife's Access and Habitat, and Restoration and Enhancement programs, by exposing them to civil action while acting in the course of their official duties.

The fiscal impact of the measure is indeterminate. However, failure of the measure would likely result in increased insurance costs on the affected agencies, as well as potential increased Department of Justice fees as a result of potential future litigation.



## Recreational Immunity

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### Priority

Ensure that employees, officers and other agents of landowners, including cities, are exempt from liability under Oregon's recreational immunity law.

### Background

Landowners in Oregon are immune from civil liability in the event a person is injured on their property provided that they were recreating and that the property owner did not charge a fee for access to their land. However, the Oregon Supreme Court has ruled that the employees or other agents of the landowner may be liable if a person is injured as a result of their actions. For public agencies that are required to indemnify and defend their employees against such claims, recreational immunity has been stripped away.

Without effective recreational immunity, cities will expose themselves to unwarranted risks if they expand recreational opportunities in their community. Indeed, some have been forced to close parks. Oregon's recreational opportunities are utilized to a high degree by its citizens, contribute to quality of life and should not be compromised by the possibility of such lawsuits.

### Outcome

Restore the civil immunity landowners and their employees had against tort actions for injuries sustained while recreating.



79th OREGON LEGISLATIVE ASSEMBLY—2017 Regular Session

**Enrolled  
Senate Bill 327**

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Business and Transportation)

CHAPTER .....

AN ACT

Relating to recreational immunity from claims of persons entering land for certain purposes; amending ORS 105.672; and declaring an emergency.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1.** ORS 105.672 is amended to read:  
105.672. As used in ORS 105.672 to 105.696:

- (1) "Charge":
  - (a) Means the admission price or fee requested or expected by an owner in return for granting permission for a person to enter or go upon the owner's land.
  - (b) Does not mean any amount received from a public body in return for granting permission for the public to enter or go upon the owner's land.
  - (c) Does not include the fee for a winter recreation parking permit or any other parking fee of \$15 or less per day.
- (2) "Harvest" has that meaning given in ORS 164.813.
- (3) "Land" includes all real property, whether publicly or privately owned.
- (4) "Owner" means:
  - (a) The possessor of any interest in any land, [such as] including but not limited to the holder of [a fee] any legal or equitable title, a tenant, a lessee, an occupant, the holder of an easement, the holder of a right of way or a person in possession of the land;
  - (b) An officer, employee, volunteer or agent of a person described in paragraph (a) of this subsection, while acting within the scope of assigned duties; and
  - (c) A director, partner, general partner, shareholder, limited liability company member, limited liability partner or limited partner of a person described in paragraph (a) of this subsection.

## Enrolled Senate Bill 327

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Business and Transportation)

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(b) Does not mean any amount received from a public body in return for granting permission for the public to enter or go upon the owner's land.

(c) Does not include the fee for a winter recreation parking permit or any other parking fee of \$15 or less per day.

(2) **Harvest** has that meaning given in ORS 164.813.

(3) **Land** includes all real property, whether publicly or privately owned.

(4) **Owner** means:

(a) The possessor of any interest in any land, [such as] including but not limited to the holder of [a fee] any legal or equitable title, a tenant, a lessee, an occupant, the holder of an easement, the holder of a right of way or a person in possession of the land;

(b) An officer, employee, volunteer or agent of a person described in paragraph (a) of this subsection, while acting within the scope of assigned duties; and

(c) A director, partner, general partner, shareholder, limited liability company member, limited liability partner or limited partner of a person described in paragraph (a) of this subsection.

(5) **Recreational purposes** includes, but is not limited to, outdoor activities such as hunting, fishing, swimming, boating, camping, picnicking, hiking, nature study, outdoor educational activities, waterskiing, winter sports, viewing or enjoying historical, archaeological, scenic or scientific sites or volunteering for any public purpose project.

(6) **Special forest products** has that meaning given in ORS 164.813.

(7) **Woodcutting** means the cutting or removal of wood from land by an individual who has obtained permission from the owner of the land to cut or remove wood.

# Appendix B

**SECTION 2.** This 2017 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect on its passage.

Passed by Senate April 11, 2017

.....  
Lori L. Brocker, Secretary of Senate

.....  
Peter Courtney, President of Senate

Passed by House June 14, 2017

.....  
Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2017

Approved:

.....M.,....., 2017

.....  
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2017

.....  
Dennis Richardson, Secretary of State

# Appendix C

## Facilities Review Committee Report



*Compiled:* November 29<sup>th</sup>, 2019

# Appendix C

## Facilities Review Committee Report

### Presentation Section



# TOWN HALL 2018



Central Linn Recreation Center & Pioneer Park





# Appendix C



## HOW DID WE GET HERE?

### OCTOBER 2016

- ★ McDowell & Frink give a presentation to City Council

### May 2017

- ★ Budget Committee includes funds to perform study

### January 2018

- ★ Council approves contract with *Inspections Unlimited*





# AGING ASSETS



## THE STUDY

1. Reviews Most Capital Assets
2. Provides Current Cost Estimates
3. Breaks Down Future Expenses
4. Gives an Inventory of Needs





# Appendix C



# RECOMMENDATION

- ★ Develop a committee of Council to review the study and report back in October or November to another joint session of Council and Park & Open Space Advisory Board.
- ★ The committee should consist of two Council members, two Park Board representatives and volunteer members from the City's Community Partners.



## TIME COMMITMENT

Hold two or three meetings as determined by the committee.

Meeting could start as soon as June or as late as September.

Meetings hosted at City Hall or the Library.



# THE COMMITTEE PURPOSE

1. Determine Needs

2. Develop Associated Costs

3. Explore Funding Strategies

4. Provide Recommendations





# QUESTIONS

The End

... for now



# Appendix C

## Facilities Review Committee Report

### Minutes Section



September 4<sup>th</sup>, 2018

Members of the Facilities Review Committee met this day in regular session at City Hall in the Community Room, Brownsville, Oregon at 7:00 p.m.

**Present:** Debbie Wyne, Lynda Chambers, Marilyn Grimes, Brandie Simon, Rick Dominguez, Blaine & Katie Cheney, Karl Frink, Elizabeth Coleman & Scott McDowell.

**Absent:** Everyone was present.

**Public:** Allen Buzzard.

**Presiding:** Scott McDowell & Blaine Cheney.

The meeting was called to order at 7:05 p.m. McDowell shared a presentation from the Town Hall meeting which was held on May 22<sup>nd</sup>, 2018. McDowell felt that two or three meetings should be enough to render a recommendation to Council by their October 23<sup>rd</sup>, 2018 meeting. The Committee needs to determine what the needs and wants are to determine the best course of action. Outlining a few funding strategies is also an important part of any recommendation(s). McDowell asked if the Committee would like to operate informally as a conversation or more formally and elect a chair. The Committee decided to open the floor for nominations. Blaine Cheney, Carla Gerber and Marilyn Grimes were nominated. Mr. Cheney was voted in as Committee Chair.

Mr. Cheney then turned the floor back over to McDowell who gave a financial background on what the City Council is facing over the course of the next five years. McDowell indicated that the General Fund is projected to receive \$679,000 + this fiscal year. All facilities are funded through the General Fund. Operation and maintenance run between \$30,000 to \$60,000 per year. A large part of the General Fund goes to Public Safety services in the form of the LCSO contract and the Municipal Court which represents about 30% of the General Fund. McDowell explained the importance of carry-over amounts for the entire City budget.

McDowell explained that in 2016 the City was allowed by the United States Department of Agriculture to refinance the outstanding debt on the wastewater bond. The refinance saved the City \$1,000,000 plus over the course of the loan. The refinance documents limit the city to a \$2,500,000 cap on General Fund general obligation debt. If the Committee decided to replace all of the existing buildings, the total cost would be close to \$1,900,000 leaving a remainder of \$600,000. The City has this General Fund general obligation restriction until February 2024.

Another major factor is the City will be planning for a new water treatment plant in 2023. The new water treatment plant will include water distribution improvements and will cost between \$4,000,000 and \$6,000,000. Council is also facing potential infrastructure costs due to the possible implementation of EPA's TMDL program.

McDowell then shared some information about the gymnasium floor and other existing conditions in Pioneer Park. McDowell said rebuilding the Pavilion without the Dance Hall would cost between \$425,000 and \$525,000. Replacing the structure in its existing footprint will be sure to draw criticism due to the changing condition of the Calapooia River. The Committee should take a hard look at what the community needs are. Perhaps there are some structures that should not be replaced.

McDowell then shared a few financing options including, 1) bonding, 2) loans & possible grants, 3) funding campaigns and 4) adding a general fund fee. McDowell discussed user fees. Mrs. Wyne asked what the user fees cover in Pioneer Park. McDowell indicated that all fees don't quite recover the cost of the Park Caretakers agreement.

Mr. Cheney asked what are the goals of this committee? What does success look like? Cheney offered providing three varied options in a good, better, best style format. Mrs. Wyne thought it would be a good idea to provide a list of funding schemes along with the plan. Mrs. Chambers wanted to clarify that all costs will be the responsibility of Brownsville citizens. Chambers wondered if there was any way to enjoin other entities who use the facilities. Discussion ensued. Mrs. Wyne offered the idea of a recreational district that was discussed several years back. Mrs. Simon asked do we 'Band-Aid' the facilities or should we start over. Mrs. Grimes wondered if we should keep everything or make some tough decisions.

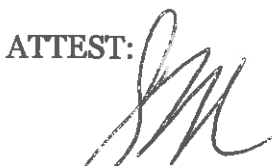
Mrs. Cheney discussed the basketball program and talked about the gymnasium use. The basketball program serves many youth and utilizes the gym for nearly 2 1/2 months year. Mrs. Cheney added that other programs such as volleyball utilize the gym also. The Senior Center walk in the mornings and the gymnasium is used during the school year by the preschool. Mr. Cheney provided a programmatic and financial overview of the Central Linn Recreation Association. Cheney indicated that 40% of the kids are from Brownsville and 40% of the kids are from Halsey with the remainder being from the Central Linn area at large. Cheney added that when rec center fees go up, participation generally goes down. The Association wants to ensure that all children can be served by the recreation center and of purposefully kept costs low.

Mrs. Gerber asked Mr. McDowell to review a few of the funding choices. McDowell discussed a few of the options indicating that it will more than likely take a variety of the above-referenced funding choices to execute this kind of project. McDowell indicated that Brownsville has a lot of amenities and infrastructure for town of its size. It will be a tough ask of the taxpayers to provide a bond or pay for these options when service is not being increased. Mr. Frink asked the Committee to strongly consider the historic value of the Recreation Center. Any decision will be an emotional one for certain groups in our community. Mr. Frink also indicated that all the structures were given to the City and the associated will be very high due to public requirements such as seismic retrofitting, accessibility guidelines and prevailing wage.

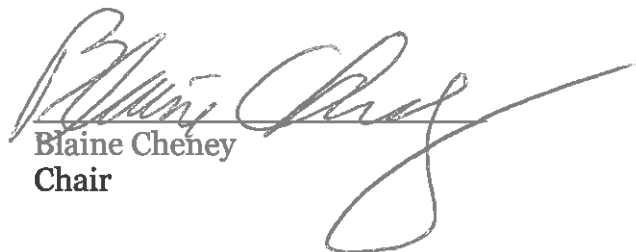
Mr. Cheney then asked the group to consider what criteria will be used to rank which facilities will be improved. Mr. McDowell will send out a Doodle poll to schedule the next meeting. Mr. Dominguez, Mrs. Chambers and Mrs. Simon requested copies of the report.

The meeting was tabled for a future convening to be determined as described above. The meeting recessed at 8:09 p.m.

ATTEST:



S. Scott McDowell  
City Administrator



Blaine Cheney  
Chair



## City of Brownsville

### Facilities Review Committee Meeting

City Hall  
Community Room  
Tuesday, September 4<sup>th</sup>, 2018  
7:00 p.m.

#### AGENDA

- 1) ROLL CALL
- 2) COMMITTEE PURPOSE & ORGANIZATION
- 3) ELECT COMMITTEE CHAIR (*Optional*)
- 4) DISCUSSION ITEMS:
  - A. Overview
  - B. Review Objectives
  - C. Structures in Pioneer Park
  - D. Rec Center Building
  - E. Visioning
  - F. Funding Strategies
- 5) ADJOURN

This agenda is a list of topics anticipated to be considered at the meeting. The Parks and Open Space Advisory Board may add or remove topics as necessary. The location of this meeting is accessible to the physically challenged. If special accommodations are needed, please notify S. Scott McDowell at 541.466.5880 in advance. Thank you.





October 4<sup>th</sup>, 2018

Members of the Facilities Review Committee met this day in regular session at City Hall in the Community Room, Brownsville, Oregon at 7:00 p.m.

**Present:** Debbie Wyne, Rick Dominguez (7:16 p.m.), Blaine Cheney, Katie Cheney, Elizabeth Coleman & Scott McDowell.

**Absent:** Lynda Chambers, Brandie Simon & Karl Frink.

**Public:** David Karo.

**Presiding:** Blaine Cheney.

Mr. Cheney reconvened the meeting at 7:09 p.m. Cheney gave a quick recap of the last meeting. Mrs. Gerber talked about what types of measures the group will use to determine and possibly rank priorities. Mrs. Wyne provided a type written list of prioritization criteria. She provided copies for members. A copy is attached to these minutes for the record. Discussion ensued around the criteria provided by Mrs. Wyne.

Mrs. Cheney mentioned the possible need for structural engineer to review all facilities. She said it was mentioned multiple times in the report that a more in-depth analysis, such as a structural engineering review should be completed. The group agreed. There was some discussion about eliminating certain buildings or activities and facilities. Mr. Dominguez felt very strongly that the Dance Hall was an important aspect to retain. Mr. Cheney wondered if the kitchen was necessary in the remodeling effort at the Rec Center or if it could be included as part of the reimagining of the Pavilion. Mrs. Coleman indicated that the Rec Center is often used for memorial services and birthday parties. In both cases, the kitchen is used. Mrs. Cheney indicated that the kitchen isn't used much for sports. There was discussion about how priorities of the kitchen have changed over the years. Mr. Dominguez discussed the kitchen at the American Legion and the permitting processes that are required to use the kitchen for certain events.

Mr. Cheney said that the fire, life and safety issues really resonated for him. One safety issue that should be addressed is ease of access to the Rec Center. Many people have keys to the Rec Center which can be seen as a security problem. Mr. McDowell indicated that he had looked into the possibility of keyless entry for City Hall, the Rec Center and the Kirk Room because these were all public spaces that were frequently used. The cost was very high, so it was not added to the budget. The system Mr. McDowell looked at was a wireless coding system that would provide a pin number for specified time frame. The City requires folks to pick the keys for the rented facilities up on the Friday before their event. In some cases, this is difficult to arrange. Mr. McDowell felt that this type of security system should be installed if the facilities are refurbished.

The group spent some time listing activities at the various facilities. Below are the Pavilion's activities as defined on the whiteboard:

### Pavilion

- Picnics
- Weddings
- Parties
- Fundraising



- Events
- Scouts
- Shows
- Commercial Kitchen
- Restrooms
- Reunions
- Graduation Parties
- Memorial Services

The group added that the building should look rustic and be capable of serving the public year-round with capacity for about 500 persons.

Mr. Cheney wondered about the future of Park services and what that evolution would look like. Discussion ensued. Mr. McDowell shared his views from serving on the Oregon Parks and Recreation Board by stating facilities that are capable of serving the most people are the ones that should be considered. Niche projects such as skate parks and dog parks serve a narrow population. Skate parks are very expensive and tricky to maintain over time. Cheney talked about concerns in Corvallis with the pool and some of the challenges certain public facilities have on public budgets and maintenance crews. McDowell talked about some of the ideas the Park Board removed from the Master Plan and have considered through the years; things like disc golf, BMX parks, croquet courts, volleyball courts etc. Maximizing opportunities with limited resources is challenging.

Mrs. Wyne brought up the concept of a recreational district. She's interested in a way for everyone to cost share in these improvements. Mr. McDowell indicated that the biggest barrier to creating a recreational district is the necessary vote that is required for taxing district to be established. With that said, a regional approach to this should be considered. McDowell indicated that in many places, as stated at the last meeting, school districts and communities work together to fund rec centers and other community opportunities through a major bond campaign. Mrs. Wyne like the idea of incorporating Halsey and the Central Linn School District; maybe the facilities could be more centrally located using this model. Some history around past decisions was discussed. Some past ideas were also contemplated. A very clear, defined body would need to be created for this approach to be successful. Everyone felt positive about the possibility of a broader discussion.

Mr. Cheney began discussing outcomes and what the next meeting would look like. Mrs. Cheney asked for a complete, detailed list that outlined activities at each facility. Mr. McDowell said that he and Administrative Assistant Elizabeth Coleman would work up a list for consideration. The group discussed possible recommendations and timelines. The group does not have to render a decision by October, November will also work.

Mrs. Wyne asked for a meeting to happen soon, so the discussion can continue. The group decided on Thursday, October 18<sup>th</sup>, 2018 at 7:00 p.m. in the Community Room to reconvene. The meeting recessed at 8:12 p.m.

ATTEST:

S. Scott McDowell  
City Administrator

  
Blaine Cheney  
Chair

1. Life/Fire/Safety
  - Security
  - Lights
  - Hazards (tripping, railings, etc.)
  - Safety concerns
  - Broke beyond repair
2. Prevention of further damage
  - Broken pipes
  - Leaking roof
  - Electrical problems
  - Structural issues
3. Emergency  
(prevents normal work operation)
  - Lights out
  - Power failure
  - Broken items
  - Things that prevent use
4. Special Projects
  - Major maintenance
  - CIP items
5. Public Relations
  - Annual Events
  - Private parties
  - Esthetics: General cleaning/grounds
  - Community use
6. Cost
7. Funding Source
  - Grants
  - District
  - Private donations
  - Campaigns
  - City of Brownsville citizens
  - Users
  - Other local cities

**October 18<sup>th</sup>, 2018**

Members of the Facilities Review Committee met this day in regular session at City Hall in the Community Room, Brownsville, Oregon at 7:00 p.m.

**Present:** Debbie Wyne, Lynda Chambers, Katie Cheney, Carla Gerber, Elizabeth Coleman & Scott McDowell.

**Absent:** Blaine Cheney (Excused), Rick Dominguez, Brandie Simon & Karl Frink.

**Public:** No one was present.

**Presiding:** Carla Gerber.

Mrs. Gerber reconvened the meeting at 7:08 p.m. McDowell indicated that Mr. Blaine Cheney was under the weather. Mrs. Wyne & Mrs. Coleman had brought a treat for the members. McDowell gave a recap from the last meeting. Mrs. Gerber asked about the purpose for the meeting which was to render a decision to Council. McDowell said that November Council meeting would probably be a better target. McDowell indicated that he would be setting up a joint meeting between City Council & the Park & Open Space Advisory Board for November if the Committee is ready by then. McDowell said that a recommendation should probably include, 1) building options (structural engineering), 2) facility priority options, and 3) possible funding strategies.

Discussion ensued around possible locations for the Pavilion. The locations included, 1) the current location, 2) further east closer to the stage, and 3) by the "new" restroom. The Committee discussed architectural features of what the building could be. Many exciting features were discussed including an enclosed kitchen, Dance Hall, and amphitheater. Discussion ensued around similar issues for the Rec Center. The kitchen was discussed again at length as was the overall used for both facilities.

A majority of the meeting was spent on discussing a regional approach to addressing regional concerns. Members talked about the Central Linn School Districts building needs and capital campaigns and how some of the City's facility plans could be discussed with a larger group. The Pioneer Christian Academy should also be in the discussion along with the City of Halsey. Members discussed the logistics of having certain amenities in various locations throughout the greater Central Linn area. Several scenarios were reviewed.

The culmination of the conversation led to some consensus that a regional approach should be recommended to the City Council. Including members from the aforementioned groups would give the City a better handle on how to make these capital improvements work for a broader audience that it currently serves. It would also answer questions that will be posed by taxpayers. Members thought that some of the proposed facilities could be handled by Brownsville while others could fall under a larger master plan. Many facilities in the Central Linn area are toward the end of their useful life. All options should be explored to better the community while protecting the interests of local taxpayers.

Members asked McDowell to send out a Doodle scheduler for the next meeting. The meeting recessed at 8:23 p.m.

**ATTEST:**



**Facilities Review Committee**

A handwritten signature in blue ink, appearing to be "SM", written over a horizontal line.

S. Scott McDowell  
City Administrator

A handwritten signature in black ink, appearing to be "Blaine Cheney", written over a horizontal line. A large, loopy flourish extends from the end of the signature.

Blaine Cheney/Carla Gerber  
Chair





## Facilities Review Committee

November 6<sup>th</sup>, 2018

Members of the Facilities Review Committee met this day in regular session at City Hall in the Community Room, Brownsville, Oregon at 7:00 p.m.

**Present:** Blaine Cheney, Debie Wyne, Lynda Chambers, Rick Dominguez, Brandie Simon, Katie Cheney, Elizabeth Coleman, Karl Frink & Scott McDowell.

**Absent:** Carla Gerber.

**Public:** No one was present.

**Presiding:** Blaine Cheney.

Mr. Cheney reconvened the meeting at 7:06 p.m. McDowell gave a recap of the events of the last meeting to bring everyone up to speed. McDowell said that after reading through minutes it seemed there were two recommendations this Committee would consider sending Council. The first recommendation would be for Council to consider a broader, regional discussion about recreational facilities. How would partners such as the Central Linn School District, the City of Halsey and others feel about working together to create new recreational space. The second recommendation would be for Council to consider placing money in the budget for structural engineer to review the Pavilion and possibly the Rec Center. McDowell gave a rundown of funding options the Committee discussed to date. Lynda Chambers reviewed possible locations for the Pavilion. Discussion ensued around prevailing wage rates, the use of volunteer help and the legalities of bidding public project.

Debie Wyne asked for members to give their thoughts on the direction the Committee was heading as described by McDowell. Rick Dominguez thought it would be a very good idea to review the Pavilion to see if it could simply be repaired. Dominguez also shared insight into the Central Linn Rec Center being utilized as a large meeting hall. He indicated that the American Legion likes to have regional meetings in Brownsville. If there would be no Rec Center, then that opportunity, and others like it, would no longer be possible.

Lynda Chambers talked about the partnership aspects and the importance of having everyone at the table. Chambers was concerned about the sheer size of the discussion. Keeping conversations on point could prove to be difficult. Chambers also mentioned the emotional element of these buildings in the broader community. How will the discussion address emotional elements?

Blaine Cheney asked McDowell how the City would propose approaching the other groups. McDowell indicated that a well-crafted, hand-delivered letter would more than likely be the approach. The ask would be if the other parties would be interested in partnering around recreational opportunities for the broader community. The letter would also contain a few suggestions on how to proceed including a timeline for at least in initial discussions take place. The Central Linn School District and the City of Halsey would be the principles in the discussion along with Pioneer Christian School. McDowell thought Council would want to gauge interest prior to putting a lot of effort in a broader discussion.

Blaine Cheney talked about fixed costs and struggles the City of Corvallis has had relating those costs to the general public regarding the public swimming pool. The bottom line is there will be



operational costs associated with any improvements and identifying reasonable ways to address these costs will be vital to the larger conversation. Some discussion ensued regarding meeting the associated costs of operation and user fees. The reason why certain assets are held by the public are because they do not generate enough revenue to cover costs. Another difficult aspect is discussing public wants versus what can be afforded.

Lynda Chambers thinks there will be significant emotional attachment to the Rec Center. It is something that will have to be strongly considered moving forward. A regional approach will be very difficult based on the history between all the identified partners and, then, their individual histories with taxpayers. How do we maximize resources to serve a broad group of people in our region? Future discussions will be difficult. Perhaps they will prove to be insurmountable in terms of political opinion and ability to execute a well-thought-out plan, however, the avenue must be reviewed for the sake of taxpayer efficiency and community need.

Discussion ensued about the Pavilion. The general consensus was that the Pavilion would be separate from the regional discussion about recreational opportunities and how that would impact the existing Rec Center facility. Discussion ensued around how intergovernmental agreements could be used to dedicate space, ensure proper scheduling, deal with general administrative issues and pay for operational maintenance.

Several other conversation strings were explored around some of the challenges a larger group discussion will inevitably bring. The conclusion was for McDowell to write up a recommendation based on the conversations of the Committee. McDowell will send that draft recommendation for Committee members review. Members volunteered to be present at the November 27<sup>th</sup>, 2018 Council meeting to present a recommendation. Members were interested in being reconvened if Council should decide they need a Committee to review details or consider other courses of action.

McDowell thanked all the members on behalf of Council and the City for their time and effort. He said this Committee was a fantastic experience that included great conversations, meaningful discussion points, great group interaction and ice cream!

The meeting was adjourned at 8:08 p.m.

ATTEST:

S. Scott McDowell  
City Administrator

  
Blaine Cheney  
Facilities Review Committee

# Appendix C

## Facilities Review Committee Report

### Recommendation





**November 27<sup>th</sup>, 2018**

**To:** Mayor & City Council  
**From:** Facilities Review Committee

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**Re:** Facilities Review Committee Recommendation

## Timeline

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### **October 2016**

Public Works Superintendent Karl Frink & City Administrator Scott McDowell made a presentation on the condition of the Rec Center and the structures in Pioneer Park.

### **June 2017**

The Budget Committee & Council include funds for a comprehensive building analysis in the City Budget for FY 2017.2018.

### **March 2018**

Inspections Unlimited delivers the study to the City.

### **May 2018**

A joint session of Council and the Park & Open Space Advisory Board held on May 22<sup>nd</sup>, 2018 to review a report completed by Inspections Unlimited regarding the condition of the Rec Center and the buildings in Pioneer Park.

### **September through November 2018**

The Facilities Review Committee met four times, September 4<sup>th</sup>, October 4<sup>th</sup>, October 18<sup>th</sup>, & November 6<sup>th</sup> to consider and discuss the review Council requested.

## Scope & Purpose

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Council appointed several members from the membership of community partners, Council & Staff. Members included Rick Dominguez, Brandie Simon, Blaine Cheney, Katie Cheney, Lynda Chambers, Carla Gerber, Debie Wyne, Administrative Assistant Elizabeth Coleman, Public Works Superintendent Karl Frink, City Administrator Scott McDowell and Doug Block as an alternate.

The Facilities Review Committee would deliver a recommendation around three (3) primary issues, 1) building needs, 2) facility priority options, and 3) possible funding strategies.

## Recommendation

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After much discussion and contemplation, the recommendation is broken down into four categories for Council's consideration as follows:



1. Consider a Broader, Community Group Discussion (*Central Linn Rec Center*)
  - a. Scope & Funding
  - b. Central Linn School District
  - c. City of Halsey
  - d. Pioneer Christian School
2. Budget for Structural Engineering Review
  - a. Central Linn Recreation Center
  - b. Pavilion
3. After Structural Analysis
  - a. Reassess Options
    - i. Repair
    - ii. Replacement
    - iii. Locations & Placement
  - b. Associated Costs & Other Building Options
4. Funding Options
  - a. Bond Regionally
  - b. Bond Locally
  - c. General Fund Fee
  - d. State Grants
  - e. USDA Loans
  - f. Fundraising Campaign

## Conclusion

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The Facilities Review Committee concluded that reviewing regional funding options was in the best interest of any future project. Should Council decide to keep the discussion specifically to Brownsville, the Committee is willing to continue reviewing this important project.

We appreciate the opportunity to serve our community. Thank you!

Sincerely,



Blaine Cheney  
Facilities Review Committee



## **Pioneer Park River Bank**

The City spent most of 2011 dealing with the erosion of the river bank in Pioneer Park. The problem was so extensive that a restroom and a major water line that crossed the river, and served the entire west side of the City, were destroyed by the erosion caused by the flooding. The City hired River Design Group (RDG), Corvallis, Oregon, to evaluate options. RDG had extensive experience working specifically on the Calapooia River and had a thorough knowledge of the river's hydraulic dynamics.

Many Federal & State agencies were involved in the review of the erosion situation. The City requested assistance from the Governor's Regional Solutions team. The City also



received help from State Senator Lee Beyer, State Representative Phil Barnhart, U.S. Senator Jeff Merkley and U.S. Representative Peter DeFazio. The outcome was that the City could spend about \$600,000 (2019: \$678,000), option #1, to "shore up" the river bank using the new, approved techniques for bank stabilization. The problem with this option was improvements utilizing these new techniques were "washed away" during an above average flood event. The Calapooia Watershed

Council had completed two projects in the general proximity of the Park, both structures were destroyed due to slightly above average high water and flooding. The other option, option #2, was to spend over \$1.2 M (2019: \$1.356 M) to stabilize the bank to the Army Corps of Engineers standards which was the best option. The problem was cash flow.

Council decided that option #1 was too risky. The investment could be lost in any given year. Council decided that option #2 would require voters to approve a general obligation bond for such an improvement. Council did not feel that this was a financially realistic or reasonable option.

Council decided to implement a retreat strategy that would abandon the west road around the playground structure and would eventually relocate the playground structure, if necessary. Council continued this course of action at the March 28<sup>th</sup>, 2017 Council meeting.

Recent flooding has taken more river bank. Staff has included money to move the playground structure in this budget. The City may once again explore options for the modification of the river bank. Stringent regulations and costly projects are the main challenges faced by Council.

### **Photos from Friday, April 19<sup>th</sup>, 2019**

