Report of the Joint Subcommittee on Program Open Space and Agricultural Land Preservation on Local Land Acquisition Standards

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THE MARYLAND GENERAL ASSEMBLY
ANNAPOLIS, MARYLAND 21401

JOINT SUBCOMMITTEE ON PROGRAM OPEN SPACE AND AGRICULTURAL LAND PRESERVATION

May 2018

The Honorable Kumar P. Barve
Chair, Environment and Transportation Committee
The Honorable Joan Carter Conway
Chair, Senate Education, Health, and Environmental Affairs Committee
Members of the Senate Education, Health, and Environmental Affairs Committee
Members of the House Environment and Transportation Committee

Ladies and Gentlemen:

The Joint Subcommittee on Program Open Space and Agricultural Land Preservation respectfully submits its report in accordance with Chapter 406 of 2017 (Program Open Space – Attainment of Acquisition Goals – Local Government Apportionment and Use of Funds). Chapter 406 directed the joint subcommittee to study and make recommendations regarding local land acquisition standards under Program Open Space. Specifically, the law required the joint subcommittee to review the current standards and determine whether they should be altered to encourage the preservation of additional land.

Historically, local land acquisition goals were established using a single acreage per population metric, with a default goal for all jurisdictions to provide 30 acres of parks and recreational land per 1,000 people. However, under the State's 2017 Land Preservation, Parks, and Recreation Plan Guidelines, counties are no longer required to use the 30 acre per 1,000 people metric. Instead, the guidelines instruct counties to set local land acquisition targets based on (1) a proximity analysis that considers where the public can readily access existing parks and recreation facilities and (2) a park equity analysis that identifies population centers that lack access to parks and recreational facilities. Based on its review of these new guidelines, the joint subcommittee makes the following recommendations:

1. The General Assembly should not make any changes to the local land acquisition standards at this time;

2. Counties should be given the opportunity to complete their Land Preservation, Parks, and Recreation Plans using the new land acquisition standards; and

3. The joint subcommittee should review the standards during the 2019 interim, at which time the subcommittee may make additional recommendations.

On behalf of the joint subcommittee, we wish to thank the many individuals who contributed their time and expertise during this process; the information and perspectives they provided were invaluable. We also wish to thank the joint subcommittee's staff for their continued support.

Sincerely,

Senator Ronald N. Young
Senate Chair

Delegate James W. Gilchrist
House Chair

RNY:JWG/AMM/nb

cc: Mr. Ryan Bishop
Ms. Ryane Necessary
Ms. Cristen Flynn
Mr. Justin Kozinn

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Introduction

Program Open Space (POS) is considered to be Maryland's leading land conservation program. The program includes both State and local components, which support the acquisition and improvement of outdoor recreation land and open space areas for public use. POS is funded by the real estate transfer tax through a statutory formula. The Department of Natural Resources (DNR) administers the program and allocates funding for State and local projects in accordance with statutory guidelines.

Chapter 406 of 2017 (Program Open Space – Attainment of Acquisition Goals – Local Government Apportionment and Use of Funds) made changes to State law governing the use of POS local funding. The law also required the Joint Subcommittee on Program Open Space and Agricultural Land Preservation to review land acquisition standards for POS local and report its findings and recommendations to the Senate Education, Health, and Environmental Affairs Committee and the House Environment and Transportation Committee on or before October 1, 2018. Specifically, the law directed the joint subcommittee to "review the State's standard for land acquisition of 30 acres per 1,000 people to determine whether adjustments may be made to the standard to encourage the additional acquisition of land under Program Open Space."

This report is submitted in accordance with Chapter 406. At the outset, it is important to note that under DNR's 2017 Land Preservation, Parks, and Recreation Plan (LPPRP) Guidelines, counties are no longer required to use the 30 acre per 1,000 people metric. Instead, the guidelines instruct counties to establish land acquisition targets based on (1) a proximity analysis that considers where the public can readily access existing parks and recreation facilities and (2) a park equity analysis that identifies population centers that lack access to parks and recreational facilities. Consequently, this report will focus on the shift from the old acreage-per-population metric referenced in Chapter 406 to the more flexible standard proposed in the 2017 LPPRP Guidelines.

The report concludes with the following recommendations:

- The General Assembly should not make any changes to the local land acquisition standards at this time.

- Counties should be given the opportunity to complete their LPPRPs using the new land acquisition standards.

- The joint subcommittee should review the standards during the 2019 interim, at which time the subcommittee may make additional recommendations.

Program Open Space Local – Background

Distribution of Program Open Space Local Funds

DNR allocates POS local funds among the counties according to a formula established in 1982 that is based on past grant amounts, population change, and transfer tax revenue collections in each jurisdiction. To participate in the grant process, a county submits an annual program of proposed acquisition and development projects to DNR for approval. The annual program becomes the basis for a grant agreement for the county's total annual allocation. Municipalities may receive POS funds through their counties. A municipality must apply to its county for consideration of proposed municipal projects along with other county projects.

Generally, a local jurisdiction, except Baltimore City, must use at least 50% of its annual allocation of POS funds for land acquisition. Up to 20% of the remaining funds may be used for capital renewal (improvements necessary to ensure the physical integrity of facilities, fixed equipment, or other existing physical improvements). Baltimore City may use any portion of its annual apportionment for acquisition or development projects.

Legal Effect of Attaining Local Land Acquisition Goals

Every five years, each county prepares a local LPPRP that establishes land acquisition goals for the county based on guidelines developed by DNR and the Maryland Department of Planning (MDP) under the Maryland Land Preservation and Recreation Plan (MLPRP). The LPPRPs must be submitted to DNR and MDP for approval. Prior to approving an LPPRP, DNR must provide the legislators, from the district within which any part of the county is located, the opportunity to review and comment on the local plan.

In general, if DNR and MDP certify that the acquisition goals set forth in a county's current approved LPPRP have been met, the county may use up to 75% of its future annual allocation for development projects for a period of five years. Chapter 406 created special rules for jurisdictions that contain more than 65,000 combined acres of State forest, State parks, and wildlife management areas – allowing these jurisdictions to use up to 100% of their future annual apportionments for development projects and capital renewal if they meet or exceed their land acquisition goals. Currently, Allegany and Garrett counties are the only jurisdictions that meet these criteria.

Land Acquisition Goals

History of the Local Land Acquisition Standard

There are no statutory guidelines for establishing local land acquisition goals under POS. State law requires only that a local jurisdiction meet "the minimum recommended acreage goals developed for that jurisdiction under the Maryland Land Preservation and Recreation Plan." This gives the State agency in charge of developing the MLPRP broad discretion in establishing local land acquisition goals.

Historically, local land acquisition goals were established using a single acreage per population metric, with a default goal for all jurisdictions to provide 30 acres of parks and recreational land per 1,000 people. The origin of the 30 acres per 1,000 people standard is unclear. According to MDP, it appeared approximately 30 years ago in the MLPRP and appears to have been used ever since. The 2010 LPPRP Guidelines for the calculation of the default State recreational acreage goal – which count varying percentages of local recreational acreage, local natural resource acreage, and State and federal acreage toward the goal – may be found in **Appendix 1**.

Exhibit 1 shows the attainment status of each county under its most recent previous LPPRP in 2012, using the goal of 30 acres per 1,000 people.

Exhibit 1
Attainment Status of Each County and Baltimore City under 2012 LPPRPs

Jurisdiction	30 Acres/1,000 People Goal
Allegany, Caroline, Carroll, Dorchester, Frederick, Garrett, Kent, Queen Anne's, Somerset, Talbot, Washington, Wicomico, and Worcester	Met
Anne Arundel, Baltimore, Calvert, Cecil, Charles, Harford, Howard, Montgomery, Prince George's, and St. Mary's	Not Met
Baltimore City	Not Applicable

LPPRP: Land Preservation, Parks, and Recreation Plan

Source: Department of Natural Resources

Chapter 410 of 2011 (State Government – Land Acquisitions and Transfers of Property) transferred responsibility for preparation of the MLPRP from MDP to DNR. Around this time, DNR made the decision to look at alternative metrics for local land acquisition that would account for multiple factors rather than just population size. Based on input from the counties and Baltimore City, DNR developed a new, two-part "level of service" analysis that can be used to assess local land needs. This analysis is based on a "proximity analysis," which takes into account the location of public parks and recreation sites in relation to the population and a "park equity analysis," which seeks to identify population centers that are lacking access to park and recreation facilities. DNR indicates that, by analyzing and mapping a county's parks and recreation inventory in relation to population density and taking into consideration the known needs and demands of users (as determined via surveys, participation rate figures, public input, etc.), a more accurate determination of deficiencies in service can be made and better plans formulated to address them.

2017 Land Preservation, Parks, and Recreation Plan Guidelines

The most recent LPPRP Guidelines reflect DNR's shift in thinking on setting local land acquisition goals. The guidelines require each county to include in its 2017 LPPRP Guidelines a level of service analysis to "identify areas in the county where additional investment in land or facilities may be needed to meet the needs and desires of users." The guidelines recommend, but do not require, that the level of service analysis include both a proximity analysis and a park equity analysis. Counties are also free to use a different or additional means of analysis, provided that logical justification of the basis of analysis is clearly documented in the county's LPPRP.

The following sections provide a brief overview of the proximity analysis and park equity analysis process. Additional instructions from the 2017 LPPRP Guidelines can be found in **Appendix 2**.

Proximity Analysis

The goal of a proximity analysis is to determine where public parks and recreation sites are located in relation to the population in order to determine where the population has greater or lesser access. To conduct a proximity analysis, counties are instructed to define different catchment areas (set distances from designated points, such as all parks, or individual public aquatic facilities, playgrounds, or trailheads) and examine the extent of parks and recreation facilities within those catchment areas. The 2017 LPPRP Guidelines recommend the use of two catchment area sizes: a five-mile catchment radius for large-scale or countywide analyses and analyses of rural areas; and a half-mile catchment radius for smaller-scale analyses and analyses of urban or highly developed areas.

Park Equity Analysis

The goal of a park equity analysis is to determine whether there are underserved populations within a jurisdiction that are in higher need of additional access to parks and natural areas. DNR has developed a web-based tool (available at http://dnr.maryland.gov/Pages/ParkEquity.aspx) that counties may use to conduct park equity analyses. The tool uses national, statewide, and local data to identify areas of (1) high population density; (2) high concentration of children; (3) high levels of poverty; and (4) low proximity to public park space. Based on these factors, the tool creates a map illustrating areas with underserved populations in higher need of additional access to parks and natural areas.

Local Land Acquisition Goals under Old and New Standards

As of February 2018, 12 of the draft 2017 LPPRPs that had been submitted to DNR and MDP for approval had been finalized. Although they represent only half of the counties, the finalized reports offer some insight as to how jurisdictions are setting local land acquisition goals under the new LPPRP Guidelines.

Exhibit 2 shows the attainment status of each county with a finalized 2017 LPPRP, both under its current LPPRP (acquisition goals set using a level of service analysis) and under its most recent previous LPPRP (acquisition goals set using the 30 acres per 1,000 person metric). Two counties, Carroll and Frederick, which had met their acquisition goals under the old metric, have identified additional acquisition needs under the new analysis. Six counties, Baltimore, Cecil, Charles, Howard, Montgomery, and Prince George's which had not met their acquisition goals under the old metric are still not in attainment under the new analysis. Caroline, Garrett, and Wicomico counties were in attainment under the old metric and continue to be in attainment under the new metric. St. Mary's County is the only jurisdiction not in attainment under the old standard that has met its goals under the new standard.

Exhibit 2
Attainment Status of Select Counties under Old (2012) and New (2017) LPPRPs

Jurisdiction	Goals Under 2012 LPPRP	Goals Under 2017 LPPRP
Baltimore County	Not Met	Not Met
Caroline County	Met	Met
Carroll County	Met	Not Met
Cecil County	Not Met	Not Met
Charles County	Not Met	Not Met
Frederick County	Met	Not Met
Garrett County	Met	Met
Howard County	Not Met	Not Met
Montgomery County	Not Met	Not Met
Prince George's County	Not Met	Not Met
St. Mary's County	Not Met	Met
Wicomico County	Met	Met

LPPR: Land Preservation, Parks, and Recreation Plan

Note: Land acquisition goals are not applicable to Baltimore City.

Source: Department of Natural Resources

Conclusion and Recommendations

The joint subcommittee held its annual briefing on the State's land conservation programs on November 8, 2017. The briefing included a lengthy discussion of the new local land preservation standards – how and why they were developed and how they are currently being implemented through the LPPRP process.

At the meeting, the joint subcommittee heard from representatives of the Maryland Association of Counties, Maryland Recreation & Parks Association, and Partners for Open Space. These representatives urged the joint subcommittee and the legislature at large to refrain from making changes to the standards at this time. They noted that local jurisdictions are currently in the process of updating their LPPRPs based on the new guidelines. They recommended allowing

this process to continue so that any future changes to the guidelines could be grounded in counties' actual experiences using the new park equity and proximity analysis tools.

Based on the information presented at the November 8 meeting as updated by data received in February 2018, the joint subcommittee makes the following recommendations:

1. **The General Assembly should not make any changes to the local land acquisition standards at this time.** The new standards were developed through an open and collaborative process with input from local jurisdictions and other stakeholders. The standards replace the strict 30 acre per 1,000 people metric with a new metric that is intended to allow local jurisdictions more flexibility in setting land acquisition targets that meet the needs of their populations. At this time, any change to the new standards would be premature.

2. **Counties should be given the opportunity to complete their LPPRPs using the new land acquisition standards.** This process, which is already underway, will provide valuable information about how local jurisdictions actually use park equity analyses and proximity analyses in developing their land acquisition goals.

3. **The joint subcommittee should review the standards during the 2019 interim, at which time the subcommittee may make additional recommendations.** At its meeting in the 2019 interim, the joint subcommittee will review the implementation of the new land acquisition standards. Stakeholders will be invited to share their experiences with the new standards and advise whether the new standards are sufficient. At this time, the subcommittee will consider whether to make additional recommendations to the Senate Education, Health, and Environmental Affairs Committee and the House Environment and Transportation Committee.

Appendices

Appendix 1.
2010 LPPRP Guidelines
Calculation of the Default State Recreational Acreage Goal

This appendix summarizes how to calculate the generic State recreation acreage goal of 30 acres of parkland per 1,000 persons and how to count local, State, and federal lands towards this goal. This is one of the methods a county can use to set its recreational acreage goal. If a county does not set a needs-based acreage goal or use another system that must be approved by MDP and DNR, the goal described in this appendix will serve as the default goal.

There are three categories of preserved acreage that count towards this goal: local recreational acreage; a portion of local natural resource acreage; and a portion of qualifying State and federal acreage. What types of land qualify under each category and how each category counts towards the goal are explained below in the appropriate section.

STEP 1: Setting the Goal

Example: If a county has 150,000 persons, its default State-recommended recreational goal is 4,500 acres (based on the 30 acres per thousand rule).

(150,000 residents/1,000) x 30 acres = 4,500 acres

STEP 2: Local Recreational Acreage Portion of the Goal

When counting public land towards the default acreage goal, it is important to note that a minimum of 15 acres per 1,000 people must come from locally owned recreational lands. The box below indicates what types of land may be counted as recreational lands.

Local Recreational Acreage

Consists of 100% of:

- Neighborhood parks
- community parks
- city/countywide parks
- metro/regional parks
- educational recreation areas*

*60% of school site or actual community recreational use areas can be counted. A joint use agreement between the county and school must exist.

The local recreational acreage portion of the recreational goal can be determined through the equation below:

Local Recreation Portion of Goal = Local Recreation Acres/Population in thousands

If the county with 150,000 persons determined it owned 3,000 acres of recreational acreage it could count towards meeting the generic State acreage goal, it would have 20 acres per 1,000 persons of the 30 acre per 1,000 person goal (3,000 acres/150).

As a county does not have enough locally owned recreational lands to meet its overall 30 acres per thousand goal, it may apply a portion of locally owned natural resource lands and qualifying State and federal lands towards the goal. The sections below explain how to compute the portions that can count towards the goal.

STEP 3: Local Natural Resource Acreage Portion of the Goal

In addition to local recreational acreage, one-third of the acreage of certain types of natural resource land can be counted towards the default recommended acreage goal. Lands that can be counted are indicated in the text box to the right.

Local Natural Resource Acreage

Consists of one-third of:

- natural resource areas
- historic cultural areas
- private open space*

*Private open space may be counted if the land is permanently preserved as open space, is accessible to members of the community in which it is situated, and can be reasonably construed as helping to meet public demand for open space.

The local natural resource acreage portion of the recreational goal can be determined through the equation below:

Local Natural Resource Portion of Goal = (One-third x Local Natural Resource Acres)/Population in thousands

If the county with 150,000 persons determined it had 2,250 acres of natural resource acreage, it could count one-third of this acreage or 750 acres towards meeting the generic State acreage goal. This acreage would add an additional 5 acres per 1,000 persons to the county's 30 acre per 1,000 person goal (750/150 = 5). The county would now have 25 acres of land per 1,000 residents of the 30 acre per 1,000 person goal.

STEP 4: State and Federal Acreage Portion of the Goal

If needed, up to 15 acres per 1,000 persons of State and federal lands present in the county, in excess of 60 acres per 1,000 persons, can be used to meet the default recommended acreage goal. State and federal lands that can be counted towards the goal are indicated in the text boxes below.

State Acreage

Consists of 100% of:

- state parks
- state forests
- educational recreation areas

Federal Acreage

Consists of 100% of:

- national parks
- national seashores
- national recreation areas

The acreage of both types of land should be added together. The State and federal portion of the recreational goal can be determined through the equation below:

State and Federal Acres per 1,000 persons = (State and Federal Acres)/Population in thousands

Of the figure computed above, only the portion above 60 acres per 1,000 persons can be used to meet the goal. For example if there are 10,500 acres of State and federal acres in the county with a population of 150,000, the total calculated State and federal acres per 1,000 persons is 70 (10,500/150 = 70). Of this, the State and federal portion that can count towards the goal is only 10 acres per 1,000 persons (*i.e.*, the 10 acres over and above 60 acres/thousand residents). Using this acreage, the county would now have 35 acres of land per 1,000 residents. The county has thus achieved the 30 acre per 1,000 person goal.

Appendix 1 (continued)

Nonqualified State and Federal Lands

The acreages of certain lands under State and federal ownership cannot be used to meet the acreage goal. These are listed in the boxes below.

Nonqualified State Acreage

DO NOT COUNT:

- Natural Resource Management Areas
- Natural Environment Areas
- Wildlife Management Areas
- Fish Management Areas
- Roadside Picnic Areas
- Historic Cultural Areas
- Natural Areas

Nonqualified Federal Acreage

DO NOT COUNT:

- Wildlife Areas
- Wilderness Preservation Areas
- Parkways
- Historic Sites
- Cemeteries
- Natural Areas
- Battlefields

Appendix 2.
2017 LPPRP Guidelines

Proximity Analysis

By more accurately pinpointing the places where parks and recreation facilities are most needed, the proximity analysis is valuable for enhancing the quality of life in existing communities. As a result, it helps local jurisdictions to meet both state and local smart growth objectives. DNR completed this type of analysis to help gauge the level of service provided by State and national parks in Maryland in Chapter 3 of the 2014-2018 MLPRP. A link to this Plan is included in this Appendix.

To conduct the proximity analysis: (1) determine where public parks and recreation sites and/or amenities are located in the county in relation to the population and identify areas where the population has greater or lesser access to public parks and recreational sites and (2) define a catchment area (set distance from a designated point or points, such as all parks, or individual public aquatic facilities, playgrounds, or trailheads) and examine the extent of parks and recreation facilities within the catchment area. Areas found to be outside of catchment areas for a facility should be considered a "gap," where the population may not have easy access to the type of park or recreational facility being examined.

Catchment area size can and should vary depending on the size and population density of areas being examined. The following criteria are suggested for use in defining proximity analysis catchment areas:

- *Large-scale/rural area/county wide area analysis catchment: 5 miles*
  This distance is suggested because it approximates a 15-minute drive and reflects how far a casual park or recreational facility user may travel by car, public transportation, or via bicycle or foot to access a particular park or recreational amenity.

- *Smaller-scale/urban/highly developed area catchment: one-half mile (or some other fraction of a mile) or a set number of city blocks*
  Within urban or densely developed areas, it is anticipated that a higher number of park or recreational facility users live and/or work within fairly close proximity to public parks and recreation facilities and likely will not rely on an automobile to travel to and from these places.

Parks and recreation facilities to review and map via a proximity analysis should include the following items, as well as additional parks and recreation amenities of higher importance to be defined by each county within their LPPRP:

- Entire parks and recreation system – Identify areas where general gaps in access to the public parks and recreation system exist. Gaps in access will be illustrated through the proximity analysis as those areas shown outside of the defined catchment area.

- Water Access – Identify areas where gaps in public access to water bodies and waterways exist. Public facilities that provide water access can include beaches, swimming areas, boat ramps, and canoe/kayak launches, shoreline, or piers open for fishing, etc.

- Trails – Identify where gaps in public access to trails may exist. For this analysis, any/all types of trails may be examined separately or as a large grouping. Types of trails to consider should include natural surface hiking or mountain biking trails, bike paths, and rail trails, hard-surfaced walking paths equestrian and off-road vehicle trails and paddling/water trails. It is suggested that the catchment area for these linear amenities be set from managed trail heads or approved points of access where users would most likely gain access to the trail.

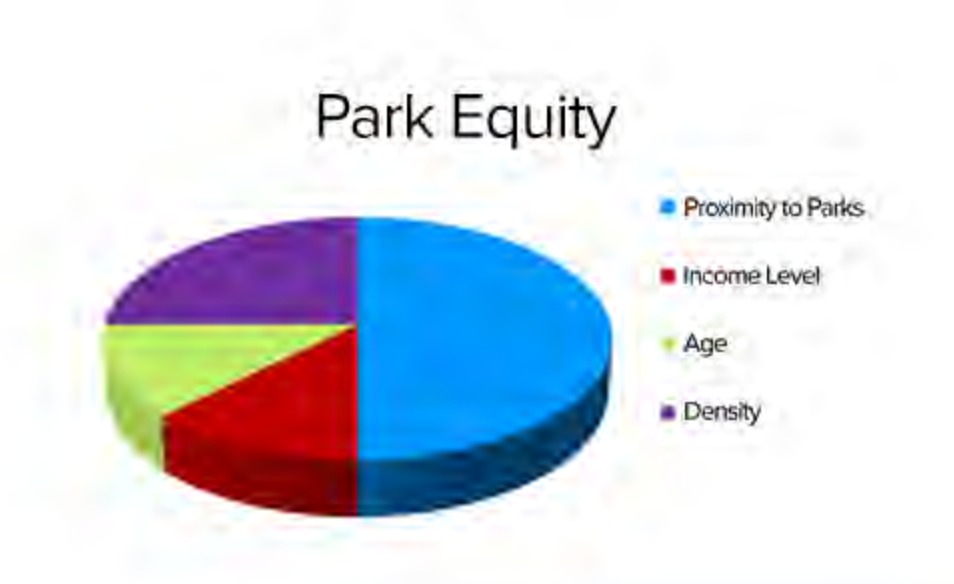
- Picnic Facilities – Identify where gaps in public access to picnic facilities at public parks and recreation facilities may exist. Picnic facilities should generally be considered areas within parks or recreation facilities that provide picnic benches and/or pavilions that can accommodate multiple users or user groups.

- Suggested additional public parks and recreation amenities to review via proximity analysis include sports fields or courts, athletic complexes, aquatic facilities, playgrounds, skate parks, hunting, or fishing areas, etc.

Park Equity Analysis

The Park Equity Analysis is an important new tool for identifying population centers that are lacking access to parks and recreational facilities. This tool uses national, statewide, and local data in its analysis to illustrate areas of high population density, high concentration of children, high concentration of poverty, and low access to public parks and natural areas. Through the analysis, a combined score is computed for these four data sets and illustrated by census tract on a statewide map. Areas with higher combined scores that are illustrated in red or orange on the Park Equity Map are considered to be those with underserved populations in higher need of additional access to parks and natural areas.

Appendix 2 (continued)



Park Equity Analysis Tool Website: http://dnr.maryland.gov/Pages/ParkEquity.aspx

Park Equity Model

The Park Equity Analysis is built upon the U.S. Census data analyzed at the Census Tract Block Group level, combined with statewide maps of public and local parks. The model prioritizes underserved areas of Maryland in need of park space by identifying areas with:

- high concentration of children under the age of 17;
- high concentration of populations below the poverty line;
- high population density; and
- low proximity to public park space.

Each of these factors is represented in the model as a separate data layer. The layers include Census Tract Block Groups that are scored for the importance of these factors. The layers are added to produce a combined score for prioritizing need for park space.

Half of the combined score is based on these identifying population factors, while the other half is based on geographic proximity to park space and access to trails.