

# A LEGAL MAP OF NEW LOCAL PARKLAND

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*Public parks play consequential roles in local communities. Parks can raise property values, encourage or inhibit sprawl, and promote health, safety, and social cohesion. The decision to create a park affects development in the surrounding area and dictates which residents can easily access the property's new amenities—and which residents cannot.*

*Yet, public stakeholders are given few signposts in making and monitoring public park acquisitions. Data on new parkland is scarce; moreover, the legal framework undergirding the process is poorly understood and rarely explored, particularly at the local government level. Although local governments are America's leading stewards and gatekeepers of public park property, the actions of a parks department when acquiring new land receive bare direction from the formal legal regime and little attention from legal scholars. Instead, state law and judicial precedent grants almost unconstrained local discretion when acquiring parkland, a framework that delegates lawmaking to the lowest level of governance: to the local and sublocal institutions whose internal policies and unwritten practices determine what parkland is acquired, how potential land acquisitions are reviewed, and which stakeholders and priorities carry most weight in the process. Viewed as a whole, these policies and practices constitute an informal, heterogeneous legal regime of local parkland acquisition.*

*This Article sheds light on this informal legal regime. It first aims to identify where parkland is actually being acquired, employing an empirical review of property recently obtained for park purposes at many of the largest local departments and authorities across the United States. The Article then analyzes this data against the policies and practices that drove each acquisition. In doing so, it builds a framework for understanding sublocal acquisition regimes and for arbitrating between oft-competing values of equity*

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*and efficiency—while at the same time assessing the normative impact of institutional informality, both in the parkland context and for local governance more broadly. The Article concludes by recommending that state legislatures play a stronger role in guiding sublocal actors.*

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## I. INTRODUCTION

Every parcel of parkland has an origin story. A park property—one dedicated to greenspace or recreation and open to public use<sup>1</sup>—might have been donated generations in the past or purchased only yesterday. Some parks are created on reclaimed industrial land whereas others are carved out of pristine wildlife habitats. In practice, the path a property takes to becoming public greenspace can witness a number of twists and turns; its genesis could be years or decades in the making. How and whether a property reaches that finish line is a factor of its legal environment. The law of parkland creation is consequential—for communities located near parks, for those *not* located near parks, and for the governance institutions that administer the process—yet the regime is unrecognized and underexplored, a blind spot that enables under-the-radar, heterogeneous decision-making without thought as to how those decisions translate into meaningful sites of policy and law over time.

Two origin stories are illustrative. In Johnson County, Kansas, an undeveloped property—labeled Parcel 3010 in tax records—sits near the confluence of Mill Creek and Clear Creek, an area of gently sloping woods and

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1. See *infra* note 26 (defining “park property” for purposes of this Article).

fields towards the western outskirts of the Kansas City metropolitan region.<sup>2</sup> Until 2014, the property was privately held, sandwiched between two other parcels owned by the Johnson County Park and Recreation District.<sup>3</sup> People running or cycling on the Clear Creek Trail may not have realized the invisible boundaries that sliced through their surroundings, but private ownership of Parcel 3010 nevertheless limited the Park and Recreation District's management of its adjacent land.<sup>4</sup> For this reason, when the parcel's owner approached the District with an interest in selling, the District's staff sprang into action. They assessed the site, ensured adequate funding, and moved forward with a fee simple acquisition of the parcel, closing on the transaction in 2015.<sup>5</sup>

Another acquisition story comes from Jacksonville, Florida, where a bright yellow house at 2095 Forest Street in the city's Mixon Town neighborhood—a historically Black residential community challenged by years of divestment and population turnover<sup>6</sup>—went vacant during the Great Recession. The property subsequently fell into disrepair and then tax foreclosure.<sup>7</sup> In 2019, it was acquired by the City of Jacksonville for \$100, which placed the parcel under the management of the Parks, Recreation, and Community Services Department.<sup>8</sup> To the casual observer, the house at 2095 Forest Street bears no resemblance to Parcel 3010 in Johnson County. It is not adjacent to publicly-owned park properties. Nor does it contain the common trappings of local

2. See Johnson County Department of Technology & Innovation, AUTOMATED INFORMATION MAPPING SYSTEM <https://maps.jocogov.org/ims/> [<https://perma.cc/QK8F-UKHF>] (search for "Parcel 0460411203002003010").

3. Telephone Interview with Bill Maasen, Superintendent of Parks and Golf Courses, Johnson County Park and Recreation District (Dec. 15, 2020) (notes on file with author).

4. *Id.* The District held an easement across the parcel, but this easement did not provide the District with the full powers of fee simple ownership. See *infra* note 37 and accompanying text (discussing the value of fee simple estates in park property). It also came with maintenance obligations for a privately-owned bridge and impeded the District's ability to conduct flood mitigation activities around the site.

5. *Id.* See also Johnson County Park and Recreation District, Properties Acquired Since 2010 (Dec. 9, 2020) (on file with author).

6. Ennis Davis, *The Story of Jacksonville's West Lewisville*, THE JAXSON MAG. (June 7, 2018), <https://www.thejaxsonmag.com/article/the-story-of-jacksonvilles-west-lewisville/> [<https://perma.cc/A9T2-U6DX>].

7. See Search for "2095 Forest, Jacksonville, Florida," GOOGLE MAPS <https://goo.gl/maps/67c55U9NH499yZ5W7> [<https://perma.cc/KXX4-99L4>]; Response to Public Records Request from City of Jacksonville to Wendy Xu, Univ. of Detroit Mercy Sch. of L. (Mar. 29, 2021) (on file with author) [hereinafter Jacksonville Public Records Request].

8. City of Jacksonville JaxGIS, DUVAL MAPS PROP. APPLICATION <https://maps.coj.net/duvalproperty/> [<https://perma.cc/M45X-WTAM>] (search for "2095 Forest"); Jacksonville Public Records Request, *supra* note 7.

parkland; there are no recreational facilities, woods, or streams located on or near 2095 Forest. Rather, the parcel sits unremarkably on a quiet residential street, several blocks from the nearest public greenspace and adjacent only to private residential homes.<sup>9</sup>

In this manner, however, the sharp contrasts between Parcel 3010 and 2095 Forest underscore basic shared commonalities: both parcels were voluntarily acquired and purposefully placed under the control of local park entities, and both acquisitions, presumably, were made with policy reasons in mind. In Johnson County, local officials were motivated to consolidate ownership and control over once-private inholdings within an existing park system. In Jacksonville, meanwhile, officials may have been driven by an almost opposite goal, not to expand an existing park at the urban fringe but to create a new one within the urban core, in the process replacing a vacant home with greenspace for an economically-marginalized community.<sup>10</sup> These goals and acquisitions do not arise in a vacuum. Local government agencies operate with finite acquisition dollars, staff time, maintenance resources, and political capital.<sup>11</sup> In acquiring Parcel 3010, Johnson County's Park and Recreation District made a policy decision to place its resources and energies into a neighborhood that already boasted expansive greenspace.<sup>12</sup> By acquiring 2095 Forest, in contrast, the City of Jacksonville prioritized a property in a neighborhood lacking such greenspace, perhaps at the expense of opportunities to acquire more pristine conservation properties and expand upon parkland elsewhere.

Such tradeoffs are inherent to local park acquisition. When assessing properties owned by a local park agency—whether a department of the general purpose government, as in Jacksonville, or a special purpose government, as in

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9. *See id.* The nearest publicly-owned park appears to be McCoy's Creek Boulevard Park, removed by several blocks and an interstate highway from 2095 Forest.

10. *See infra* notes 15–18 (discussing the competing policy tradeoffs that inform acquisition decisions).

11. *See infra* notes 143–48 and accompanying text (discussing fiscal constraints placed upon park acquisition). *See also* Telephone Interview with Glenn Boorman, Deputy Dir. of Project Admin., Gwinnett Cnty. Parks and Recreation (Apr. 20, 2021) (notes on file with author) (discussing fiscal tradeoffs); Keith W. Rizzardi, *Money, Mandates, and Water Management: Foreshadowing A Florida Disaster*, 21 VT. J. ENVTL. L. 1, 36 (2019) (exploring the impact of fiscal constraints on local governance institutions).

12. Parcel 3010 is located in Mill Creek Streamway Park, which contains seventeen miles of trails that extend into the nearby Shawnee Mission Park, a large 1,655-acre recreational and nature facility. *See Mill Creek Streamway*, JOHNSON CNTY. PARKS AND RECREATION DIST., <https://www.jcprd.com/Facilities/Facility/Details/Mill-Creek-Streamway-Park-40> [<https://perma.cc/V6E4-E6K6>]; *Shawnee Mission Park*, JOHNSON CNTY. PARKS AND RECREATION DIST., <https://www.jcprd.com/facilities/facility/details/Shawnee-Mission-Park-14> [<https://perma.cc/K2TD-FEDU>].

Johnson County<sup>13</sup>—some of this inventory may appear the product of historical accident; for example, the agency might have acquired several parks in a one-time transfer from the state or via a series of significant donations that occurred decades in the past.<sup>14</sup> But modern parkland acquisition is not based on happenstance. Rather, policy and law guide local priorities, informing an agency's decision whether or not to acquire a given parcel of land.<sup>15</sup> Some local agencies prioritize efficiencies in the acquisition process and acquire properties that can be obtained expediently or cheaply.<sup>16</sup> Others prioritize substantive geographic goals along the lines discussed above in Johnson County and Jacksonville: as a matter of formal or informal policy, one local agency may prefer to acquire property adjacent to existing parkland while another might seek opportunities in areas with no existing greenspace.<sup>17</sup> One agency might

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13. This Article uses the term “park agency” to characterize both of these organizational forms. For purposes of this Article, a park agency is a local entity, authority, or department that manages local parkland within a given jurisdiction, whether created as a special purpose government or acting as a subsidiary of a general-purpose municipality, county, or regional authority. *See infra* Part III(A) (discussing the Article's aim of selecting representative institutional forms that directly govern local park property).

14. *See* Paul Stanton Kibel, *The People Down the Hill: Parks Equity in San Francisco's East Bay*, 1 GOLDEN GATE U. ENVTL. L.J. 331 (2007). This article appears to offer the only direct account of local parkland acquisition policies in the legal scholarship. It surveys the history of the East Bay Regional Park District, a special purpose governmental authority in California, and argues that its land acquisitions over time have yielded an inequitable allocation of parkland between the region's wealthier foothills, where park property is more abundant, and its lower-income coastal plain, where parkland is scarcer. *See id.* at 332. While demonstrating how policy decisions have informed recent park acquisition decisions, the article also illustrates the historical accidents that created East Bay's modern inventory, including property being transferred from another governmental entity that held significant inventory in hillside areas before the region was built out. *Id.* at 352–55.

15. *See id.* at 355–59. Park staffers interviewed for this article noted a shift towards policy-driven decision-making over time. *See, e.g.*, Telephone Interview with Paul Sun, Land Acquisition Specialist, Prince George's Cnty. Dept. of Parks and Recreation (Mar. 24, 2021) (notes on file with author). In part, this is a product of supply: just as governmental entities are resource-constrained, so too is the inventory of undeveloped land in metropolitan regions, a product of urban growth and sprawl since World War II. *See, e.g.*, Telephone Interview with Glenn Boorman, *supra* note 11 (discussing growth and decreased land availability). *See also infra* Part II (defining the legal regime of parkland acquisition).

16. *See, e.g.*, E-mail from Tom Korosei, Land Manager, Mun. of Anchorage Parks and Recreation Dep't (May 14, 2021) (on file with author) (discussing the role of funding availability and noting that most acquisitions occur via donation); Telephone Interview with Kelly Grissman, Dir. of Plan., Three Rivers Park Dist. (May 21, 2021) (notes on file with author) (discussing tradeoffs between process and expediency).

17. *See, e.g.*, Telephone Interview with Allen Ishibashi, Senior Real Prop. Agent, Midpeninsula Reg'l Open Space Dist. (Feb. 25, 2021) (notes on file with author) (prioritizing adjacent property acquisition); Telephone Interview with Clement Lau, Dept'l Facilities Planner, Cnty. of L.A. Dept. of Parks and Recreation (Feb. 2, 2021) (notes on file with author) (prioritizing access and equity).

aim to conserve unimproved natural areas whereas another works to repurpose brownfield sites.<sup>18</sup>

These priorities—whether official or unofficial, stated or unstated—impact not only the property actually acquired by a local park agency, but also the relationships that agency cultivates, the stakeholders it engages, and the normative interests its policies promote.<sup>19</sup> An agency's choice of priorities and its allocation of acquisition resources can determine which neighborhoods see boosted property values and which do not; which neighborhoods realize health and civic wellness gains and which do not; and, broadly, how shared public amenities are distributed in a given community.<sup>20</sup> The aggregate impact of parkland distribution is seen starkly in cities and counties across the United States. Just over two-thirds of Americans can walk to a local park, which means about one-third cannot, whereas parks in majority non-white areas serve five times as many people as parks that serve majority white populations.<sup>21</sup> Priorities that make sense in a small-scale context may prove uneven in their large-scale application, a challenge for both policymakers and for the communities they govern.

In short, then, the location of new public parkland has ramifications for local residents *and* for local governance. Yet stakeholders are given few signposts in setting acquisition priorities and monitoring acquisition programs. Data on parkland acquisition is scarce.<sup>22</sup> The legal framework undergirding the

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18. Compare Telephone Interview with Stephanie Kutsko, Land Prot. Manager, Cleveland Metroparks (May 13, 2021) (using natural resource value as a criteria), with Telephone Interview with Glenn Boorman, *supra* note 11 (discussing the turn to brownfield parks development); *An Overview of EPA's Brownfields Program*, U.S. ENV'T PROT. AGENCY, <https://www.epa.gov/brownfields/ovcrview-epas-brownfields-program> [https://perma.cc/K8VT-QCQE] ("A brownfield is a property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.").

19. See *infra* Part III(C) (exploring the ecosystem of stakeholder participation). See also Jennifer Nou, *Intra-Agency Coordination*, 129 HARV. L. REV. 421, 471–72 (2015) (exploring the role of internal priority-setting within federal agencies).

20. See *infra* Part I(A).

21. KATHARINE LUSK, BOS. UNIV., SONGHYUN PARK, KATHERINE LEVINE EINSTEIN, DAVID M. GLICK, MAXWELL PALMER & STACY FOX, URBAN PARKS AND THE PUBLIC REALM: EQUITY & ACCESS IN POST-COVID CITIES 3 (2020). See also THE TR. FOR PUB. LAND, THE HEAT IS ON 2 (2020), [https://www.tpl.org/sites/default/files/The-Heat-is-on\\_A-Trust-for-Public-Land\\_special-report\\_r10.pdf](https://www.tpl.org/sites/default/files/The-Heat-is-on_A-Trust-for-Public-Land_special-report_r10.pdf) [https://perma.cc/LVY6-VVZV] (discussing park distribution inequities); *infra* Part III(B) (exploring access inequities and the concept of environmental justice).

22. Valuable governmental and nongovernmental organizations in the field of open space management track important local park metrics, including comparative data regarding the acreage held by local park agencies in the United States. See 2020 *City Park Facts*, THE TR. FOR PUB. LAND

process is rarely explored, particularly at the local government level.<sup>23</sup> And although local governments are America's leading stewards and gatekeepers of public park property, the actions of a park agency when acquiring new land receive bare direction from the formal legal regime and little attention from legal scholars.<sup>24</sup> Instead, state law and judicial precedent grants almost unconstrained local discretion when acquiring parkland, a framework that delegates lawmaking to the lowest level of governance: to the local and sublocal institutions whose internal policies and unwritten practices determine what parkland is acquired, how potential land acquisitions are reviewed, and which stakeholders and priorities carry most weight in the process.<sup>25</sup> Viewed as a whole, these policies and practices constitute an informal, heterogeneous legal regime of local parkland acquisition.

This Article sheds light on this informal legal regime. Faced with a dearth of national data on parkland acquisition, it aims to identify *where* parkland is actually being acquired, employing an empirical review of property recently obtained for park purposes at many of the largest local departments and authorities across the United States.<sup>26</sup> The Article then analyzes this data

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<https://www.tpl.org/2020-city-park-facts> [<https://perma.cc/X3C2-N4LE>]. The Trust for Public Land has also prepared national-level reports on greenspace location, see, e.g., *ParkServe*, THE TR. FOR PUB. LAND <https://parkserve.tpl.org/mapping/> [<https://perma.cc/WHB8-5U22>], and local-level studies and planning reports for specific entities, see, e.g., *Barnegat Bay 2020: A Vision for the Future of Conservation*, THE TR. FOR PUB. LAND (July 2008), <https://www.tpl.org/sites/default/files/cloud.tpl.org/pubs/local-nj-barnegat-bay-2020.pdf> [<https://perma.cc/7EWW-PTWQ>]. Yet national-level data on recent property acquisitions is not aggregated and difficult to collect. All data collected for this Article was obtained through direct outreach to ninety-four departments and authorities. See *infra* Part III(A) (explaining the methodology). The majority of these departments and authorities did not provide acquisition data until a public records request was submitted.

23. See *supra* note 14 and accompanying text. Park acquisition has received more attention at the state and federal levels. See, e.g., Richard J. Fink, *The National Wildlife Refuges: Theory, Practice, and Prospect*, 18 HARV. ENVTL. L. REV. 1, 12 (1994) (discussing the creation of federal wildlife refuges through acquisition); Sean Flaherty & Anthony Moffa, *Conserving A Vision: Acadia, Katahdin, and the Pathway from Private Hands to Park Lands*, 71 ME. L. REV. 37 (2018) (exploring the creation of national parks in Maine); Rachel E. Deming, *Protecting Natural Resources-Forever: The Obligations of State Officials to Uphold "Forever" Constitutional Provisions*, 36 PACE ENVTL. L. REV. 202, 206–07 (2019) (discussing conservation land acquisition under the Florida Forever program).

24. See Steven M. Davis, *The Politics of Urban Natural Areas Management at the Local Level: A Case Study*, 2 KY. J. EQUINE, AGRIC. & NAT. RES. L. 127, 127 (2010) (noting that public park management at the local level is rarely explored, notwithstanding the fact that local parks dwarf federal parks in size and visitors).

25. See *infra* Part III.

26. For purposes of this Article, “parkland” and “park properties” are synonyms and defined broadly, drawing upon the definition used by the Trust for Public Land to include parcels owned in fee

against the policies and practices that drove each acquisition. In doing so, it builds a framework for understanding sublocal acquisition regimes and for arbitrating between oft-competing values of efficiency and access—while at the same time assessing the normative role of institutional informality, both in the parkland context and for local governance more broadly.

The Article proceeds in three parts. Following this introduction, Part I sets the stakes. It argues that park acquisition is consequential for local communities, despite often operating under the radar, because parks are vital public amenities: they generate health and economic benefits for surrounding neighborhoods and impact how resources and residents disperse across a locality. The crucial geographic decision made by local stakeholders—*where* to create parkland—can thus serve to reduce or reinforce interlocal disparities. Studying these decisions offers scholars a window into thorny questions of local government that populate the legal literature, in particular those that confront tensions inherent in sublocal structures. This part explores how parkland acquisition can pull back the opaque institutional veil of sublocal lawmaking in order to explore its governance outcomes.

Having established why local park acquisition is worth examining, Part II offers a descriptive account of the regime: it moves down the vertical chain of government power, tracing the devolution of acquisition authority from the state to the local to the sublocal level, ending with an assessment of the stakeholders who hold an operative voice in the process. This part draws upon statutes, ordinances, interviews, and internal agency documents to sketch the contours of this acquisition regime, one that is forged out of sublocal policies and institutional cultures rather than external law. In doing so, however, this part argues that despite its hazy and heterogeneous nature, there are salient ways in which the legal framework of park acquisition can shape, and be shaped by, on-the-ground institutional practice. Part II concludes by exploring how proactive governance can yield stakeholder diversity in the acquisition ecosystem.

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simple by a local governmental entity that contain open greenspace and permit public access. The ParkServe Database, *How do we define a park?*, THE TR. FOR PUB. LAND <https://www.tpl.org/parkserve/about#faq02> [<https://perma.cc/7NY6-LTK6>]. Whether a given parcel constitutes “park property” was determined by the responsive local agencies included in this study, which at times distinguished between multiple subcategories of properties, for example between community parks and open space sites. *See, e.g.*, Aurora Parks, Recreation & Open Space Department, Acquisition Parcels 2010 to 2021 (Mar. 11, 2021) (on file with author) (breaking down park properties into conservation areas, community parks, greenbelts, neighborhood parks, and special use parks). In accordance with the broad designations utilized by the Trust for Public Land, all such subcategories were considered to describe park properties for purposes of this Article.



Part III puts our sublocal acquisition framework to the test. Using data from 5,120 park properties acquired over the past decade, it performs geospatial and statistical analyses to determine where parkland is being acquired in local communities across the country, what normative civic values are promoted by these acquisitions, and, crucially, how local institutional structures translate into geographic outcomes. The study specifically examines two values shared widely by local park agencies: first, the value of expanding existing greenspace through adjacent or proximal land acquisitions, and second, as introduced above, the oft-conflicting value of creating new parks in areas that have historically lacked them. How do an agency's priorities translate into park creation? What features of an acquisition regime yield more park properties? Which promote better acquisition outcomes? In offering some initial answers to these questions, this part reveals that equity challenges persist in park creation and further demonstrates the values of formality and stakeholder diversity in local acquisition schemes. The Article concludes by drawing upon these empirical results to advocate for state legislatures to modestly boost the guidance they provide sublocal actors.

## II. SIGNIFICANCE OF THE PARK ACQUISITION REGIME

Why study the legal regime of local parkland acquisition? Of the 5,120 acquisitions reviewed for this Article, the majority, if not the vast majority, were acquired without public controversy.<sup>27</sup> Few were subject to critical media coverage or judicial review.<sup>28</sup> In contrast with the case where a park is being sold by a local entity—a flashpoint situation where the government may face

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27. To be sure, an acquisition's notoriety or lack thereof is impossible to quantify, but a review of acquisition data indicates that a substantial volume of park properties are small in size, obtained from other governmental and/or nonprofit entities and via donation, factors that do not tend to aggravate public attention. *See, e.g.*, Response to Public Records Request from City of Dallas to Wendy Xu, University of Detroit Mercy School of Law (Apr. 14, 2021) (on file with author) (providing a list of acquisitions since 2010; the list includes notes regarding the nature of the acquisition and size of each parcel; of the sixty properties listed, forty-four are smaller than one acre); San Antonio Parks & Recreation, List of Park Inventory (Feb. 24, 2021) (on file with author) (showing that only sixteen of fifty-six recent acquisitions occurred via purchase).

28. A notable exception occurred in St. Louis County, where parkland was conveyed as part of an exchange to acquire park property elsewhere, a transaction later exposed as a case of possible favoritism between the then-County Executive, Steve Stenger, who later plead guilty to a play-to-pay scheme, and a donor to his campaign. Jacob Barker, *Stenger Quietly Gave 60 Acres of Park Land to Donor in Exchange for 15 Acres*, ST. LOUIS POST-DISPATCH (May 8, 2019), [https://www.stltoday.com/news/local/govt-and-politics/stenger-quietly-gave-60-acres-of-park-land-to-donor-in-exchange-for-15-acres/article\\_0939d797-0ba4-56bf-91f6-462abf65bcf4.html](https://www.stltoday.com/news/local/govt-and-politics/stenger-quietly-gave-60-acres-of-park-land-to-donor-in-exchange-for-15-acres/article_0939d797-0ba4-56bf-91f6-462abf65bcf4.html) [<https://perma.cc/PLL9-7JPK>]. *See also* Telephone Interview with Bonnie Diaz, Cont. Manager, St. Louis Cnty. Dept. of Parks and Recreation (Mar. 2, 2021) (on file with author) (discussing the episode).

criticism for privatizing public assets or reducing public greenspace<sup>29</sup>—acquisition does trigger polarizing debates. The concept of parkland creation is not politically partisan.<sup>30</sup> Nor is it one that generally raises the specter of government impropriety.<sup>31</sup>

Under the radar, however, the transfer of property to a parks department or authority has real ramifications for the residents of a local community, even if it doesn't make headlines in the press—and it cuts to the core of local governance, even if traditional legal doctrines do not speak directly to the issue. In particular, park property acquisition matters because the *location* of parkland informs growth, development, conservation, and health in a community.<sup>32</sup> Likewise the process of deciding to acquire a specific parcel of land for park

29. See, e.g., Seth Kocnig, *Portland City Council Approves Controversial Sale of Publicly Owned Congress Square Park*, BANGOR DAILY NEWS (Sept. 16, 2013), <https://bangordailynews.com/2013/09/16/news/portland-city-council-set-to-decide-monday-on-controversial-congress-squarc-plaza-salc/> [<https://perma.cc/2VPY-HHYZ>]; Kevin Canfield, *Oklahoma Supreme Court Sends Helmerich Park Lawsuit Back to District Court*, TULSA WORLD (June 30, 2021), [https://tulsaworld.com/news/local/oklahoma-supreme-court-sends-helmerich-park-lawsuit-back-to-district-court/article\\_9df5d85a-d378-11eb-ab4b-c7b137a0332a.html](https://tulsaworld.com/news/local/oklahoma-supreme-court-sends-helmerich-park-lawsuit-back-to-district-court/article_9df5d85a-d378-11eb-ab4b-c7b137a0332a.html) [<https://perma.cc/GX7N-J8PV>].

30. Most data on public support for parkland comes from the national level, where there is broad support for national parks and federal park investments. Marcia Argust, *Americans Want Congress to Act to Fix National Parks*, THE PEW CHARITABLE TRS. (Aug. 9, 2019), <https://www.pewtrusts.org/en/research-and-analysis/articles/2019/08/09/americans-want-congress-to-act-to-fix-national-parks> [<https://perma.cc/DR92-C4EF>] (showing broad national support for investment in national parks); Carl Brown, *See America First: Public Opinion and National Parks*, ROPER CTR FOR PUB. OP. RES., <https://ropercenter.cornell.edu/sce-america-first-public-opinion-and-national-parks> [<https://perma.cc/9PGE-YKJH>] (showing national support for investment into new federal park creation, yet with a shift towards maintenance and conservation over acquisition over time). A 2020 study found strong support for local government investment in infrastructure improvements that promote economic activity, with parkland as one such form of infrastructure. See Press Release, National Recreation and Park Association, *New Survey: Nine in 10 U.S. Adults Support Local Government Investments in Infrastructure Improvements to Promote Economic Activity in their Communities* (Feb. 27, 2020), <https://www.newswise.com/articles/new-survey-nine-in-10-u-s-adults-support-local-government-investments-in-infrastructure-improvements-to-promote-economic-activity-in-their-communities> [<https://perma.cc/2ZDT-VW2Y>].

31. Pursuant to one line of traditional theory, local government is more susceptible to capture by factions and to public corruption. See *infra* note 65 and accompanying text. Yet watchdog organizations that track state and local-level corruption do not identify, or at least do not report, any pattern of impropriety in the parkland acquisition context. See, e.g., Austin Berg, *2019–2020 Illinois corruption tracker*, ILL. POL'Y, <https://www.illinoispolicy.org/reports/2019-illinois-corruption-tracker/> [<https://perma.cc/29B7-745A>]. And charges of impropriety were rare across the 5,120 properties reviewed for this Article. See *supra* note 28 and accompanying text.

32. See *infra* Part I(A). On the importance of locational decisions in local government, see generally Daniel B. Rodriguez & David Schleicher, *The Location Market*, 19 GEO. MASON L. REV. 637 (2012); Christopher J. Tyson, *Municipal Identity As Property*, 118 PENN ST. L. REV. 647, 674–77 (2014).

purposes—which by its nature also raises geographic considerations—demands that local administrators, staffers, and other stakeholders forge a system of governance out of a meager legal framework, a scheme which offers insight into the values and drawbacks of local governance institutions.

### A. Acquisition and Local Communities

Acquisition is a powerful tool of public greenspace development. On the federal level, acquisition has long played a central role in bringing natural areas into the public domain and promoting resource conservation.<sup>33</sup> Congress has empowered federal agencies with the authority and funds to pursue land acquisition opportunities, coupled with a mandate requiring that federal agencies maintain their public landholdings over time.<sup>34</sup> State governments share the sentiment and pour significant resources into parkland acquisition.<sup>35</sup> For local government, too, land acquisition serves as a crucial vehicle for accomplishing normative goals, including efforts to expand greenspace, conserve resources threatened by development, and promote recreational opportunities and amenities.<sup>36</sup> Fee simple acquisition helps further these

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33. See Fink, *supra* note 23, at 30–31 (discussing the history of wildlife refuges; land was acquired for wildlife refuges both before a conservation policy was put into place by Congress, serving as the impetus for broader policy developments, and as a consequence of the policy that followed).

34. See Nicholas G. Vaskov, *Continued Cartographic Chaos, or A New Paradigm in Public Land Reconfiguration? The Effect of New Laws Authorizing Limited Sales of Public Land*, 20 UCLA J. ENVTL. L. & POL'Y 79, 85 (2002) (discussing the retention mandate under the Federal Land Policy and Management Act of 1976). Despite the federal focus on maintaining and growing public lands, the emphasis on acquisition has declined over time; as compared with federal land policy in the 19th century, the prevailing policy focus today is to retain and manage existing resources. See Jan G. Laitos & Thomas A. Carr, *The Transformation on Public Lands*, 26 ECOLOGY L.Q. 140, 147 (1999).

35. See, e.g., Lawrence Mower, *Florida is Buying \$300 Million in Land. It's for the Environment--and Developers.*, TAMPA BAY TIMES (July 26, 2021), <https://www.tampabay.com/news/florida-politics/2021/07/26/florida-is-buying-300-million-in-land-its-for-the-cnvironment-and-developers/> [<https://perma.cc/XNQ6-2UJU>].

36. See *Barnegat Bay 2020*, *supra* note 22, at 4 (noting that land acquisition is “vital” for conservation in the Barnegat Bay watershed of coastal New Jersey); Telephone Interview with Allen Ishibashi, *supra* note 17 (describing fee simple acquisition as the main vehicle for conservation); Cook County Forest Preserve District, 2012 Land Acquisition Plan 5 (Oct. 2012) (on file with author) (explaining the agency’s rationale for expanding its park inventory). *But see* Telephone Interview with Clement Lau, *supra* note 17 (stating that Los Angeles County prioritizes non-acquisition approaches to parkland expansion because fee simple acquisition is challenging in a built-out urban environment). Local governments increasingly find themselves at the forefront of environmental conservation. See generally Katrina M. Wyman & Danielle Spiegel-Feld, *The Urban Environmental Renaissance*, 108 CAL. L. REV. 305, 307 (2020). See also A. Dan Tarlock, *Local Government Protection of Biodiversity: What Is Its Niche?*, 60 U. CHI. L. REV. 555 (1993); Jamison E. Colburn, *Localism’s Ecology: Protecting and Restoring Habitat in the Suburban Nation*, 33 ECOLOGY L.Q. 945, 953 (2006); Telephone Interview with Bonnie Diaz, *supra* note 28 (discussing how St. Louis County partners with nonprofit conservation organizations in its acquisition efforts).

multifaceted outcomes by offering short- and long-term management flexibility that easements and shared-use agreements do not.<sup>37</sup> Given that passions rise when parkland disposition is on the table, it follows that the location and extent of local park acquisition matters, as well. When an acquisition is contemplated but not pursued by the local government, thus leaving a prospective park parcel in private hands, the normative impact of the government's non-action may be no different from the more charged situation where a park property gets disposed into private ownership. The location of a new park furthers microlocal recreation values, just as those values may be impeded by a park that is disposed or by an acquisition that is never made.<sup>38</sup>

Empirical research supports the geographic import of parkland acquisition. Parks are economic engines: they boost property values in surrounding neighborhoods and attract amenities and development.<sup>39</sup> Parks also serve environmental objectives by mitigating against pollution and urban heat

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37. Telephone Interview with Bill Maasen, *supra* note 3 (discussing management limitations when parkland is held by easement); Telephone Interview with Rosalie Hendon, Env't Planner, City of Columbus Recreation and Parks Dept. (July 6, 2021) (notes on file with author) (discussing management and investment limitations when parkland is held by long-term lease); Atlanta Dept. of Parks and Recreation, Park Acquisition Approval Procedures 12 (May 12, 2021) (on file with author) (noting that conservation easements are rarely used as a tool for greenspace creation, and only under particular circumstances); Denver Parks and Recreation, Strategic Acquisition Plan 36 (Apr. 2021) (on file with author) ("Fee acquisitions have the advantage of giving [the agency] full control over the management of the properties' resources and provide the greatest flexibility for future use and decision making. Most [Denver] acquisitions for parks and open spaces will be fee simple acquisitions."). *But see* Resol. No. 2004-80, Volusia Cnty. Council 4 (2004) (on file with author) (recognizing that "significant conservation goals can be achieved by alternatives to traditional fee simple acquisition").

38. The concept can be illustrated through the emphasis many local park agencies place upon maintaining a certain number of parkland acres per 1,000 residents. *See, e.g.*, Austin Parks and Recreation Dept., Parkland Acquisition Program (Dec. 2, 2020) (on file with author) (expressing a goal of twenty-four acres per 1,000 residents); Portland Parks and Recreation, Land Acquisition Strategy (2016) (on file with author) (targeting twenty acres per 1,000 residents); City of Colorado Springs, *Updates Made to the Parkland Dedication Ordinance, What They Mean* (Feb. 23, 2021), <https://coloradosprings.gov/parks/article/news/updates-made-parkland-dedication-ordinance-what-they> [<https://perma.cc/8HXR-QAA7>] (targeting 5.5 acres per 1,000 residents).

39. *See* Molly Espey & Kwame Owusu-Edusci, *Neighborhood Parks and Residential Property Values in Greenville, South Carolina*, 33 J. AGRIC. & APPLIED ECON. 487, 491 (2001); Heather Sander & Stephen Polasky, *The Value of Views and Open Space: Estimates From a Hedonic Pricing Model for Ramsey County, Minnesota, USA*, 26 LAND USE POL'Y 837, 844 (2009); William W. Buzbee, *Sprawl's Political-Economy and the Case for A Metropolitan Green Space Initiative*, 32 URB. LAW. 367, 384 (2000); Wyman & Spiegel-Feld, *supra* note 36, at 317; Kibel, *supra* note 14, at 369 (positing that hillside parkland may have facilitated the development of affluent neighborhoods nearby).

effects,<sup>40</sup> preserving threatened species,<sup>41</sup> and discouraging sprawl.<sup>42</sup> In addition, parks advance public health and civic wellness; they promote physical activity in a neighborhood and create fora for members of the community to congregate and interact.<sup>43</sup> This is not to say that parks are unassailable public goods. Social scientists debate whether parks spur increased crime in surrounding neighborhoods, for example,<sup>44</sup> and urban parks have been associated with regressive land use planning and gentrification.<sup>45</sup> But for purposes of this Article, it is sufficient to highlight the intuitive central point: public parkland has empirical value. Its impacts are not evenly distributed across a city or region, moreover, but instead are hyper-local in nature, such that the benefits (and detriments) of parks are most pronounced in the blocks and communities that are more proximal or accessible to a park site.<sup>46</sup> The

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40. See Lusk, *supra* note 21, at 3.

41. See Buzbec, *supra* note 39, at 385 (observing that “metropolitan area green spaces can provide rare ecosystem fragments”); Álvaro Luna, Pedro Romero-Vidal, Fernando Heraldo & Jose L. Tella, *Cities May Save Some Threatened Species But Not Their Ecological Functions*, PEERJ (June 22, 2018), <https://peerj.com/articles/4908/> [<https://perma.cc/47UV-DJ4H>].

42. Kathy Blah, *How Cities Use Parks for Smart Growth*, The City Parks Forum Briefing Paper, AM. PLAN. ASS’N. (2005), [https://www.brcc.org/asscts/General\\_Info/Why\\_R\\_Parks\\_Important/Papers/Parks-for-Smart-Growth.pdf](https://www.brcc.org/asscts/General_Info/Why_R_Parks_Important/Papers/Parks-for-Smart-Growth.pdf) [<https://perma.cc/CA76-GXLR>] (providing local-level examples).

43. Andrew T. Kaczynski, Luke R. Potwarka, Bryan J. A. Smale & Mark E. Havitz, *Association of Parkland Proximity with Neighborhood and Park-based Physical Activity: Variations by Gender and Age*, 31 LEISURE SCI. 174, 175 (2009) (regarding physical activity among neighborhood residents); Ana Isabel Ribeiro, Andrea Pires, Marília Sá Carvalho & Maria Fátima Pina, *Distance to Parks and Non-Residential Destinations Influences Physical Activity of Older People, But Crime Doesn’t: A Cross-Sectional Study in a Southern European City*, 15 BMC PUB. HEALTH 593, 598 (2015) (same); Lusk, *supra* note 21, at 3 (regarding physical and mental health); *Parks and the Pandemic*, THE TR. FOR PUB. LAND (2020), <https://www.tpl.org/sites/default/files/Parks%20and%20Pandemic%20-%20TPL%20special%20report.pdf> [<https://perma.cc/2YWW-7M56>] (regarding the impact of park usage on health during the COVID-19 pandemic); ERIC KLINENBERG, PALACES FOR THE PEOPLE: HOW SOCIAL INFRASTRUCTURE CAN HELP FIGHT INEQUALITY, POLARIZATION, AND THE DECLINE OF CIVIC LIFE 22 (2019) (regarding the social value of public spaces, including parks); Buzbec, *supra* note 39, at 384 (regarding communal interactions). *But see* Deliana Kostova, *Can the Built Environment Reduce Obesity? The Impact of Residential Sprawl and Neighborhood Parks on Obesity and Physical Activity*, 37 E. ECON. J. 390 (2011) (reporting mixed findings on the correlation between park access and obesity).

44. See Elizabeth Groff & Eric McCord, *The Role of Neighborhood Parks as Crime Generators*, 25 SEC. J. 1, 1–2 (2012), <https://doi.org/10.1057/sj.2011.1> [<https://perma.cc/JBZ5-3CUT>].

45. See Sarah Fox, *Environmental Gentrification*, 90 U. COLO. L. REV. 803, 821–823 (2019) (discussing the “unintended negative consequences” of new park projects, including the gentrification and displacement that can accompany them).

46. See Sander & Polasky, *supra* note 39, at 837 (finding that home prices “increase with closer proximity to parks, trails, lakes, and streams”); James W. Kitchen & William S. Hendon, *Land Values Adjacent to an Urban Neighborhood Park*, 43 LAND ECON. 357, 360 (1967) (finding that “as a parcel of land is more distant from the park, its value decreases”). Operating upon the proximity model, the

process of acquiring and locating a park property therefore comes packaged with weighty socioeconomic externalities. In metropolitan regions, segregated along class, race, and ethnic lines,<sup>47</sup> creating greenspace in one suburb or neighborhood necessarily generates economic, health, and civic spillovers that can disproportionately affect particular demographic constituencies.<sup>48</sup> The distribution of parks can thus serve to reduce *or* reinforce interlocal disparities.

Parkland distribution also matters for the basic reason that residents of a community care about park access. The public has long held an aesthetic and recreational interest in park expansion, heralded first by the Progressive Era's beatification movement,<sup>49</sup> reinforced more recently by prominent urban and suburban revitalization projects,<sup>50</sup> and then brought back to the forefront when park attendance soared during the COVID-19 pandemic.<sup>51</sup> Today parks are prime local amenities. A community rich in greenspace and other environmental amenities enjoys an edge in the interlocal competition for skilled workers and mobile capital.<sup>52</sup> Because parks impact regional equities, they act as interlocal public goods that inform the housing decisions of mobile

Trust for Public Land releases an annual "ParkScore" that assesses local park proximity and access in major American cities. See *The ParkScore index: Methodology and FAQ*, THE TR. FOR PUB. LAND, <https://www.tpl.org/parkscore/about> [<https://perma.cc/48V5-U8HM>]. The ParkScore report uses a 10-minute walkable service area around each park to determine parkland access. *Id.*

47. See, e.g., Stephen Mcnendian, Arthur Gailles & Samir Gambhir, *The Roots of Structural Racism: Twenty-First Century Racial Residential Segregation in the United States*, OTHERING & BELONGING INST. (2021), <https://belonging.berkeley.edu/roots-structural-racism> [<https://perma.cc/F5TB-AHNE>] (finding high and increasing rates of metropolitan racial segregation).

48. See Wyman & Spiegel-Feld, *supra* note 36, at 336–37.

49. See Wyman & Spiegel-Feld, *supra* note 36, at 317.

50. The High Line in New York City is one of the more prominent examples of a major greenspace project as a form of urban economic revitalization. See Kate Ascher & Sabina Uffer, *The High Line Effect*, COUNCIL ON TALL BUILDINGS AND URB. HABITAT (2015), <https://global.ctbuh.org/resources/papers/download/2463-the-high-line-effect.pdf> [<https://perma.cc/46LS-RP2H>]. Other urban efforts have attracted public support for their ability to turn abandoned, vacant, or contaminated spaces into public goods. See Charles C. Branas, Rose A. Cheney, John M. MacDonald, Vicky W. Tam, Tara D. Jackson & Thomas R. Ten Have, *A Difference-in-Differences Analysis of Health, Safety, and Greening Vacant Urban Space*, 174 AM. J. OF EPIDEMIOLOGY 1296–97 (2011) (studying a vacant lot greening program in Philadelphia). Outside urban cores, parkland creation facilitates habitat conservation, trail connectivity, and flood management. See, e.g., Hailey Konnath, *Flanagan Lake, Opening This Week, Is Already Spurring Development In Northwest Omaha*, OMAHA WORLD-HERALD (June 25, 2018), [https://omaha.com/business/flanagan-lake-opening-this-wcck-is-already-spurring-development-in-northwest-omaha/article\\_96aad718-10fc-5701-85c8-d91c013454c7.html](https://omaha.com/business/flanagan-lake-opening-this-wcck-is-already-spurring-development-in-northwest-omaha/article_96aad718-10fc-5701-85c8-d91c013454c7.html) [<https://perma.cc/6JM5-T27R>].

51. *Parks and the Pandemic*, *supra* note 43, at 5–6.

52. See Wyman & Spiegel-Feld, *supra* note 36, at 327 (discussing the modern role of environmental amenities in interlocal competition).

residents—and impede the prosperity of communities left behind.<sup>53</sup> Under the Tieboutian model of regional competition, a greenspace investment in one municipality can serve to attract new residents, bringing mobile capital into that area and away from other parts of the region.<sup>54</sup> For local officials, the desire to attract residents and satisfy their preferences serves as an incentive to invest in park amenities.<sup>55</sup>

But where an official's jurisdiction extends over a large city, county, or metropolitan region, Tieboutian incentives become more complicated. Placing a park in one area of the jurisdiction picks winners and losers on a sublocal level, with the potential that these decisions facilitate intralocal migratory and investment patterns as residents sort themselves based upon their affinity for greenspace—or alternatively on their ability to pay a premium for its proximity.<sup>56</sup> The power of local parkland cuts both ways under this dynamic. On the one hand, it offers targeted flexibility to local administrators: for example, creating a park can promote and regulate entry into a specific neighborhood that has suffered from divestment, even as the local government can conserve resources by simultaneously choosing *not* to create a park in another neighborhood that does not have the same need.<sup>57</sup> On the other hand, however, sublocal decision-making is prone to externalities and problems of scale. Where the jurisdictional scale is too small, local park administrators may

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53. Along these lines, a park may also induce migrations *away* from a neighborhood because it causes property values to rise. See Nestor M. Davidson & David Fagundes, *Law and Neighborhood Names*, 72 VAND. L. REV. 757, 818 (2019) (discussing how Tieboutian forces can promote both entry and displacement on a neighborhood level).

54. See Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416, 422 (1956). See also Noah M. Kazis, *Service Provision and the Study of Local Legislatures: A Response to Professor Zale*, 81 OHIO ST. L.J. ONLINE 1, 11 (2020) (describing the concept of the model and its empirical underpinning support); Nestor M. Davidson, *Localist Administrative Law*, 126 YALE L.J. 564, 600 (2017) (discussing competition for economic development and local amenities). But see Richard Schragger, *Does Governance Matter? The Case of Business Improvement Districts and the Urban Resurgence*, 3 DREXEL L. REV. 49, 66 (2010) (describing the concept of competition between localities as “incoherent”).

55. Christine Sgarlata Chung, *Municipal Bankruptcy, Essential Municipal Services, and Taxpayers' Voice*, 24 WIDENER L.J. 43, 44 (2015).

56. See Richard Briffault, *The Rise of Sublocal Structures in Urban Governance*, 82 MINN. L. REV. 503, 527 (1997) (discussing “intralocal mobility within big cities”). See also Davidson & Fagundes, *supra* note 53, at 818 (noting that “movement between localities can express and sort preferences for public amenities,” a process that “very actively plays out within cities at the neighborhood level”).

57. See Davidson & Fagundes, *supra* note 53, at 818 (discussing targeted investment as a means of regulating entry and exit on a neighborhood level); Briffault, *supra* note 56, at 527 (discussing targeted sublocal mechanisms for encouraging Tieboutian mobility).

lack the resources to acquire new greenspace,<sup>58</sup> but geographic blind spots may emerge in parkland governance where the scale is too large, at times intentionally (*e.g.*, where multiple parks entities are hesitant to act in an area of jurisdictional overlap<sup>59</sup>) and at times unintentionally (*e.g.*, where a corner of the county lacks an outspoken constituency advocating for conservation<sup>60</sup>).

These intentional and unintentional choices spawn geographic outcomes. When plotted on a map, the distribution of park space hints at the dispersal of other resources and public goods in a community—and at the local policies that allocate them.

### *B. Acquisition and Local Governance*

The above discussion of parkland acquisition's role within a community highlights a predominant organizing theme. When a new property is acquired for parks purposes, the administrative decision to obtain that specific parcel of land is intertwined with considerations and incentives that operate at a micro, neighborhood-scale level. Similarly, when the parcel is ultimately turned into a public park, the resulting greenspace also has civic impacts that are most prominently micro and proximal in character.

It is not only parkland outcomes and impacts that manifest at the local level. Park *governance* also occurs in this space. Because decisions to create and expand local parkland are routinely made below the formal lawmaking radar of state legislatures, city councils, and county commissions—and instead, are driven by the internal policies of the agencies and authorities empowered to manage them<sup>61</sup>—park acquisition can be said to operate in the realm of the sublocal.<sup>62</sup> Recently, legal scholars have begun to assess the ways in which

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58. See Nestor M. Davidson & Sheila R. Foster, *The Mobility Case for Regionalism*, 47 U.C. DAVIS L. REV. 63, 104–05 (2013) (discussing the value of public goods, including open space, being provided on a regional scale); Janice C. Griffith, *Institutional Framework for Open Space Conservation*, 4 J. COMP. URB. L. & POL'Y 235, 259 (2020) (noting that open space conservation crosses boundary lines, and thus require regional implementation). See also Nicole Stelle Garnett, *Governing? Gentrifying? Seceding? Real-Time Answers to Questions About Business Improvement Districts*, 3 DREXEL L. REV. 35, 45–46 (2010) (discussing the “Secession of the Successful”).

59. See Davidson, *supra* note 54, at 600 (explaining the regulatory gaps and administrative overlaps that occurred in the fragmented space of local governance). Nearly all of the park agencies reviewed for this Article have jurisdictions that overlap with those of other park agencies, including in places with each other.

60. See *infra* Part III(C) (regarding the role and impact of participation).

61. See *infra* Part III.

62. Commentators have explored a variety of institutions that fall under the umbrella of sublocal or microlocal governance, including special districts, local public agencies, formal and informal community groups, and other processes, both official and unofficial, that play out below the municipal



sublocal governance puts central theories of local government law into stark relief.<sup>63</sup> Traditional local government theory rests upon a central dichotomy: a debate between the optimistic view first famously expressed by Alexis de Tocqueville, who described local governments as labs of democratic experimentation,<sup>64</sup> and the more pessimistic view set forth by James Madison in the *Federalist Papers*, who worried that devolution to smaller units of government would increase the odds a faction captures and exploits the levers of power to the detriment of the minority.<sup>65</sup>

Sublocal governance puts this traditional dichotomy under a microscope. At the sublocal level, the Tocquevillian view of local experimentation is even more pronounced; not only can cities and counties adopt different policy approaches from one another, but so too can administrative agencies, neighborhood institutions, and community groups within those jurisdictions experiment as well.<sup>66</sup> Experimentation in the parkland context could produce tailored acquisition plans that respond narrowly to conditions on the ground. A local parks department in a low-lying coastal area can prioritize adding new park space in floodplains; a regional authority in a wealthy suburban area can

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level. See Briffault, *supra* note 56, at 508 (describing as sublocal “enterprise zones, tax increment finance districts, special zoning districts, and business improvement districts”); Daniel B. Rodriguez & Nadav Shoked, *Comparative Local Government Law in Motion: How Different Local Government Law Regimes Affect Global Cities’ Bike Share Plans*, 42 *FORDHAM URB. L.J.* 123, 163 (2014) (discussing formal and informal sublocal and micro-local institutions, including boroughs, districts, neighborhood associations, commerce boards, and others); Davidson & Fagundes, *supra* note 53, at 811–12 (describing sublocal institutions to include “business improvement districts, neighborhood advisory councils, enterprise zones, tax increment finance districts, special zoning districts, neighborhood courts, neighborhood schools, and others”); Nadav Shoked, *The New Local*, 100 *VA. L. REV.* 1323, 1327–29 (2014). These commentators do not share interchangeable definitions of sublocal and micro-local. Professor Shoked, for example, defines as “micro local” the *indirect* expressions of local governance that sit below cities, counties, and special districts, in contrast with sublocal institutions that have a unitary decision-making body. See *id.* at 1336. This Article will use “sublocal” as an umbrella term to characterize parkland acquisition regimes, where decisions are generally made at a level of local governance below the unitary and formal. See *infra* Part III.

63. See Shoked, *The New Local*, *supra* note 62, at 1327 (“Without legal commentators noticing it, localism in contemporary American law is more local than ever before.”).

64. See generally ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* (1835).

65. See THE *FEDERALIST* NO. 10 (James Madison) 62–78 (1787). See also Michael Heller & Rick Hills, *Land Assembly Districts*, 121 *HARV. L. REV.* 1465, 1499 (2008) (“Since Madison’s *Federalist No. 10*, it has been a bromide of American political theory that, as one shrinks the size of a jurisdiction, one increases the likelihood that a majority of the jurisdiction’s residents will share a common interest in oppressing the minority.”). For an overview of the Madisonian and Tocquevillian views in the local government framework, see Richard C. Schragger, *Reclaiming the Canvassing Board: Bush v. Gore and the Political Currency of Local Government*, 50 *BUFF. L. REV.* 393, 404–07 (2002).

66. See Davidson, *supra* note 54, at 625–28.

expand its inventory via philanthropic donations from private landowners; and an urban park district in a post-industrial city can aim to create pocket parks out of vacant parcels. Devolution of power supports these varied missions.

At the same time, however, fragmenting power at the sublocal level risks the Madisonian concern of factionalism and parochialism, this time not simply as a matter of city or state power but also within and between local neighborhoods, too.<sup>67</sup> Sublocal governance might empower those who are most knowledgeable about local conditions, facilitating efficient and participatory democracy.<sup>68</sup> But it also might not.<sup>69</sup> Overlapping or coterminous sublocal park agencies could work together to coordinate acquisition planning; but they also might not, leaving inefficiencies and governance gaps in their wake.<sup>70</sup>

Sublocal governance is defined by this tension. At the sublocal level, the dearth of formal procedures breeds instead an environment of informality, where stakeholders act and interact without imbedded rubrics to guide their behavior.<sup>71</sup> Informality encapsulates many of the fundamental benefits and drawbacks of sublocal power devolution. When legal systems are less formal, park agencies are given freer rein to be flexible, nimble, and creative in response—to modify priorities over time as demographics shift, land use patterns evolve, politicians come and go, and unexpected opportunities arise.<sup>72</sup> But adaptive decisions can yield results that are, or that appear to be, inequitable

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67. See generally Erika K. Wilson, *The New School Segregation*, 102 CORNELL L. REV. 139 (2016); Davidson & Fagundes, *supra* note 53.

68. Shoked, *supra* note 62, at 1331. See also Malcolm Lavoic, *Property and Local Knowledge*, 70 CATH. U. L. REV. 637, 639 (advocating for decentralized authority as a way to benefit from unique local knowledge about property conditions).

69. See Shoked, *supra* note 62, at 1332 (“Sometimes, micro-local government promotes these values; sometimes, it defeats them.”).

70. See *supra* note 59 and accompanying text (discussing regulatory gaps and administrative overlaps); Kibel, *supra* note 14, at 400 (discussing the value of collaboration between regional park agencies and city agencies that share jurisdictional overlap and are relatively more resource-constrained); Telephone Interview with Clement Lau, *supra* note 17 (noting that Los Angeles County coordinates with the City of Los Angeles on parkland management policies, promoting efficiency and better management practices). Fragmented bureaucracies face coordination challenges that might actually impede their ability to serve the marginalized groups sublocal governance is conceptually expected to reach. See Justin Weinstein-Tull, *State Bureaucratic Undermining*, 85 U. CHI. L. REV. 1083, 1083 (2018).

71. See Patience A. Crowder, “Ain’t No Sunshine”: *Examining Informality and State Open Meetings Acts As the Anti-Public Norm in Inner-City Redevelopment Deal Making*, 74 TENN. L. REV. 623, 637 (2007) (defining and discussing informality at the local level); Davidson, *supra* note 54, at 604 (noting informality as a salient feature among local administrative agencies).

72. See Telephone Interview with Kelly Grissman, *supra* note 16 (discussing the flexibility to take advantage of out-of-the-box opportunities); Telephone Interview with Paul Sun, *supra* note 15 (discussing evolution alongside political change); Telephone Interview with Glenn Boorman, *supra* note 11 (discussing flexibility to respond to demographic and land use changes).

and unprofitable: because informal regimes enable case-by-case policymaking, they heighten the risk of ad hoc and opaque outcomes, potentially casting a pall of illegitimacy over the process even when those outcomes do not come to pass.<sup>73</sup> These promises and perils of informality surface across a variety of sublocal disputes.<sup>74</sup>

Yet informality is not necessarily an all-encompassing feature of sublocal governance. External directives and internal policies can always add a degree of formality to sublocal lawmaking.<sup>75</sup> Where local bureaucrats are handed a vague and ill-defined administrative framework, they are given a choice about how to fill out the blank spaces of their operative mission. They can leave those blanks vague and ill-defined, which in practice can yield a more flexible yet passive approach to governance, or they can build an internal structure that departs somewhat, for better or worse, from the default informality of sublocal administration.<sup>76</sup> Or they can aim to forge a hybrid combination of informal, yet proactive governance.<sup>77</sup>

Local park agencies experiment with each of these approaches, at times yielding an internal acquisition regime significantly more formal than one would expect from sublocal government. A striking example is offered by the Park & Recreation Department of Miami-Dade County, Florida, which has developed a comprehensive corpus of plans, manuals, and charts to guide local parkland acquisition. The Department first adopted a master plan that identifies a long-term vision for the park system and sets forth general acquisition priorities.<sup>78</sup> Building on this plan, the Department then created a Park Land

73. See Casey Adams, *Home Rules: The Case for Local Administrative Procedure*, 87 *FORDHAM L. REV.* 629, 656–61 (2018) (regarding issues of legitimacy, fairness, and utility in informal governances); Roderick M. Hills, Jr. & David Schlicher, *Planning an Affordable City*, 101 *IOWA L. REV.* 91, 134 (2015) (discussing “individualized and opaque” deals in the zoning context); Fink, *supra* note 23, at 61–62 (discussing ad hoc federal decision-making when policy is implemented at the regional level).

74. See, e.g., Davidson & Fagundes, *supra* note 53, at 814 (exploring the role of informality where neighborhood names are established and contested).

75. See *infra* notes 86–92 and accompanying text (describing an agency, the Cleveland Metroparks, that takes this approach).

76. Passive and reactionary government practice often goes hand-in-hand with informal governance structures. See Davidson & Fagundes, *supra* note 53, at 814 (noting that in the absence of a formal regime for local neighborhood naming, “[c]ity governments . . . most often seem to respond to or simply ratify change on the ground”).

77. See Telephone Interview with Boe Carlson, Superintendent, Three Rivers Park Dist. (Apr. 27, 2021) (notes on file with author) (noting the value of mixing proactive and reactive acquisition strategies); Telephone Interview with Stephanie Kutsko, *supra* note 18 (same).

78. See generally *Parks and Open Space System Master Plan*, MIAMI-DADE CNTY. PARKS, RECREATION, AND OPEN SPACE DEP’T (Dec. 2007),

Acquisition Program, which prescribes criteria to apply when considering an acquisition, provides an analysis of existing parkland locations and needs, and identifies specific opportunities for increasing its park inventory.<sup>79</sup> Finally, as an ultimate piece to the puzzle, operational documents speak to the implementation of these global visions: a flowchart addresses each stage of the acquisition process, and an internal manual directs staff when prosecuting a fee simple park purchase.<sup>80</sup>

Taken together, these documents mold a clear, thorough, and operative acquisition regime, imposing a framework of internal formality upon the geographic decisions and land conveyances that inform parkland creation. The regime expressly ensures that acquisition decisions are made deliberately (by specifying particular due diligence activities<sup>81</sup>), proactively (by strategically targeting areas of need<sup>82</sup>), and collaboratively (by bringing internal and external stakeholders into the process<sup>83</sup>). But formality can also be counterproductive. It can demand more time, engage too many voices, and impinge sublocal flexibility.<sup>84</sup> Indeed, Miami-Dade's Park & Recreation Department candidly acknowledges that its approach may impose burdens in the land acquisition process.<sup>85</sup>

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[https://www.miamidadc.gov/parksmasterplan/library/OSMP\\_FINAL\\_REPORT\\_ctntiredocument.pdf](https://www.miamidadc.gov/parksmasterplan/library/OSMP_FINAL_REPORT_ctntiredocument.pdf)  
[<https://perma.cc/GM9B-C7M3>].

79. Response to Public Records Request from Miami-Dade County Parks, Recreation, and Open Spaces Department to Daniel Rosenbaum, Univ. of Detroit Mercy Sch. of L. (May 6, 2021) (on file with author) (providing documents regarding the Park Land Acquisition Program) [hereinafter Miami-Dade Response].

80. *See id.* (providing documents detailing the park land acquisition process as well as providing an operations manual regarding acquisition procedures).

81. *See id.* (noting "additional due diligence items such as obtaining a survey, completing review of title work, assuring no property taxes are owed for the site, or liens on the property").

82. *See id.* (emphasizing a strategic focus upon target areas).

83. The Department has developed a park acquisition flowchart that lists five internal offices and officials with defined roles in the process. *See id.* (providing a "Park Land Acquisition Process" chart). Meanwhile, the Park Land Acquisition Program includes discussion of collaboration with local schools. *See id.* (providing a slideshow discussing the program).

84. A number of local officials interviewed for this Article expressed the importance of maintaining enough flexibility to capitalize on opportunity that arises. *See* Telephone Interview with Rosalie Hendon, *supra* note 37; Telephone Interview with Bob Carlson, *supra* note 77. On the issue of having too many stakeholders with control over a resource, see, e.g., Michael A. Heller, *The Tragedy of the Anticommons: Property in the Transition from Marx to Markets*, 111 HARV. L. REV. 621, 648–49 (1998).

85. *See* Miami-Dade Response, *supra* note 79 (providing a document noting "Lengthy Due Diligence Process" and "Lengthy Internal Process" as two park acquisition challenges).

Miami's degree of internal formality is unique. More common are park agencies that operate with fewer guidelines and more flexibility, a formula that captures the sublocal informality identified in legal scholarship. For example, in contrast with Miami-Dade, neither the Cleveland Metroparks—a regional park authority in Northeast Ohio<sup>86</sup>—nor St. Louis County Parks & Recreation—a division of the largest county in Missouri<sup>87</sup>—have a written land acquisition strategy or public-facing acquisition criteria.<sup>88</sup> Neither includes other governmental stakeholders in the process as a matter of express policy.<sup>89</sup> Instead, Cleveland and St. Louis County operate a park acquisition regime that more closely reflects the degree of informality expected from sublocal governance.<sup>90</sup>

Nevertheless, the two agencies have forged different models out of their shared base framework. Administrators at Cleveland Metroparks have used informality to pursue a multifaceted acquisition strategy: operating from a holistic, internal sense of park expansion priorities that may vary on a parcel-by-parcel basis.<sup>91</sup> Metroparks employees engage a wide variety of stakeholders—including title companies, attorneys, land conservancies, and sewer districts, among others—and employ a range of environmental and geospatial data to pursue targeted opportunities, a process that has yielded 2,715 acres of parkland acquisition since 2010.<sup>92</sup> These efforts are not formally prescribed but have become imbedded into the agency's institutional practice. St. Louis County, meanwhile, has not adopted any such affirmative acquisition practices, choosing instead to prioritize the maintenance of parkland it already owns.<sup>93</sup> As a result, it is little surprise that St. Louis County obtains park

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86. See OHIO REV. CODE ANN. § 1545.01 et seq. (2020).

87. See Mo. Econ. Rsch. and Info. Ctr., *County Population*, MO. DEP'T OF HIGHER ED. & WORKFORCE DEV., <https://meric.mo.gov/data/population/county-population> [<https://perma.cc/7LKW-K3ZT>].

88. See Telephone Interview with Bonnie Diaz, *supra* note 28; Telephone Interview with Stephanie Kutsko, *supra* note 18.

89. Both have partnerships with other governmental entities. See Telephone Interview with Bonnie Diaz, *supra* note 28 (discussing trail easement collaborations with Great Rivers Greenway); Telephone Interview with Stephanie Kutsko, *supra* note 18 (discussing a variety of intergovernmental partners). Yet these partnerships are not formally baked into the acquisition process and rather appear to develop and operate more organically.

90. See *supra* notes 71–74 and accompanying text.

91. See Telephone Interview with Stephanie Kutsko, *supra* note 18 (discussing how the agency toggles base data to highlight different values with respect to different properties; also discussing the holistic and informal nature of acquisition scoring and donation evaluations).

92. See *id.* (discussing geospatial criteria); Cleveland Metroparks, List of Acquisitions 2010–2020 (Apr. 26, 2021) (on file with author).

93. Telephone Interview with Bonnie Diaz, *supra* note 28.

property largely through passive channels, via donation or tax delinquency, and finds itself acquiring properties by happenstance, absent a plan to maintain them as parkland in the near future.<sup>94</sup>

In this manner, Miami-Dade, Cleveland Metroparks, and St. Louis County have taken differing approaches to their roles as sublocal institutions—approaches that yield disparate acquisition outcomes on the ground. Park agencies therefore offer a profitable field of analysis. Their acquisition regimes can illuminate compelling civic discussions while also presenting insight into the values and drawbacks of sublocal governance writ large. To be sure, the delegation of power to local and sublocal entities is not a new concept, nor a novel one.<sup>95</sup> Yet underexplored is the institutional role of local administrators and internal policy in this regime.<sup>96</sup> Further underexplored is how sublocal lawmaking truly informs governance outcomes.<sup>97</sup> Park acquisition offers an apt opportunity to approach these important questions.

### III. LOCATING THE LAW OF PARK ACQUISITION

Despite their differing approaches, Miami, Cleveland, and St. Louis County share a root commonality: all three agencies were given significant flexibility to experiment and mold their own park acquisition regimes as a consequence of power devolution to the sublocal level.<sup>98</sup> This section locates the legal

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94. See St. Louis Cnty. Dept. of Parks and Recreation, Land Acquisitions 2010–2020 (Mar. 1, 2021) (on file with author) (demonstrating that at least 13 of 17 acquisitions occurred through donation or tax reversion); Telephone Interview with Bonnie Diaz, *supra* note 28 (discussing parcels donated to the agency near Spanish Lake, Missouri).

95. See generally Kellen Zalc, *Part-Time Government*, 80 OHIO ST. L.J. 987 (2019) (exploring the devolution of power to city managers and other local stakeholders where municipal legislatures only serve on a part-time basis); Rodriguez & Shoked, *supra* note 62, at 161–62 (discussing the delegation of power to the microlocal level); Davidson & Fagundes, *supra* note 53, at 812 (describing neighborhood-level actors who wield formal and informal power to define neighborhood identity); Shoked, *supra* note 62, at 1327–28 (providing a number of examples). Notably, commentators have explored the role and value of devolution in the zoning and land use context. See, e.g., Robert C. Ellickson, *The Zoning Straitjacket: The Freezing of American Neighborhoods of Single-Family Houses*, 96 IND. L.J. 395, 414 (2021); Ashira Pelman Ostrow, *Process Preemption in Federal Siting Regimes*, 48 HARV. J. ON LEGIS. 289, 295–96 (2011).

96. See Kazis, *supra* note 54, at 2 (critiquing the tendency to equate local government with legislative bodies and overlook the role of local bureaucracies and employees in service provision); Wyman & Spiegel-Feld, *supra* note 36, at 305 (discussing local policies as a form of “overlooked lawmaking”); Rizzardi, *supra* note 11, at 32–34 (discussing the importance of staffing in local governance).

97. See Hills & Schleicher, *supra* note 73, at 135–36 (urging a focus upon the behaviors of agencies and other “law-making institutions,” and away from common law rules, when evaluating how land is governed today).

98. *But see infra* note 120 (regarding an ordinance in Miami-Dade that in certain circumstances directs the County’s acquisition focus).

sources and consequences of that devolution in order to sketch the salient framework of local park acquisition law. It does so by tracing a largely permissive path from state law to municipal ordinance to sublocal decision-making, in the process exploring *where* substantive lawmaking occurs and *who* holds effective lawmaking power in the field.

Defining the legal regime of local park acquisition is at once both a deceptively easy and maddingly difficult task. At its most basic level, the law of parkland acquisition can be summarized succinctly: local entities enjoy almost unconstrained power to acquire and dedicate property for park purposes, a discretionary and broad authority to such an extent that one could argue no legal regime exists in this space at all. In this manner, the law of parkland acquisition offers a window into other fields of local governance and institutional design that fall outside the scrutiny of state legislatures, and likewise below the radar of many legal scholars.<sup>99</sup> Scholarship on local government law has profitably turned its gaze upwards, towards the state and federal regimes that act to preempt local power or pose constitutional challenges at the local level.<sup>100</sup> But the law of local park acquisition must primarily look down the vertical chain of government power, to the sublocal institutions, officials, and other actors, both public and private, that determine the issues at stake and decisions at play where a parcel is being obtained for park usage.

The result is a heterogeneous regime of local and sublocal authority. Under this regime, federal and state law do play starring roles in certain noteworthy cases, none more prominent than where a local government is attempting to acquire parkland via eminent domain. Some local parks entities are expressly prohibited by law from pursuing eminent domain,<sup>101</sup> whereas others are given limited grants of this power.<sup>102</sup> Yet eminent domain is politically fraught and routinely approached as a last-resort option by local government

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99. Removed from debates over state preemption and limited local power, there are broad and disparate areas of law where local governments enjoy significant latitude. See Davidson, *supra* note 54, at 588 (noting that “local governments have long exercised significant regulatory authority through the auspices of local agencies”); Rodriguez & Shoked, *supra* note 62, at 149–53 (plotting local power along an “empowerment continuum” and providing examples of strong local power).

100. See, e.g., RICHARD C. SCHRAGGER, *CITY POWER: URBAN GOVERNANCE IN A GLOBAL AGE* (2016).

101. See, e.g., ANCHORAGE, AK., CODE OF ORDINANCES § 25.20.027 (2005) (prohibiting eminent domain “for the purpose of leisure amenities,” which is defined to include parks).

102. See, e.g., WIS. STAT. ANN. § 27.065 (2019–20) (discussing limits on a county’s ability to acquire park property via eminent domain); 70 ILL. COMP. STAT. ANN. 1505/15 (West 2005) (prohibiting eminent domain with respect to property located outside of the park district).

administrators.<sup>103</sup> In contrast, the standard process for park acquisition operates without resort to eminent domain and thus outside this shadow of federal and state law, leaving the functional role of lawmaking delegated to local stakeholders. How these stakeholders navigate their unsung delegation informs the very real-world outcome of where parkland is being acquired and placed in localities across the United States today.

### A. *An Ecosystem of Permissive External Law*

State law is the starting point for any assessment of local power.<sup>104</sup> Of the park agencies analyzed for this Article, nearly all operate under a state law framework that permits or even encourages local parkland acquisition and does so absent any explicit limitations in the enabling statute or constitutional provision.<sup>105</sup> These permissive state frameworks manifest in a number of ways. Some legal schemes permit localities to obtain park property only in passing, either as part of a larger grant that permits acquisitions for “public purposes” or amidst a laundry list of other acquisition powers.<sup>106</sup> Others are more explicit

103. Ruoying Chen, *Invited Takings: Supermajority, Assembly Surplus, and Local Public Financing*, 100 IOWA L. REV. 2309, 2311 (2015).

104. Local governments are creatures of the states, see *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178 (1907), and even those buffeted by strong home rule powers must trace their authority ultimately to state constitutional or statutory law. See generally Paul S. Weiland, *Federal and State Preemption of Environmental Law: A Critical Analysis*, 24 HARV. ENVTL. L. REV. 237, 260–65 (2000). See also Rodriguez & Shoked, *supra* note 62, at 144 (“When used in the United States, the trope [“creature of the state”] conveys the ability of the greater level of government to create, empower, and abolish the local level.”).

105. See, e.g., OHIO REV. CODE ANN. § 1545.11 (West 2020) (broad acquisition power for metropark districts in Ohio); ARIZ. REV. STAT. ANN. § 9-401 (2020); ARIZ. REV. STAT. ANN. § 9-494 (2020) (municipalities in Arizona); CAL. PUB. RES. CODE § 5540 (West 2020) (certain special districts in California); CAL. PUB. RES. CODE § 5786.3 (West 2020) (other special districts in California); N.Y. MUN. HOME RULE LAW 10 (McKinney 2021) (local governments in New York); N.M. STAT. ANN. § 3-18-18 (West 2021) (municipalities in New Mexico); TEX. LOC. GOV’T CODE ANN. § 331.001 (West 2005) (municipalities and counties in Texas); 70 ILL. COMP. STAT. ANN. 1505/15 (2014) (the Chicago Park District in Illinois); OHIO REV. CODE ANN. § 755.12 (West 2020) (municipalities in Ohio); KAN. STAT. ANN. § 13-1335 (West 2008) (cities in Kansas); 70 ILL. COMP. STAT. ANN. 810/7 (2005) (forest preserves in Illinois); WIS. STAT. ANN. § 27.05 (2019–20) (counties in Wisconsin); N.Y. COUNTY LAW § 215 (McKinney 2022) (counties in New York); GA. CODE ANN. § 36-64-2 (West 2022) (municipalities and counties in Georgia).

106. In Texas, for example, “[a] municipality or county may improve land for park purposes,” with the land being acquired by “gift, devise, purchase, or eminent domain proceeding.” TEX. LOC. GOV’T CODE ANN. § 331.001 (West 2005). This authority complements other acquisition powers enjoyed by local governments under Texas law, including the power to acquire property in general, see TEX. LOC. GOV’T CODE ANN. § 51.076 (West 2021), and acquire property in coordination with another municipality, see TEX. LOC. GOV’T CODE ANN. § 273.001 (West 2016). The acquisition, ownership, and management of park property is routinely seen as satisfying a public purpose requirement. See,



and purposeful. In California, for example, cities and counties are not merely empowered to acquire land for the preservation of open space,<sup>107</sup> but they are expressly encouraged to pursue property acquisitions that further this goal—and to expend public funds in doing so.<sup>108</sup> Meanwhile, counties in Wisconsin and park districts in Ohio, among many others, are authorized not only to obtain parkland within their jurisdiction, but also to acquire certain extraterritorial parkland as well.<sup>109</sup> And some enabling statutes go into considerable detail in describing the park and park-adjacent uses that can fall within a local entity's acquisition ambit. Illinois law authorizes the Chicago Park District to acquire land for driveways and boulevards; to obtain wharves, piers, jetties, and airfields; and to construct field houses, stadiums, power plants, playgrounds, and other improvements tied to the enjoyment of public parkland.<sup>110</sup> Such grants leave no doubt as to the local entity's fundamental acquisition power. In this environment, it is little surprise that local park administrators report operating with few or no external legal constraints and rarely referencing state law when pursuing property acquisition.<sup>111</sup>

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*e.g.*, CAL. GOV'T CODE § 37351 (West 2019). *See also* Holder v. City of Yonkers, 56 N.Y.S. 912, 913 (App. Div. 1899) (“The acquirement of lands for purposes of a public park is a city purpose.”). *See also* Mastrangelo v. State Council of Parks, 249 N.Y.S.2d 19, 25 (Sup. Ct.), *aff'd*, 251 N.Y.S.2d 788 (1964) (“This does not, however, affect the City's basic and constitutional right to acquire the property for public use, to wit, park purposes.”).

107. *See* CAL. GOV'T CODE § 51097 (West 2019). In addition, other provisions of California law make clear that local governments hold broad acquisition powers in general. *See* CAL. GOV'T CODE § 37350 (West 2019); CAL. GOV'T CODE § 37351 (West 2019).

108. CAL. GOV'T CODE § 6950 (West 2019); CAL. GOV'T CODE § 6952 (West 2019); CAL. GOV'T CODE § 6953 (West 2019).

109. *See* WIS. STAT. ANN. § 27.05 (West 2019–20) (permitting parkland acquisition within three-quarters of a mile of the county line); OHIO REV. CODE ANN. § 1545.11 (West 2020) (permitting the entity to “acquire lands either within or without the park district”). *See also* City of Kirkwood v. City of Sunset Hills, 589 S.W.2d 31, 42 (Mo. Ct. App. 1979) (discussing local power to acquire extraterritorial parkland); City of Nashville v. Vaughn, 14 S.W.2d 716, 716 (Tenn. 1929) (same); City of Gainesville v. Pritchett, 199 S.E.2d 889, 892 (Ga. Ct. App. 1973) (same); GA. CODE ANN. § 36-64-2 (West 2022) (granting such power to counties and municipalities in Georgia); KAN. STAT. ANN. § 13-1353 (West 2008) (granting such power to first-class cities in Kansas).

110. 70 ILL. COMP. STAT. ANN. 1505/15 (2014). *See also* *In re Euclid Avc.*, 8 Ohio Dec. 86, 87 (Ohio Ct. Com. Pl. Feb. 8, 1899) (finding that the board of park commissioners had “almost an unlimited power and right to take, hold and control streets and public thoroughfares connecting and leading to or from [] parks”).

111. *See, e.g.*, Telephone Interview with Stephanie Kutsko, *supra* note 18 (noting that the agency's state enabling statute is rarely referenced); Telephone Interview with Bill Maascn, *supra* note 3 (identifying the relevant state law as permissive); Telephone Interview with Robert Clemens, Land Acquisition Manager, Lee Cnty. Parks & Recreation (July 15, 2021) (notes on file with author) (same); Telephone Interview with Rosalie Hendon, *supra* note 37 (stating no knowledge of city or state law that impedes acquisition).

As a result of the deferential posture taken by state law, courts, too, have long been permissive in their assessment of local acquisition power.<sup>112</sup> Courts have roundly endorsed acquisition activities, even in cases where the specific power to acquire parks has not been expressly conferred by the legislature.<sup>113</sup> They have defined the term “park” broadly, reasoning that ancillary public purposes—*i.e.*, acquiring land to operate a nursery that supplies park resources—fall within the scope of parkland acquisition power.<sup>114</sup> And perhaps most helpfully for local governments, courts have also declined calls from plaintiffs to narrow the scope of local power, citing state law provisions as evidence of broad statutory intent, identifying where acquisition is mentioned under state law, and noting the inherent public purpose of parkland creation when faced with legislative silence.<sup>115</sup> The location of new park property has withstood collateral legal challenges, as well. While a number of lawsuits have alleged racial discrimination in the distribution of local park facilities, these claims have fared poorly, as courts have hesitated to question sublocal policy choices absent a showing of intentional discrimination by local

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112. *See, e.g.*, *Schweriner v. City of Philadelphia*, 35 Pa. Super. 128, 130 (Pa. Super. Ct. 1907) (“The power of the city to acquire, lay out, improve and maintain ground for public parks cannot be questioned.”); *Bolick v. State*, 95 Fla. 982 (Fla. 1928); *Londoner v. City & Cnty. of Denver*, 52 Colo. 15 (Colo. 1911); *City of Kirkwood v. City of Sunset Hills*, 589 S.W.2d 31, 42 (Mo. Ct. App. 1979); *City of Nashville v. Vaughn*, 158 Tenn. 498 (Tenn. 1929) (upholding broad discretion to acquire parkland); *City of Hawthorne v. Peebles*, 333 P.2d 442, 443 (Cal. Dist. Ct. App. 1959) (condemnation for parkland can satisfy the requirement of “public necessity”); *Thayer v. City of St. Joseph*, 54 S.W.2d 442, 445 (Mo. Ct. App. 1932).

113. *Holder v. City of Yonkers*, 56 N.Y.S. 912, 913 (App. Div. 1899) (the power to acquire property for public purposes includes the power to acquire parkland). The power to acquire parkland has been articulated as a “basic and constitutional right” of a municipality due to the inherent public use associated with park creation. *See Mastrangelo v. State Council of Parks*, 249 N.Y.S.2d at 25.

114. *See People ex rel. Sweitzer v. City of Chicago*, 363 Ill. 409, 416 (1936) (“The power of the city over parks is very broad. The city council has discretion over their size, location, number, equipment, and maintenance.”). *See also Dudley v. City of Charlotte*, 27 S.E.2d 638 (N.C. 1943) (power to acquire parks includes power to acquire a right-of-way for a street leading to a park); *Laird v. City of Pittsburg*, 54 A. 324 (Pa. 1903) (permitting acquisition to construct library and art building alongside park); *Thayer*, S.W.2d at 445 (property containing a swimming pool falls within the statutory definition of “park”).

115. *See, e.g.*, *Baker v. Forest Pres. Dist. of Cook Cnty.*, 33 N.E.3d 745, 753–54 (7th Cir. 2018) (declining to limit a park district’s power to acquire property in “fee simple;” the court reasoned that the limitation sought by plaintiffs was not contemplated by state law, which did not proscribe a particular process for how a fee simple acquisition must proceed, and furthermore, even if the district was engaging in a proprietary activity outside the explicit scope of the statute, it “did not acquire the property for profit but rather for a public purpose.”) *See also Forest Pres. Dist. of Cook Cnty. v. Mount Greenwood Bank Land Tr.* 5–0899, 579 N.E.2d 1066, 1069 (Ill. Ct. App. 1991) (“Here, the District’s statutory power to acquire the subject property is not at issue, and the District’s interest in protecting the property, for the benefit of the public, is free from doubt.”); *supra* note 106 and accompanying text.

decisionmakers.<sup>116</sup> Whether stated or not, judicial review of parkland acquisition operates from the starting presumption that parks are normative civic amenities, a presumption that casts a pall of permissiveness over the sublocal policy choices that determine where and when a new park is created.<sup>117</sup>

Finally, at the municipal level, local charters and ordinances that speak to acquisition generally mirror the permissive approach found in state law: they operate to broadly encourage or permit parkland expansion.<sup>118</sup> Local codes that do not reference parkland acquisition, moreover, can also be read to sanction acquisition power. When compared against the procedures placed upon public land *disposition*, the specified and often onerous precepts of the latter stand in sharp contrast with the permissive silence of the former.<sup>119</sup> Ultimately local

116. See, e.g., Jane E. Schukoske, *Community Development Through Gardening: State and Local Policies Transforming Urban Open Space*, 3 N.Y.U. J. LEGIS. & PUB. POL'Y 351, 357 nn.38–41 (2000). It should be noted, however, that cases from the Jim Crow era unsurprisingly did endorse intentional racial discrimination in park acquisition. See, e.g., *Berry v. City of Durham*, 186 N.C. 421 (N.C. 1923).

117. See, e.g., *City of Kirkwood*, 589 S.W.2d at 42 (finding parks distinguishable from “high offensive” uses such as the disposal facilities and incinerators and concluding that “[n]o specific provision appears in [the statute] indicative of any intention on the part of the [legislature]” to limit “the exercise of the power to acquire land for parks outside, but within one mile of the city limits”). As a strong endorsement of local policymaking, a recent decision assessing local acquisition power declined to question an “internal rule” of the local park agency in its acquisition process. See *Baker*, 33 N.E.3d at 756. See also *Earth Management v. Heard County*, 283 S.E.2d 455, 459 (Ga. 1981) (“[A] public park is a public purpose and . . . the court is in no position to second guess [a] county as to the size and scope of a park for its people.”); *Thayer*, S.W.2d at 445 (finding that “the word ‘park’ when used in a legal sense has rather a broad meaning”).

118. See, e.g., NEW YORK CITY, N.Y., CHARTER § 381 (granting broad authorization for New York City to acquire property); WESTCHESTER CNTY., NY., CODE OF ORDINANCES § 249.31(1) (1961) (providing that the local park agency “may” consider parkland acquisition, “may” make option agreements, and “may” negotiate for the purchase of a fee simple or lesser estate); BAKERSFIELD, CA., MUN. CODE § 15.80.030 (1995) (granting the “authority to locate [or] require . . . dedication of real property . . . for the purpose of supplying public parks”). See also Telephone Interview with Bonnie Diaz, *supra* note 28 (discussing how an amendment to the County Charter restricts public land disposition but not acquisition); Telephone Interview with Glenn Boorman, *supra* note 11 (noting lack of legal constraints); Telephone Interview with Paul Sun, *supra* note 15 (same); Telephone Interview with Allen Ishibashi, *supra* note 17 (same); Telephone Interview with Robert Clemens, *supra* note 111 (same).

119. Under the Philadelphia Municipal Code, for example, a number of provisions establish procedural and substantive requirements for public land disposition, including a provision that speaks directly to parkland disposition. See PHILADELPHIA, PA., MUN. CODE §§ 16-403, 15-102. See also Philadelphia City Council, Bill No. 190606-AA (Nov. 12, 2019), <http://www.amlegal.com/pdffiles/Philadelphia/190606-AA.pdf> [<https://perma.cc/Z9PC-YQS9>] (establishing “uniform procedures for the disposition of property by the City and City-related agencies”). Meanwhile, the Municipal Code contains only sparse references to public land acquisition and no mention of parkland acquisition; these provisions are bare and permissive in tone. See

legislatures appear to share the default presumption held by courts: that park acquisition is an unconditional civic virtue. Few adopt ordinances that address and directly impact a park agency's geographic discretion.<sup>120</sup>

More so than at the state level, however, municipal law does at times impose procedural structure upon the acquisition process.<sup>121</sup> A park agency may be required to request legislative approval for some or all of its property acquisitions.<sup>122</sup> Similarly, an agency may find it politically valuable or expedient to bring certain acquisitions for legislative approval, even absent a defined mandate to do so.<sup>123</sup> Other laws may seek appraisals or maps of proposed acquisitions.<sup>124</sup> The hurdles posed by these procedures are often minimal or perfunctory in practice, though.<sup>125</sup> In Nashville, for example, the Board of Parks and Recreation is required by charter to seek approval from a local legislative body, the Metropolitan Council, when acquiring parkland by

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PHILADELPHIA, PA., MUNICIPAL CODE § 16-101 (permitting acquisition to construct new facilities); *Id.* § 16-102 (permitting acquisition at sheriffs' sales); *Id.* § 19-1602 (discussing water and sewer charges on acquired properties). The Code's most substantive acquisition requirements are reserved only for tax-delinquent properties acquired by the Philadelphia Land Bank. *See id.* § 16-705(3).

120. Of the agencies studied for this Article, there were a few cases where acquisition criteria or priorities were set by external law rather than internal policy. *See, e.g.*, Resolution 2018-41, Collier Cnty. Bd. of Cnty. Comm'rs (Feb. 27, 2018) (on file with author) (setting criteria by ordinance in Collier County); Memorandum from R.A. Cuevas, Cnty. Atty., to Miami-Dade Bd. of Cnty. Comm'rs (Oct. 16, 2012) (on file with author) (discussing a resolution that encourages the Park, Recreation, and Open Space Department in Miami to consider vacant parcels adjacent to parkland for acquisition).

121. State law often poses no distinct procedural requirements upon local governments, which often are not subject to state administrative procedure acts. *See generally* Adams, *supra* note 73; Davidson, *supra* note 54, at 605. *But see* FLA. STAT. ANN. § 166.045 (West 2021) (requiring that municipalities seeking to acquire property maintain written records of every appraisal, offer, and counteroffer).

122. *See, e.g.*, ALBUQUERQUE, N.M., CODE OF ORDINANCES § 5-2-5(A) (2016) (subjecting some property acquisitions by the city to approval by the City Council, but not where the Council has previously appropriated money for acquisition); Atlanta Dept. of Parks and Recreation, *supra* note 37, at 9; Miami-Dade Response, *supra* note 79 (providing an operations manual regarding acquisition procedures); Telephone Interview with Bonnie Diaz, *supra* note 28 (discussing this process).

123. *See* Telephone Interview with Stephanie Kutsko, *supra* note 18 (noting that Cleveland Metroparks may seek approval from its board for higher-profile acquisitions, and likewise may approach a local municipality for approval when pursuing a high-profile acquisition that falls within the municipality's jurisdiction).

124. *See, e.g.*, WESTCHESTER COUNTY, NY., CODE OF ORDINANCES § 249.41 (1961) (requiring that the agency prepare a map of any properties proposed for acquisition).

125. *See, e.g.*, Telephone Interview with Bonnie Diaz, *supra* note 28 (noting that County Council approval has not been an issue). *But see* Telephone Interview with Kelly Grissman, *supra* note 16 (discussing procedural hurdles that add cost and time to the acquisition process).

gift or condemnation,<sup>126</sup> a mandate that could in theory infuse the Metropolitan Council with sweeping acquisition oversight. Yet the requirement has been chipped away in court, where it was found to create a non-exclusive path to acquisition that does not apply to the purchase of real estate.<sup>127</sup> It has been chipped away further in practice, where it appears the Metropolitan Council serves as a final step in the acquisition process with respect only to certain properties.<sup>128</sup>

In sum, when considering the external legal regime that frames and shadows the world of local parkland, the overwhelming takeaway is that acquisition power is broad and clear, even if passively granted.<sup>129</sup> And crucially, with only rare exceptions, external actors generally do not dictate where a local parks administrator should locate new parkland, or similarly, what policy considerations should play into these decisions.<sup>130</sup> The geography of park acquisition is instead delegated almost fully to the sublocal level.

Permissive local power is perhaps unsurprising in the realm of parkland acquisition. The process of growing an entity's park inventory does not straddle political fault lines or implicate concerns of good governance.<sup>131</sup> Moreover, the geography of local park placement and access falls traditionally within the ambit of land use planning, a function viewed as quintessentially within a local government's purview.<sup>132</sup> States therefore hesitate to limit *or* mandate

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126. See CHARTER OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TN., § 11.1002(5). On the role of charters in local government law, see Nestor M. Davidson, *Local Constitutions*, 99 TEX. L. REV. 839 (2021).

127. See *Zseltvay v. Metro. Gov't of Nashville & Davidson Cnty.*, No. 01A-01-9605-CV-00201, 1996 WL 596951, at \*3 (Tenn. Ct. App. Oct. 18, 1996).

128. See E-Mail from Cindy Harrison, Assistant Dir. Metro Parks, Nashville Parks and Recreation Bd. (Feb. 12, 2021) (on file with author) (providing acquisition policies that note approval requests are sent to the Metropolitan Council "if applicable").

129. The hands-off legislative approach to local parkland acquisition does not necessarily indicate that states have no stake in local greenspace creation. See Buzbee, *supra* note 39, at 380 n.35 (noting state efforts to promote urban park creation).

130. As a notable exception, see *infra* note 137 and accompanying text (discussing the Santa Clara Open Space Authority). The legislative decision to prescribe geographic priorities in the Open Space Authority's enabling statute underscores the silence of similar California statutes that do not.

131. See *supra* notes 30–31 and accompanying text.

132. See Colin Crawford, *Environmental Benefits and the Notion of Positive Environmental Justice*, 32 U. PA. J. INT'L L. 911, 911 (2011); Charles Gottlieb, *Regional Land Use Planning: A Collaborative Solution for the Conservation of Natural Resources*, 29 J. ENVTL. L. & LITIG. 35, 36 (2014); Richard Briffault, "What About the 'Ism'?" *Normative and Formal Concerns in Contemporary Federalism*, 47 VAND. L. REV. 1303, 1318 n.57 (1994) (regarding land use regulation).

greenspace creation.<sup>133</sup> In many respects, indeed, considering that broad and discretionary local power is a norm in local government,<sup>134</sup> state abstention on the issue is unexceptional; it provides little guidance as to how legislatures view the competing policy aims of local parkland geography. Their permissive delegation can be seen as alternatively purposeful or inattentive. But in either case, it remains for the local authorities who receive this delegation to mold it into policy.

### *B. Exceptions to Permissive External Law*

To be sure, discussions of local government power are prone to generalizations. When considering the tens of thousands of local entities that operate in the United States, one will find that exceptions and other cracks emerge in the baseline model.<sup>135</sup> Here, too, it should be noted that some local park agencies do not enjoy the same acquisition latitude as their peers. Some limits on acquisition power are fairly minimal and procedural.<sup>136</sup> But some are more substantive. Most notably, the enabling statutes of several special purpose park agencies contain language that directly reduces the geographic discretion of local officials. In California, for instance, the Santa Clara Open Space Authority is required to prioritize park acquisition on “those lands closest, most accessible, and visible to the urban area.”<sup>137</sup> In Minnesota, meanwhile, state law obliges the Three Rivers Park District to obtain consent of the local municipality before acquiring property in its jurisdiction.<sup>138</sup>

133. See Buzbee, *supra* note 39, at 381 (“Mandate-based regulation, such as state or federal regulation requiring green space preservation or creation, would likely be politically unpalatable and ineffective.”).

134. See Briffault, *supra* note 132, at 1318 (“Many local governments enjoy substantial autonomy with respect to many matters. . . . Although local power is, at its source, a delegation from a state, that delegation is often quite broad and is rarely revoked. In most states, local governments operate in major policy areas without significant external legislative, administrative, or judicial supervision.”).

135. See, e.g., Garnett, *supra* note 58, at 36–7 (noting the “institutional diversity” at the local and sublocal levels that make broad-stroke generalizations difficult). According to 2017 census figures, there are over 90,000 general and special purpose local governments in the United States. 2017 Census of Governments, U.S. CENSUS BUREAU, <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html> [<https://perma.cc/Q8YZ-SZFG>].

136. An example seen in several states is the requirement to get the property appraised prior to purchase. See, e.g., IND. CODE ANN. § 36-10-4-25(h) (West 2022) (requiring appraisals in certain cases); FLA. STAT. ANN. § 166.045 (West 2021) (same); NEV. REV. STAT. ANN. § 244.275 (West 2015) (regarding county acquisitions).

137. CAL. PUB. RES. CODE § 35152(b) (West 2019).

138. MINN. STAT. § 398.09(b)(1) (2021).

These examples appear relatively rare. More common, however, are the indirect and secondary legal impediments that implicate local parkland acquisition power. Despite generally enjoying broad and permissive external powers to acquire park properties, indirect limitations on local power and informal checks on local governance can still constrain how and where local administrators obtain properties for parks purposes. For example, some local governments are tasked with adopting comprehensive plans—including, at times, plans that specifically include a parks component.<sup>139</sup> Local officials are given discretion in molding the substance of a comprehensive plan and the final product is treated with considerable deference by courts.<sup>140</sup> Still, these documents could functionally nudge local actors; being required to have a plan, as a matter of process, may force pre-commitments today that shape decisions down the road.

A couple other secondary impediments are worth noting. First, state governments wield appreciable structural power over local park agencies. Special purpose park authorities are generally created by state statute, and therefore are subject to ultimate state legislative control,<sup>141</sup> while state law also prescribes the selection process for officials at some city and county parks departments.<sup>142</sup> Structural state power manifests itself in a number of indirect ways, perhaps none more prominent than the power exercised by states over the purse strings of local governance. Local entities operate in an environment of fiscal scarcity,<sup>143</sup> and parkland acquisition is not immune from budgetary pressures; perceived as a dispensable component of municipal budgets,<sup>144</sup> park investment has historically risen and fallen with the economic climate, as localities boost their spending when tax receipts are strong and cut those

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139. See, e.g., MINN. STAT. § 394.25(2) (2021) (under certain circumstances a county must adopt a parks and open space plan); MONT. CODE ANN. § 7-16-2324(3)(b) (West 2021) (a county must prepare a comprehensive open space plan prior to selling, leasing, or exchanging park property); FLA. ADMIN. CODE r. 9J-5.006 (2022) (requiring recreation and open space standards in local comprehensive plans).

140. See *Crowley v. City of Hood River*, 480 P.3d 1007, 1011 (Or. Ct. App. 2020) (noting the “highly deferential” standard of review granted localities when considering a local comprehensive plan).

141. See Gerald E. Frug, *Beyond Regional Government*, 115 HARV. L. REV. 1763, 1831 (2002).

142. See, e.g., WIS. STAT. ANN. § 27.03(2) (West 2019–20) (discussing the appointment of a county park system’s general manager).

143. See generally Aurelia Chaudhur, Adam J. Levine & David Schleicher, *Junk Cities: Resolving Insolvency Crises in Overlapping Municipalities*, 107 CAL. L. REV. 459, 465 (2019).

144. See *Parks and the Pandemic*, *supra* note 43, at 9 (discussing a 2017 survey of city managers and mayors that found these officials view park and recreation spending as nonessential in local budgets).

expenditures when they are not.<sup>145</sup> The sources of funding they draw upon are often regulated by state statute. State law controls a local government's ability to raise sales tax or demand exactions from developers, for example.<sup>146</sup> It determines whether, and how, revenues are shared with local governments.<sup>147</sup> As a consequence, grant programs funded and administered at the state level serve as important sources of local acquisition funding—and also, at times, an opportunity for state actors to signal their conservation values to localities.<sup>148</sup>

The cyclical nature of local park finance could tip the scales of parkland acquisition policy, pushing local administrators to prioritize those acquisitions that secure grant support or demand fewer resources. Properties could be acquired that pose fewer costs upfront—at the most economical, a property being offered by donation—or fewer costs down the road, perhaps by seeking parcels with fewer maintenance needs or accompanied by dedicated maintenance funding.<sup>149</sup> To a degree these considerations are elemental to the parkland acquisition process.<sup>150</sup> Perhaps surprisingly, though, they are not all-encompassing. Despite operating in a resource-limited environment, the average local park agency still has funds set aside for land acquisition.<sup>151</sup> Some have created a line item for acquisition in their budgets, whereas others have

145. See Nicholas Pitas, Austin Barrett, Andrew Mowen & Kevin Roth, *The Great Recession's Profound Impact on Parks and Recreation*, NAT'L RECREATION AND PARK ASS'N (Feb. 2018), <https://www.nrpa.org/parks-recreation-magazine/2018/february/the-great-recessions-profound-impact-on-parks-and-recreation/> [<https://perma.cc/R9JB-GSE8>].

146. E.g., Jeff Chapman, *Local Tax Limitations Can Hamper Fiscal Stability of Cities and Counties*, THE PEW CHARITABLE TRUSTS (July 8, 2021), [https://origin.pewtrusts.org/-/media/assets/2021/07/statetaxlimitations\\_brief.pdf](https://origin.pewtrusts.org/-/media/assets/2021/07/statetaxlimitations_brief.pdf) [<https://perma.cc/MS87-NHK8>] (regarding state limits on local tax power); CAL. GOV'T CODE § 66477 (West 2021) (delineating a scheme for cities and counties in California to impose exactions).

147. See generally Amanda Kass, Michael Pagano & Farhad Kaab Omcyr, *How States Provide Cities with General Revenue: An Analysis of Unrestricted State Aid*, (LINCOLN INST. OF LAND POL'Y, Working Paper No. WP20AK1, 2020), [https://www.lincolninst.edu/sites/default/files/pubfiles/kass\\_wp20ak1.pdf](https://www.lincolninst.edu/sites/default/files/pubfiles/kass_wp20ak1.pdf) [<https://perma.cc/RH3K-FP38>] (analyzing state disbursement to local governments).

148. See, e.g., FLA. STAT. ANN. § 259.105 (West 2021) (the "Florida Forever Act") (creating a notable state-funded conservation acquisition program; funding received under the program is subject to priorities and procedures set forth under the Act).

149. See, e.g., E-mail from Tom Korosei, *supra* note 16 (discussing considerations that inform when the Department accepts parkland donations); see *supra* notes 11–12 and accompanying text.

150. See generally Rizzardi, *supra* note 11, at 28–42 (tracing the impact of funding constraints on local governance); Garnett, *supra* note 58, at 43 (noting that resources play a role in the focus and scope of sublocal governance).

151. See *2021 NRPA Agency Performance Review*, NAT'L RECREATION AND PARKS ASS'N 23–25 (Apr. 15, 2021), [https://www.nrpa.org/siteassets/2021-agency-performance-review\\_final.pdf](https://www.nrpa.org/siteassets/2021-agency-performance-review_final.pdf) [<https://perma.cc/4EVL-RVZ8>] (reporting survey results indicating that agencies have a median of \$6 million budgeted for capital expenditures, of which, on average, 32% of this amount is budgeted for new development and 8% for acquisition).



not, yet still hold flexibility to find acquisition funds when desired.<sup>152</sup> No doubt considerable variation exists between local jurisdictions.<sup>153</sup> Agencies nevertheless share one universal commonality: a constituency that is broadly supportive of park expansion.<sup>154</sup> Their acquisition funding often traces to voter-approved initiatives, which stand as dedicated insurance policies against the shifting political and economic winds to which local general funds are subject.<sup>155</sup> The strength of voter support may explain why park agencies purchase a significant number of the fee simple properties they obtain.<sup>156</sup>

As an additional secondary impediment of note, park agencies also acquire property through specific acquisition programs authorized under state and local law, the most notable among these being parkland dedication ordinances. A dedication ordinance requires private developers to contribute greenspace property—or alternatively, pay an in-lieu fee—when seeking to construct

152. See Telephone Interview with Rosalie Hendon, *supra* note 37 (noting an acquisition budget); *2017 Parks and Open Space Plan*, SEATTLE PARKS & RECREATION 2 (Aug. 7, 2017), <https://www.seattle.gov/documents/Departments/ParksAndRecreation/PoliciesPlanning/2017Plan/2017ParksandOpenSpacePlanFinal.pdf> [<https://perma.cc/XYP4-ZG8E>] (discussing a \$2 million annual acquisition budget); Telephone Interview with Bonnie Diaz, *supra* note 28 (noting that acquisition funds can be secured when sought, yet are not isolated on the agency's budget).

153. See, e.g., Telephone Interview with Bill Maasen, *supra* note 3 (explaining that the agency is well-funded).

154. See *supra* notes 49–52 and accompanying text.

155. See, e.g., Denver Parks & Recreation, Draft Strategic Acquisition Plan 1–2 (Apr. 2021) (on file with author) (discussing the voter-approved sales tax that supports park expansion in Denver); *2017 Parks and Open Space Plan*, *supra* note 152, at 2 (discussing the voter-approved tax supporting acquisition in Seattle); Operations Manual, *supra* note 80, at 1 (providing an operations manual that discusses a voter-approved millage supporting acquisition efforts in Miami); *Oklahoma City Parks Master Plan*, OKLA. CITY PARKS & RECREATION DEPT. 17 (2020), <https://www.okc.gov/home/showpublisheddocument/20965/637456235265330000> [<https://perma.cc/ERV8-98ZL>] (describing a voter-approved bond to support, in part, parkland acquisition in Oklahoma City); Memorandum from the Conservation and Environmental Lands Management Department, Hillsborough Cnty., to the Bd. of Cnty. Comm'rs, Hillsborough Cnty. (Apr. 2018) (on file with author) (discussing a voter-approved acquisition program in Hillsborough County); *Conservation 20/20*, LEE CNTY., FL. <https://www.leegov.com/parks/conservation2020> [<https://perma.cc/7XTL-D6E8>] (noting that Lee County's Conservation 20/20 program was renewed in 2016 with 84% of voters in support).

156. When park agencies shared per-property acquisition methods in response to this Article's public records requests, their data indicated a strong reliance on fee simple purchases alongside donations and other less costly acquisition approaches. In Indianapolis, for example, the Parks & Recreation Department has acquired twenty-five properties by purchase since 2010, as compared with ten properties acquired via donation and the twenty-four obtained through intergovernmental transfers or other means. See Response to Public Records Request from City of Indianapolis to Wendy Xu, Univ. of Detroit Mercy Sch. of L. (Mar. 31, 2021) (on file with author) (providing a list of park property acquisitions).

certain housing projects in a community.<sup>157</sup> Plainly, dedication programs serve as assets to park agencies: they offer an opportunity to create new greenspace with land or funding an agency would not have otherwise possessed.<sup>158</sup> Yet as with the fiscal constraints discussed above, these programs can also influence where an agency acquires property. When resources are limited—due to budget pressures, staff bandwidth, or both—programs that offer an acquisition pipeline with a dedicated process and funding source offer an evident appeal, functionally reducing the number of acquisitions pursued outside of its strictures.<sup>159</sup> Arguably, then, dedication and other acquisition programs can prod park administrators in a manner that narrows their discretion and thus power.<sup>160</sup>

But as a matter of law, these acquisition programs still do not proscribe or guide an agency's core acquisition power.<sup>161</sup> The trend, in fact, is to structure acquisition programs so as to *enhance* agency discretion; local governments have embraced dedication programs that emphasize the collection of in-lieu fees over property dedications, an approach that leaves ultimate geographic decision-making with park agencies.<sup>162</sup> As a matter of practice, moreover, an

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157. See, e.g., KANSAS CITY, MO., ZONING AND DEV. CODE § 88-408; John L. Crompton, *An Analysis of Parkland Dedication Ordinances in Texas*, 28 J. PARK AND RECREATION ADMIN. 70, 74 (2010). Under some dedication programs, the new park site may remain owned by the developer or another private entity. See, e.g., SAN ANTONIO, TX., UNIFIED DEV. CODE § 35-503(g)

158. See, e.g., *Oklahoma City Parks Master Plan*, *supra* note 155, at 82 (listing cities that have adopted dedication ordinances and noting the amounts generated from dedication fees in Oklahoma City in 2019).

159. *Supra* note 16 and accompanying text.

160. While dedication programs are the most prevalent example, they are not the only nonexclusive acquisition programs that may influence the acquisition decision of local park agencies. See, e.g., Rcsol. 2004-80, *supra* note 37 (setting forth the Volusia Forever Program).

161. See, e.g., *id.* (“These procedures apply to selection and purchase of land under the Volusia Forever Program, and shall not apply to property acquisitions completed by Volusia County for other purposes or using other funding sources.”).

162. See Telephone Interview with Paul Sun, *supra* note 15 (noting a decline in use of dedication acquisitions over time and a switch from property dedications to in-lieu fees). See also BAKERSFIELD, CA., MUN. CODE, *supra* note 118; ATLANTA, GA., CODE OF ORDINANCES § 19-1007(a) (2021) (providing for in-lieu fees); *Dedication and Development Criteria Manual*, AURORA PARKS, RECREATION & OPEN SPACE DEPT. 6 (Oct. 2020), [https://plcdn4static.civiclive.com/UserFiles/Servers/Server\\_1881137/File/Departments/PROS/PDC/2020%20PROS%20D&DC%20MANUAL.pdf](https://plcdn4static.civiclive.com/UserFiles/Servers/Server_1881137/File/Departments/PROS/PDC/2020%20PROS%20D&DC%20MANUAL.pdf) [<https://perma.cc/Z8X9-KSAD>] (providing for in-lieu fees at the city's discretion). Some dedication programs do require that in-lieu fees are spent within the section of the park agency's where they were collected. See, e.g., Telephone Interview with Rosalie Hendon, *supra* note 37. Here too, however, there has been a recent effort to loosen these restrictions and broaden the geographic reach of dedication fees. See *id.* CA. ASSEMBLY REG. SESS. 2013, Bill No. 1359(a)(3)(B) (expanding the use of impact fees to permit parks in a different neighborhood from where the fee was collected).

acquisition program's more rigid structure also impedes its applicability.<sup>163</sup> Agencies still pursue and consummate significant numbers of acquisitions in practice outside of any programmatic framework.<sup>164</sup>

This survey of structural and programmatic constraints suggests a couple shared takeaways. On the one hand, secondary legal impediments do exist in the park ecosystem, and these impediments likely do impact the parkland acquisition process. Local parks are not created in a vacuum. On the other hand, however, fiscal concerns and dedication ordinances are not the end of the story. Park agencies expend significant resources to purchase new park properties, notwithstanding the environmental pressures at play.<sup>165</sup> When distilled to its barest form, the legal regime of park acquisition is ultimately still a permissive, discretionary, and unconstrained one.<sup>166</sup> Local administrators might be nudged by outside forces—yet only rarely are they mandated or compelled to act by them.

### *C. The Outcome: Delegation to the Lowest Level of Governance*

With external law largely silent or permissive, our analysis of parkland acquisition must dive further down the chain of government power, turning now to local park agencies themselves and to the legal regime created internally by these institutions rather than mandated by external actors. How is this legal regime created, contested, and applied? The question demands an appraisal of the sublocal stakeholders and internal rules that fill the external governance void and mold a heterogeneous system of parkland acquisition.

Internal acquisition law at the sublocal level comes in two primary written forms: planning documents, which can establish acquisition priorities even if they serve primarily as aspirational vision statements, and internal policy documents, including acquisition checklists and operations manuals, which can

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163. See Volusia Cnty., Contract to Purchase Property from Lemon Bluff R.V. Park and Fish Camp 04-1 (Dec. 20, 2012) (on file with author) (noting that the County “was not able to negotiate a purchase through the Volusia Forever process,” and therefore was instead acquiring the property via a purchase contract outside any formal program); Telephone Interview with Rosalie Hendon, *supra* note 37 (noting the limits and constrictions of the local dedication ordinance).

164. See Peter Harnik & Luara Yaffe, *Who's Going to Pay for This Park?*, THE TR. FOR PUB. LAND, [https://www.tpl.org/sites/default/files/cloud.tpl.org/pubs/ccpe\\_who\\_is\\_going\\_to\\_pay.pdf](https://www.tpl.org/sites/default/files/cloud.tpl.org/pubs/ccpe_who_is_going_to_pay.pdf) [<https://perma.cc/G3CK-L9KA>] (assessing the limits of dedication programs).

165. *Id.*

166. Telephone Interview with Glenn Boorman, *supra* note 11 (observing that while fiscal constraints exist, local administrators hold discretion to set priorities within the parameters of those limitations).

inform an agency's on-the-ground actions.<sup>167</sup> The city of Columbus, Ohio offers an example of the interplay between these two sources of sublocal governance. First, Columbus has a comprehensive planning document—the Columbus Recreation & Parks Land Plan—that specifically focuses on land acquisition planning through the year 2024.<sup>168</sup> The plan provides an overview of parkland location and access in Columbus while offering some broad recommendations for new park priorities.<sup>169</sup> Notably, it encourages the Columbus Recreation and Parks Department (CRPD) to focus on acquisitions that provide greenspace to underserved communities or address gaps in the existing parks and trail system.<sup>170</sup> The Land Plan thus establishes a global, high-level vision to guide the work of CRPD employees.<sup>171</sup>

But it offers no operative rubric for approaching acquisition on a parcel-by-parcel basis,<sup>172</sup> a task that falls to the city's other primary source of internal guidance: an acquisition checklist that sets forth criteria to gauge, necessary costs to estimate, and other pertinent data to compile and document when the CRPD is considering a new purchase or donation.<sup>173</sup> Some of the criteria mirror

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167. Of the fifty park agencies whose acquisitions were mapped and analyzed for this Article, thirty-nine have some form of planning or vision document that discusses acquisition. A smaller yet appreciable number also written internal policy documents, either voluntarily or in response to public records requests, most notably acquisition checklists. *See, e.g.*, E-mail from Roque Duque De Estrada, San Antonio Parks and Recreation Dept. (Feb. 24, 2021) (on file with author) (sharing “an informal parkland criteria checklist”); Portland Parks & Recreation, Land Acquisition Strategy (2016) (on file with author); Response to Public Records Request from City of Indianapolis, *supra* note 156 (providing a property acquisition evaluation form). Of course, this summary generalizes the universe of internal acquisition documents and does not capture the approach taken by every agency. *See* E-mail from Brenda Sandburg, Real Estate Mgmt. Supervisor, Montgomery Cnty. Parks (May 3, 2021) (stating that “we don’t have a single policy document, but a complex web of adopted policies, procedures, and recommendations that drives how we prioritize to acquire parkland to meet the needs of a growing county”).

168. *See* Columbus Recreation and Parks, Land Plan 2019–2024 4 (Aug. 2019) (on file with author).

169. *Id.* at 17, 26.

170. *See id.* at 18–19, 26, 34.

171. *See* Telephone Interview with Rosalie Hendon, *supra* note 37 (describing the Land Plan as a vision document).

172. The Land Plan identifies properties of interest, *see, e.g.*, Columbus Recreation and Parks, *supra* note 168, at 34–35, but does not delineate which are available for purchase or donation, how to allocate limited funding, or how to weigh different considerations and concerns in the acquisition process. Stated otherwise, the plan offers priorities and guidance at the city-wide level but not at the per-parcel one.

173. Columbus Recreation and Parks, Acquisition Checklist (Feb. 26, 2019) (on file with author). *See also* Telephone Interview with Rosalie Hendon, *supra* note 37 (describing the checklist as the operative internal document referenced during the acquisition process).

the priorities found in the Land Plan.<sup>174</sup> Others are more operative in nature and allow for more focused, parcel-by-parcel assessments.<sup>175</sup> In this manner, the checklist adds a layer of specificity atop the Land Plan and hones its focus. Yet our illustration of the CRPD is not yet complete; a third source of internal law now comes into play. The acquisition checklist does not prompt agency employees to consider a parcel's potential drawbacks, such as concerns about community opposition or environment contamination.<sup>176</sup> Instead, it is the task of these employees to bring their institutional knowledge to bear and keep their experience with past pitfalls in mind when assessing a property.<sup>177</sup>

While Columbus's hybrid internal regime is not representative of all agencies, the example begins to illustrate the central role played by sublocal stakeholders in park lawmaking. The most important lawmakers in the acquisition realm are park agency employees, the civil servants within parks departments and park authorities who manage real estate, planning, and administration in local park systems large and small across the country. With external sources of authority providing mostly bare direction and only indirect limitations, it falls first and foremost to these individuals, people who sit at the lowest, but often most impactful level of governance, to mold an operative legal regime of local parkland acquisition.<sup>178</sup> Bureaucrats within sublocal government in general<sup>179</sup>—and within park agencies, as well<sup>180</sup>—represent the frontline foot soldiers of day-to-day governance.

The discretion they exercise is considerable. In the absence of restrictive external law, parkland acquisition is guided by the internal park agency policies and planning documents that employees charged with overseeing the process

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174. See, e.g., Columbus Recreation and Parks, *supra* note 173 (asking whether the acquisition “[s]erves previously unserved Columbus residents”).

175. See, e.g., *id.* (asking whether the property is easily accessible from the public right-of-way and how many people it serves within a ten-minute walk). The checklist allows for direct comparisons between parcels, as agency staff can quickly ascertain which of two potential acquisitions satisfies more criteria, serves more people, or expects to carry lower operating costs, among other considerations.

176. See Telephone Interview with Rosalie Hendon, *supra* note 37 (describing such drawbacks as drawn from staff experience).

177. See *id.*

178. When power is devolved to and within administrative institutions, individuals can hold significant discretion to implement policy, set priorities, or delegate power further. See Nou, *supra* note 19, at 451–52, 468–71 (examining federal agencies).

179. See Davidson, *supra* note 54, at 606.

180. See Davis, *supra* note 24, at 138 (discussing the discretion held by staff in local public land management).

are responsible for writing or interpreting—or both.<sup>181</sup> The result in many cases is an acquisition framework closely tied to the people administering it. At the most informal end of the spectrum, an employee who manages park acquisition creates a policy document for herself or himself to use when purchasing property or deciding when to accept a donation.<sup>182</sup> That document might never be viewed by anyone outside the agency, let alone interpreted by a court, and it might never again be referenced after its author leaves their position. Internal policies at other agencies are more formal and longstanding.<sup>183</sup> But here, too, the employees tasked with property acquisition hold significant discretion in practice. They can elect to follow the established policy as a matter of habit, consistency, or because they determine it has proved effective in the past.<sup>184</sup> Conversely, however, because their internal policy is not mandated by outside forces, park agency employees can choose to disregard or selectively apply it, leaning instead on the personal expertise they have accumulated from prior land acquisitions.<sup>185</sup> The expertise these employees bring to bear can functionally supersede a written policy, demonstrating that institutional knowledge operates as a discrete source and situs of local acquisition lawmaking.<sup>186</sup>

But agency employees do not operate in a vacuum. In addition to serving as repositories of accumulated expertise, frontline local employees also act as

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181. See e.g., Telephone Interview with Bonnie Diaz, *supra* note 28; see St. Louis County Dept. of Parks and Recreation, *supra* note 94; *infra* note 182.

182. See, e.g., Telephone Interview with Bonnie Diaz, *supra* note 28. Before Ms. Diaz joined St. Louis County, the parks department lacked a dedicated staff member responsible for acquisition and had no formal or informal internal policy on the books. Consequently, Ms. Diaz has created for herself a procedure for inbound new parkland donations, which is the primary way the County obtains new park properties. See St. Louis County Dept. of Parks and Recreation, *supra* note 94.

183. See *supra* notes 78–85 and accompanying text (regarding Miami-Dade); *infra* notes 204–10 (regarding Atlanta and Cook County).

184. See, e.g., Telephone Interview with Paul Sun, *supra* note 15. Agency staff use a criteria matrix to assess potential property acquisitions, not because it is mandated by law but rather as a matter of habit and to promote transparency in their process. See also Telephone Interview with Rosalie Hendon, *supra* note 37 (discussing the creation and use of an acquisition checklist as a form of historical recordkeeping; when an employee involved in a given acquisition is no longer working at the agency, the checklist can help cover gaps in the institutional knowledge of those who remain).

185. See, e.g., Telephone Interview with Allen Ishibashi, *supra* note 17. The agency has a land acquisition policy from 1988; while it reflects current practices, it is rarely referenced because staff have discretion to rely on their intuition and expertise in assessing a potential acquisition. See also *supra* note 117 (discussing *Baker v. Forest Pres. Dist. of Cook Cnty.*, 33 N.E.3d 745, 756 (7th Cir. 2018)).

186. See Telephone Interview with Rosalie Hendon, *supra* note 37 (discussing the institutional knowledge of long-tenured agency employees and their overlay of such knowledge upon the written plans and checklists that guide parkland acquisition); Telephone Interview with Robert Clemens, *supra* note 111 (noting that unwritten acquisition criteria are prioritized and balanced pursuant to the institutional knowledge held by agency staff).

mediators—as conduits of local knowledge among and between other stakeholders in the community.<sup>187</sup> The line between public participation and local agency governance is often a very fine one.<sup>188</sup> When a sublocal park employee makes an acquisition decision, they might be deferring to the position of an angry community member, weighing interests of governmental or nongovernmental partners, or responding to knowledge gleaned from a landowner whose property borders an existing park.<sup>189</sup> Because these employees sit at the lowest rung of local government, they also find themselves closest to the people. The lawmaking authority they enjoy is subject to being informed or influenced—or captured—by other local stakeholders who choose to participate in the process.<sup>190</sup>

The universe of potential outside stakeholders is vast. Consultants and nonprofit organizations write acquisition plans, provide funding, and conduct gap analysis studies of parkland needs.<sup>191</sup> Contractors and local real estate brokers spot for-sale signs when an undeveloped property goes on the market.<sup>192</sup> Counterparts at other local park agencies reach out to coordinate on policy, request maintenance support for a new acquisition, and propose a sale

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187. See Davidson, *supra* note 54, at 574; Lavoie, *supra* note 68, at 649–50; Davidson & Fagundes, *supra* note 53, at 820 (regarding “mediating disputes”); Noah M. Kazis, *Transportation, Land Use, and the Sources of Hyper-Localism*, 106 IOWA L. REV. 2339, 2340 (2021) (describing a common conversation at community meetings where “elected officials and community members swap helpful announcements”).

188. Davidson, *supra* note 54, at 572 (noting that “[l]ocal agencies also often operate at the edge of a blurry line between governmental action and public participation”).

189. See *id.* at 618 (citing Carol M. Rose, *Planning and Dealing: Piecemeal Land Controls as a Problem of Local Legitimacy*, 71 CALIF. L. REV. 837, 887–93 (1983)). See also Telephone Interview with Allen Ishibashi, *supra* note 17 (discussing interactions with park neighbors).

190. See Davidson & Fagundes, *supra* note 53, at 812–13. Legal scholars have debated the true value of participation in the local and sublocal governance process. Some argue that participation is fundamental to sublocal administration. Compare Noah M. Kazis, *American Unicameralism: The Structure of Local Legislatures*, 69 HASTINGS L.J. 1147, 1207 (2018) (demonstrating participation as fundamental in the local administrative process, particularly when compared against the local legislative one) with Shoked, *supra* note 62, at 1379 (critiquing “administrative micro-localism” where participation is more symbolic than political); Crowder, *supra* note 71, at 625 (discussing the façade of informal participation and advocating for more formal structures at the community level).

191. On the role of consultants in local governance, see Samuel T. Bassett, *Consultants, Urban Leadership, and the Replica City* 12–14 (2015) (Ph.D. dissertation, University of Illinois at Chicago), <https://indigo.uic.edu/downloadcfr/files/19374707> [<https://perma.cc/9N9A-FFRD>].

192. See Telephone Interview with Paul Sun, *supra* note 15 (mentioning being approached by owners, neighbors, real estate agents, developers, and attorneys); Telephone Interview with Allen Ishibashi, *supra* note 17 (mentioning park rangers spotting for-sale signs).

or exchange of parkland presently under the outside agency's ownership.<sup>193</sup> And finally, of course, residents of the local community participate in the acquisition process too. Private landowners approach park agencies to propose donations.<sup>194</sup> Neighbors speak up to advocate for a parkland acquisition—or against one.<sup>195</sup> And community groups, businesses, and conservation advocates also have a voice to add to the chorus.<sup>196</sup>

With such a broad field of potential participants, the ability for a stakeholder to impact parkland acquisition will turn on the relative strength of their voice within the sublocal ecosystem. One could imagine a number of hierarchical permutations between these stakeholders, each permutation yielding a different governance outcome. Where neighbors hold disproportionate voice in the acquisition process, for example, their personal interests may outweigh civic ones, marginalizing the voices of residents who live further from existing parks.<sup>197</sup> Where consultants and intergovernmental partners drive the conversation, an ethos of administrative efficiency may prevail, yet in the process dampening the interactive strength of sublocal governance and overlooking the unique needs of the local community.<sup>198</sup> Giving voice to community groups may address some of these concerns, but doing so also raises the risk that decision-making will grow ad hoc and opaque as a result.<sup>199</sup> Community groups, after all, are not an undifferentiated mass. Rather they are

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193. See Telephone Interview with Clement Lau, *supra* note 17 (regarding policy coordination); Telephone Interview with Rosalie Hendon, *supra* note 37 (regarding maintenance coordination); Telephone Interview with Stephanie Kutsko, *supra* note 18 (regarding maintenance and exchanges).

194. Some agencies use donations as their primary acquisition vehicle. See *supra* note 16 (discussing Anchorage); *supra* note 182 (discussing St. Louis County).

195. Neighbors play a role in the acquisition process, whether through formal or informal channels. See Telephone Interview with Kelly Grissman, *supra* note 16 (explaining that agency staff get coffee and build relationships with surrounding owners); Columbus Recreation and Parks, Acquisition Closing Checklist (Feb. 26, 2019) (on file with author) (requiring that staff “Notify Adjacent Property Owners”). Despite the public’s broad support for parkland creation, see *supra* notes 49–52 and accompanying text, there are examples, too, of local landowners opposing a proposed acquisition. See Telephone Interview with Allen Ishibashi, *supra* note 17 (discussing opposition in San Mateo County).

196. See Telephone Interview with Allen Ishibashi, *supra* note 17.

197. See Shoked, *supra* note 62, at 1380–83 (arguing that sublocal participation must “transcend private interests” and avoid homogeneity); Kazis, *supra* note 187, at 2349–41 (discussing the outsized control held by neighbors over the land use process).

198. See *supra* note 186 and accompanying text (regarding local government bureaucrats are technocratic managers); *supra* note 66 and accompanying text (on the value of sublocal governance); see generally K. Sabeel Rahman & Jocelyn Simonson, *The Institutional Design of Community Control*, 108 CALIF. L. REV. 679 (2020) (discussing the structures of exclusion that impede community participation, even at the informal local and sublocal levels).

199. See *supra* note 73 and accompanying text.



apt to represent a cross-section of formal and informal neighborhood institutions, the most powerful of which do not necessarily speak for wide swaths of the constituency.<sup>200</sup> Too much community participation can also overwhelm an agency's acquisition resources.<sup>201</sup>

The task of a local park agency is to adjudicate between these voices, forging a recipe that yields normative policy outcomes.<sup>202</sup> This is a fine line to walk. How, then, is it navigated? How is it determined which stakeholders have the loudest and most impactful voice in the crowded, yet thinly defined landscape of local park acquisition?

An initial answer to the question hearkens back to the competing values of informality and proactivity in sublocal governance. The more formal a park agency's internal acquisition regime, the more disparate community voices can theoretically be brought into the process.<sup>203</sup> A few examples are illustrative. Towards the most formal end of the spectrum, Atlanta's Department of Parks and Recreation has a written procedure for promoting broad participation in determining where to acquire new greenspace.<sup>204</sup> The procedure encourages a wide variety of entities—ranging from governmental partners to nonprofits to community groups—to advocate for a parkland acquisition by completing and submitting a template questionnaire to the Department.<sup>205</sup> Submitted questionnaires are then shared with members of the Green Team, a working group represented by local agencies and advised by community partners, which assesses the proposal in light of a number of express criteria—including consideration of whether the community supports the acquisition.<sup>206</sup> In a parallel process, Department staff are also provided the questionnaire for purposes of conducting a site visit and preparing an evaluation of the

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200. See generally Stephen R. Miller, *Legal Neighborhoods*, 37 HARV. ENVTL. L. REV. 105 (2013) (exploring neighborhood institutions); Crowder, *supra* note 71, at 638–39 (regarding the powerful role of the “business elite” in local development).

201. See Cook County Forest Preserve District, *supra* note 36, at 7 (noting that the District’s “original plan was to conduct a series of public outreach meetings to identify properties that should be considered for acquisition,” but were “warned against broad-based outreach that might inundate the District with offers of unsuitable property, and instead encouraged a more targeted outreach effort”).

202. What constitutes a balanced recipe is, of course, not a neutral exercise either, nor is the decision to seek one in the first place. See Sara C. Bronin, *Rules of the Road: The Struggle for Safety & the Unmet Promise of Federalism*, 106 IOWA L. REV. 2153, 2183 (2021) (showing that decisions to enable certain forms of participation can be non-neutral where legal mandates are absent).

203. See Crowder, *supra* note 71, at 636–39 (associating informality with exclusionary local participation regimes).

204. Atlanta Dept. of Parks and Recreation, *supra* note 37, at 4–6.

205. See *id.* at 4–5. See also Atlanta Dept. of Parks and Recreation, Community Parks and Greenspace Program, Property Identification Questionnaire (July 25, 2013) (on file with author).

206. Atlanta Dept. of Parks and Recreation, *supra* note 37, at 5.

proposal.<sup>207</sup> The final acquisition decision is a product of these parallel efforts: the Green Team's external assessment and the Department's internal one. As a consequence, at least where the Department's policy is being followed, a broad coalition of participants are cultivated and incorporated into the acquisition process.

A similar regime exists in Cook County, Illinois, where the Forest Preserve District employs an interdisciplinary advisory team to assess potential acquisitions and encourages proposals from a variety of community stakeholders.<sup>208</sup> Unlike in Atlanta, however, the District expressly includes proactive features into its acquisition policy.<sup>209</sup> It affirmatively interviews planners and nonprofit experts across the region to seek feedback on potential acquisitions, disseminates surveys to identify properties, and conducts outreach to maintain an ongoing list of target acquisitions.<sup>210</sup> These proactive efforts further the role of District staff as mediators of parkland knowledge, not simply technocratic experts, and it offers diverse public stakeholders a number of entry points into the acquisition regime.

Proactive outreach can diversify participation even where internal acquisition regimes are more informal.<sup>211</sup> Yet informality cuts both ways. Where an agency's internal regime is both informal in structure *and* reactive in how it identifies parkland, certain stakeholders have a disproportionate opportunity to participate in the decision-making process. Those who work in the real estate and construction fields—developers, brokers, agents, and land use attorneys—approach park agencies absent any institutional prodding or outreach to lend their voice to the acquisition regime.<sup>212</sup> Neighbors who live adjacent to existing parkland also come into contact with an agency in a way other community members do not; they may see employees conducting maintenance or initiate dialogue when a boundary issue arises.<sup>213</sup> These interactions breed informal networks.<sup>214</sup> If outside stakeholders aren't offered the same access, networks forged with developers and neighbors can privilege

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207. *Id.* at 5–6.

208. See Cook County Forest Preserve District, *supra* note 36, at 7.

209. *Id.* at 12 (discussing features such as recreation uses, greenway and bike trail connections, and buffers).

210. *Id.* at 7–8.

211. See generally Edward W. De Barbieri, *Urban Anticipatory Governance*, 46 FLA. ST. U. L. REV. 75 (2018) (arguing for proactive local governance as a way to improve public participation).

212. See Telephone Interview with Paul Sun, *supra* note 15 (discussing such interactions).

213. See Telephone Interview with Kelly Grissman, *supra* note 16 (discussing relationships with private parties that own “inholdings” adjacent to parkland).

214. See Telephone Interview with Allen Ishibashi, *supra* note 17 (regarding informal relationship building). See also *supra* note 192 and accompanying text.

those interests in the acquisition process, marginalizing more disadvantaged local voices as a consequence.<sup>215</sup>

In sum, the relationship between parkland acquisition and participation is a symbiotic one. An agency's internal legal regime impacts the type and variety of stakeholder granted a voice in acquisition. At the same time, stakeholders help mold the legal regime itself by guiding where property is being acquired and coloring how strongly an agency's internal plans, policies, and institutional expertise dominate the process. This observation does not, however, fully answer the core question posed above: How do agency practices yield normative policy outcomes? The formality of the agency's acquisition regime surely comes into play. So too does the approach it takes to outreach. But pulling together these variables requires an empirical assessment of local policies and outcomes, a task to which the next section of this Article turns.

#### IV. AN EMPIRICAL STUDY OF NEW PARK PROPERTIES

Identifying the informal legal regime of parkland acquisition is only half the task. As demonstrated by the examples drawn from Miami, Cleveland, St. Louis, Atlanta, Cook County, and others, local acquisition regimes share a number of unifying attributes and challenges but have the potential for tremendous diversity in vision, governance, and implementation. How to sort through this mess? How can local administrators, state legislatures, courts, and members of the public assess the value of a particular regime in practice? And what can acquisition teach us about the tradeoffs inherent in informal, sublocal governance more broadly?

Any comprehensive effort to answer these questions must parse through an enormous body of law and data—through potentially millions of discrete park acquisition decisions, aggregated across tens of thousands of policies and park agencies across the country. This is a tall and necessarily imperfect task. Yet the sheer breadth of local agencies also presents an opportunity to perform a representative analysis: to assess parkland practices and outcomes across a sampling of agencies, extracting in the process some signposts for future research and some qualified answers to the questions posed above.<sup>216</sup>

As a starting point, even if the regime of parkland acquisition cannot be pinpointed in a provision of law, its outcomes can be plotted on a map. The result of a decision to acquire property—or a decision not to acquire property—is perhaps a rare moment of local policymaking that lends itself to easy visuals.

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215. See *supra* note 200 and accompanying text.

216. In a similar vein, the National Recreation and Park Association releases an annual report of park agency data, which collects survey data from participating agencies to offer representative guidance for local administrators. See *2021 NRPA Agency Performance Review*, *supra* note 151.

In an environment of limited resources, as discussed above, one agency might focus its time and funding on a corner of its jurisdiction that lacks greenspace access or contains high-quality conservation habitats; another might focus on growing existing parks or building pocket parks on residential blocks. These decisions can populate on a map, painting a visual study of how individual policy choices turn into sublocal practice. Geographic data offers tangible guidance to public officials and may inform future policy and lawmaking.<sup>217</sup>

A number of local park agencies and their partner governments offer maps of park properties or online parcel databases that can be searched to identify local greenspace.<sup>218</sup> Yet no map exists that compares parkland acquisitions across jurisdictions, let alone one that assesses those acquisitions over a relatively recent or comparable time period.<sup>219</sup> This Article's preliminary empirical task, therefore, is to collect, distill, and plot acquisition data from a cross-section of park agencies. Once mapped, acquisition data can then be used to compare the relationship between the salient features of an agency's regime—the formality of its internal policies, structure, and practices—against the outcome of those features aggregated across a number of acquisitions and years.<sup>220</sup> The exercise offers a cross-jurisdictional lesson for those who mold local institutional structures and for the communities impacted by them.

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217. See, e.g., John R. Taylor & Sarah Taylor Lovell, *Mapping Public and Private Spaces of Urban Agriculture in Chicago through the Analysis of High-Res Aerial Images in Google Earth*, 108 LANDSCAPE AND URB. PLAN. 57, 65–66 (2012) (showing how a geospatial analysis can help develop local policies).

218. See, e.g., Johnson County Department of Technology & Innovation, *supra* note 2; City of Jacksonville JaxGIS, *supra* note 8.

219. Indispensable parkland maps have been created by the Trust for Public Land, the national leader in local park policy and the premier source for cross-jurisdictional park data. See *supra* note 22 and accompanying text. But national data on recent parkland acquisition remains lacking. Studying recent data is particularly important in the local parkland context, where, as a function of their informality, acquisition regimes are susceptible to institutional evolution within a given agency, due both to external factors (for example, changing land use patterns in the locality) and internal ones (new agency employees making new decisions, engaging different stakeholders, and amassing and applying different principles drawn from their experience). See Kibel, *supra* note 14, at 352–59 (describing changing circumstances and policies that fostered different acquisition outcomes over time at the East Bay Regional Park District). See also *supra* notes 184–86 (regarding the ability of individual staff to change policy). Due to the potential for significant institutional change over time, an appraisal of an agency's internal policies today must be assessed against parkland acquisitions made over a relatively recent timeframe.

220. Comparative local government law offers a rich opportunity to identify and shape best practices of local governance. See Rodriguez & Shoked, *supra* note 62, at 132–33. To achieve an honest assessment of local institutional design, however, it is important to consider the outcomes and impacts of those designs and the practices resulting therefrom. See Michelle Wilde Anderson, *The New Minimal Cities*, 123 YALE L.J. 1118, 1214 (2014).

### A. *The Methodological Framework*

Local agencies lie at the heart of our park acquisition analysis. To assemble a focus group of these agencies, data from two preeminent nongovernment organizations—the Trust for Public Land and the National Association of County Park and Recreation Officials (NACPRO)—was used to create a representative cross-sample of large agencies across three institutional forms: the 40 general and special purpose city agencies that own 5,000 or more acres of parkland; the 38 general and special purpose county agencies that employ 200 or more employees; and the 16 regional park authorities that own and manage property across city and county jurisdictions on a metropolitan level.<sup>221</sup> Together these 94 entities are responsible for local greenspace in many of the largest urban and suburban areas in the United States.

Why the focus on large agencies? In significant part, large agencies offer diversity and scale, both in operations and in impact. Owning more properties and employing more employees provides large agencies more latitude to experiment with varying degrees of formality, develop institutional cultures, and perhaps even acquire more property—and thus offer more data points to analyze—as a product of their greater budgets, inventories, and political visibility.<sup>222</sup> The policies and practices of large agencies also affect more people and engage with (or alternatively, fail to engage with) more constituent stakeholders. Finally, as a matter of methodological convenience, limiting the analysis to larger agencies offers a neutral scalpel for extracting a manageable sample from the vast universe of local parkland—and in the process, still capturing a cross-section of institutional forms, state jurisdictions, geographic regions, and local land use patterns.

Once selected, the ninety-four agencies were contacted and asked to provide two items: first, a list of all properties acquired in fee simple since 2010, and second, any and all policies, plans, procedures, or documents that pertain to the agency's parkland acquisition process. Formal public records requests were submitted wherever an agency was nonresponsive to informal outreach. Ultimately, nearly every authority provided some form of response to the

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221. See generally *2020 Acreage & Park System Highlights*, THE TRUST FOR PUB. LAND, [https://web.tplgis.org/parkservedatadownloads/Acreage\\_Park\\_System\\_Highlights\\_WEB\\_DATA\\_TABLES\\_City\\_Park\\_Facts\\_2020.xlsx](https://web.tplgis.org/parkservedatadownloads/Acreage_Park_System_Highlights_WEB_DATA_TABLES_City_Park_Facts_2020.xlsx) [https://perma.cc/3VR9-PTAU]; E-mail from Brenda Adams-Weyant, Excc. Dir., NACPRO, to the author (Oct. 9, 2020) (on file with author) (sharing employee data from 889 county park agencies). Employee counts were used to assess a county agency's size because no comparative national-level data exists on the acreage owned by county park agencies. See *id.*

222. See *2021 NRPA Agency Performance Review*, *supra* note 151, at 4, 11, 23–24 (finding that larger agencies have more public interactions, offer more programming, and have larger capital budgets—of which an average of 8% is allocated for acquisition).

query.<sup>223</sup> Usable acquisition data was mapped using ArcGIS software, while further outreach was conducted when an agency provided data that could not be analyzed.<sup>224</sup> At the end of the exercise a total of 5,120 recent property acquisitions—representing fifty park agencies and hundreds of internal policy documents—had been mapped and analyzed.

This data was then used to compare the internal policies of the fifty park agencies with their acquisitions outcomes. Each agency's internal regime was reviewed and evaluated based on its degree of informality. As a matter of written procedure, an agency's plans and policies were coded on a scale from "1" to "4," with the low end of the scale indicating an agency with *no* acquisition planning documents, and the high end indicating an express, detailed, and operational internal process. As a matter of institutional practice, moreover, each local acquisition regime was also evaluated to determine whether the agency's practices are (1) informal or formal and (2) proactive or reactive in nature.<sup>225</sup>

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223. An exception was Harris County, Texas, which is divided into four precincts. Precinct One did not provide a response to the public records request but did offer some background on its acquisition process. See Telephone Interview with Amar Mohite, Director of Planning & Infrastructure, Harris County Precinct One (May 6, 2021) (on file with author). The outreach process was nevertheless an exercise in the value of state public records laws and the deficiencies that characterize their applicability in practice. See generally Christina Koningsor, *Transparency Deserts*, 114 NW. U. L. REV. 1461 (2020). Few of the agencies provided responses within the statutory timeframe, while some did not respond until an appeal was filed or legal action threatened.

224. Acquisition data may be unusable for a number of reasons. A few common examples are illustrative. At the most challenging level, an acquisition list might include only bare property descriptions, absent any identifying geographic features. See, e.g., Salt Lake County, List of Open Space Lands (Sept. 1, 2018) (on file with author); Response to Public Records Request from Loudoun County Parks, Recreation & Community Services to Wendy Xu, Univ. of Detroit Mercy Sch. of L. (Apr. 15, 2021) (on file with author) (providing a list of park acquisitions). A list might alternatively describe the properties in some detail, but not in detail sufficient to compare against the reference datasets or shapefiles created by the local city or county—which at times could not be downloaded or purchased. A shapefile could not be obtained for Gwinnett County, for example, whereas property information needed to link with an available shapefile could not be obtained for San Diego County or Indianapolis. Wherever possible, further outreach was conducted, or further public records requests were submitted, in an effort to improve the quality of data being received.

225. Agencies that affirmatively seek parkland acquisition opportunities or affirmatively engage diverse stakeholders were considered proactive. See *supra* notes 208–10 and accompanying text (regarding Cook County). Agencies that operate with set acquisition processes and criteria were considered formal, see *supra* notes 78–85 and accompanying text (regarding Miami-Dade), while those with bare or no processes or criteria—or alternatively, processes and criteria that rely on unstructured institutional knowledge and culture—were labeled as informal, see *supra* notes 86–94 (regarding Cleveland Metroparks and St. Louis County). By its nature an assessment of informality is an imperfect science. As a consequence, agencies that did not clearly lean towards one criterion or the other were excluded from this latter component of the analysis.

### B. Incorporating Normative Values

All of these assessments were made with the overarching goal of providing some semblance of quantifiable order to the yet hazy and diverse universe of local park acquisition. But how to assess outcomes? As explored above, greenspace acquisition and location have far-ranging impacts upon local communities.<sup>226</sup> Presumably, then, there are a number of normative values that could be advanced when an agency purchases a given parcel or prepares an internal acquisition plan. In order to assess whether a regime's outcomes are effective, it is necessary to identify at baseline which policy goals are most valuable, or, at minimum, which ones can stand as useful barometers of institutional efficacy.

Two such policy goals were chosen for purposes of this Article. The first is the goal of geographic efficiency—the value of locating new park parcels next to existing ones. The second is the goal of expanding access to greenspace for local residents, and in particular, for residents who have been inequitably saddled with substandard access as a matter of environmental injustice.

These goals were chosen for a number of practical and substantive reasons. Most practically, one or both of these goals was adopted by every park agency studied for this Article that articulated a vision or purpose behind its acquisition planning.<sup>227</sup> The widespread embrace of the goals reflects their prominence and perceived value to local park administrators. Moreover, because the agencies themselves have embraced geographic efficiency and access equity, it is possible to assess institutional outcomes on a level playing field, one that can directly appraise how aspirational policy goals translate into administrative reality. A final practical reason harkens back to the examples drawn from Johnson County and Jacksonville at the onset of this Article: the values of geographic efficiency and access equity are not necessarily harmonious with each other.<sup>228</sup> Acquiring property adjacent to existing parkland promotes the first value, but perhaps does so at the expense of the latter. Likewise, creating new parks in communities that have historically lacked greenspace promotes

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226. See *infra* Part I(A).

227. See, e.g., Louisville Metro Parks and Recreation, Land Acquisition Policy (July 1, 2008) (on file with author) (asking whether a property is “[l]ocated adjacent to an existing park” and “[l]ocated in an area . . . that needs open space and/or recreation facilities”); Monmouth County Park System, *Open Space Plan 2019*, MONMOUTH CNTY., N.J., 45 (Oct. 7, 2019), <https://www.co.monmouth.nj.us/documents/132/Open-Space-Plan-2019-Web.pdf> [<https://perma.cc/FXZ9-AJYQ>] (listing as priorities “[a]dditions to existing County parks” and “[n]ew park sites . . . in underserved areas”); Mecklenburg County Park and Recreation Department, Park & Recreation Land Acquisition (Feb. 23, 2021) (on file with author) (listing “acquiring parcels adjacent to existing parks” and “acquiring parklands in service gap areas”).

228. See *supra* notes 10–12 and accompanying text.

access equity, but it might geographically fragment the agency's park inventory in the process. Examining both outcomes allows for an evaluation of how internal law adjudicates between the two.

Such practical considerations notwithstanding, the values of geographic efficiency and access equity also resonate in the legal scholarship, where both are associated with pressing challenges of property and local government law. From a property law perspective, geographic park consolidation serves as a crucial antidote to the problem of land fragmentation, a costly source of management and ecological inefficiencies.<sup>229</sup> When public property is fractured, governments face higher maintenance and transaction costs.<sup>230</sup> Boundary surveys become costly and challenging, spawning errors and gaps in property data.<sup>231</sup> Fractured parcels also tend to be smaller and more difficult to access.<sup>232</sup> In the parkland context, these smaller properties may attract fewer public resources and host fewer recreational amenities—as a consequence limiting the health advantages a smaller park can confer upon its community.<sup>233</sup>

Fragmentation is particularly troublesome where conservation efforts are concerned. Because habitats inevitably cross human-drawn boundary lines, ecological communities benefit when land areas are larger and more consolidated.<sup>234</sup> Scale is needed to connect those habitats, enable migrations, and sustain biodiversity.<sup>235</sup> Bringing adjacent properties under unified

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229. See generally James J. Kelly, Jr., *Freeing the City to Compete*, 92 CHI.-KENT L. REV. 569, 572–73 (2017) (discussing transaction costs on fractured local land).

230. *Id.*

231. See Scott K. Miller, *Missing the Forest and the Trees: Lost Opportunities for Federal Land Exchanges*, 38 COLUM. J. ENVTL. L. 197, 214 (2013) (discussing surveys on fractured federal land); Anderson, *supra* note 220, at 1172 (discussing data deficiencies tied to fractured public land in Detroit).

232. Davis, *supra* note 24, at 135 (noting that local agencies have “small preserves segmented by roads and traffic”). See also Merry J. Chavcz, *Public Access to Landlocked Public Lands*, 39 STAN. L. REV. 1373, 1389 (1987).

233. See, e.g., Christopher C. Weiss, Marnie Purciel, Michael D. M. Bader, J. Quinn, G. Lovasi, K. Neckerman & A. Rundle, *Reconsidering Access: Park Facilities and Neighborhood Disamenities in New York City*, 88 J. URB. HEALTH 297, 307 (2011), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3079030/> [<https://perma.cc/UBP5-H5Q3>] (noting that “neighborhood-level access to large, but not small parks, has been found to be associated with lower BMI”).

234. See Robert B. Keiter, *Toward A National Conservation Network Act: Transforming Landscape Conservation on the Public Lands into Law*, 42 HARV. ENVTL. L. REV. 61, 129 (2018) (discussing the value of “landscape scale management”); Craig L. Shafer, *The Unspoken Option to Help Safeguard America's National Parks: An Examination of Expanding U.S. National Park Boundaries by Annexing Adjacent Federal Lands*, 35 COLUM. J. ENVTL. L. 57, 72–73 (2010) (observing that boundaries are “ineffective” for purposes of conservation); Fink, *supra* note 23, at 92–93 (discussing research on the connection between species extinction and land area).

235. See Shafer, *supra* note 234, at 64, 85 (“The smaller the park, the more rapid the extinction rate has been.”).



ownership can promote these efforts.<sup>236</sup> Alternatively, when parks or other local greenspaces are fragmented, wildlife habitats are splintered as well, a potentially destructive process for local animal and plant populations.<sup>237</sup> Once fragmented, moreover, habitats are difficult to restore.<sup>238</sup> They are isolated by urban and suburban development;<sup>239</sup> exposed to degradation and invasive species;<sup>240</sup> and stymied by inhospitable zoning and land use regimes.<sup>241</sup> As local governments assume more prominent roles in environmental conservation, ecological fragmentation, once the domain of regional and national entities, becomes a local concern too.<sup>242</sup>

Conservationists and public officials struggle to surmount these hurdles. Smaller properties lack the political visibility and support enjoyed by a larger area of conserved land.<sup>243</sup> Despite public support for local conservation writ large, fractured parcels still face a heightened risk of ecological degradation, impeding conservation efforts from getting off the ground and jeopardizing the long-term viability of those that do.<sup>244</sup> In this manner, parkland fragmentation does not merely hamper and complicate the work of local park agencies, but it can also undercut conservation and preservation efforts that lie at the very heart

236. At the federal land management level, courts have emphasized the importance of considering adjacent properties when considering conservation and development decisions of federal agencies. See Keiter, *supra* note 234, at 102–04. Adjacent land acquisitions are also valuable in the context of local land management. See, e.g., *Vill. of Fox River Valley Gardens v. Lake Cnty. Forest Pres. Dist.*, 586 N.E.2d 813, 820–21 (Ill. Ct. App. 1992) (examining and interpreting a statute that promotes local government acquisition of contiguous conservation land). The Fox River Valley Gardens court defined “contiguous” in this context to include “tracts of land [that] touch or adjoin each other in a reasonably substantial physical sense or where the parcels have a substantial common boundary or a common border of reasonable length or width.” *Id.* at 821 (internal citations omitted).

237. Colburn, *supra* note 36, at 960 n.61, 961; Fink, *supra* note 23, at 96 (noting that plant species also benefit from habitat linkages). See also Susan Jane M. Brown, *David and Goliath: Reformulating the Definition of “The Public Interest” and the Future of Land Swaps After the Interstate 90 Land Exchange*, 15 J. ENVTL. L. & LITIG. 235, 236 (2000).

238. Brown, *supra* note 237, at 236; see also Keiter, *supra* note 234, at 90–91 (noting that the “enclave theory of nature conservation has not been working”).

239. Davis, *supra* note 24, at 134.

240. *Id.* at 135.

241. Colburn, *supra* note 36, at 974.

242. See Sarah Fox, *Localizing Environmental Federalism*, 54 U.C. DAVIS L. REV. 133, 149–151 (2020) (observing that “local action on environmental issues has entered a new period of considerable activity” and that “[l]ocal leadership on environmental issues is expected to continue to increase, and to be increasingly important”). The increased prominence of local action in the environmental space is, in part, a consequence of federal and state inaction on the issue. See *id.*

243. See Colburn, *supra* note 36, at 968, 968 n.93. See also Davis, *supra* note 24, at 152 (“[P]articipation in land management at the local level is typically more ad hoc and dependent on sporadic bursts of activism.”).

244. See Colburn, *supra* note 36, at 946–47.

of their missions.<sup>245</sup> A park agency can ameliorate the problem by focusing its acquisition strategy upon properties adjacent to existing parks, thereby protecting habitats at the edge of existing park boundaries from encroachment while also promoting management and administrative efficiencies down the road.<sup>246</sup>

In doing so, however, as set forth above, the strategy serves to expand greenspace in a community that already enjoys park access. The strategy comes at the expense of another value emphasized in legal scholarship: the imperative of officials and stakeholders to advocate for equitable parkland access as a matter of environmental justice.<sup>247</sup> Scholars have documented how marginalized communities in metropolitan areas—namely, communities of color and economic distress—contain fewer park acres and more limited parkland access, a product of intentional local policy and a byproduct of discriminatory real estate, land use, and historical housing practices.<sup>248</sup> These communities are denied the same health, economic, and civic benefits enjoyed

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245. *Id.* at 974. Regarding the important role played by local-level land conservation, see Tarlock, *supra* note 36; Keiter, *supra* note 234, at 74.

246. Regarding the “edge effect” in conservation biology, see Fink, *supra* note 23, at 93–94.

247. The term “environmental justice” has been used to describe efforts to confront two closely related issues: environmental racism (which stems from deliberately-caused disparities) and environmental inequity (which stems from disparities that may or may not have been deliberate in origin). Kibel, *supra* note 14, at 334–35. Because the literature indicates that parkland disparities are caused by discriminatory policies and outcomes both invidious and otherwise, see *infra* note 248 and accompanying text, this Article will employ “environmental justice” to encompass both concepts.

248. The Trust for Public Land has closely studied and documented park access inequities. See *The Heat is On*, *supra* note 21; Ronda Chapman, *Parks and Equity*, in PARKS AND AN EQUITABLE RECOVERY 5, 5–6 (The Tr. for Pub. Land, May 27, 2021), <https://www.tpl.org/sites/default/files/Parks%20and%20an%20equitable%20recovery%20-%20The%20Trust%20for%20Public%20Land.pdf> [<https://perma.cc/4BPV-BTDT>]. See also Fox, *supra* note 45, at 843 (“[U]rban researchers have extensively documented the disparity between access to parks and open space in low-income communities as compared to their more affluent counterparts.”); Christopher J. Tyson, *From Ferguson to Flint: In Search of an Antisubordination Principle for Local Government Law*, 34 HARV. J. RACIAL & ETHNIC JUST. 1, 31–32 (2018) (arguing that “the design of bridges, highways and public parks have all been deployed in various cases to exclude black people from spaces intended for whites”); Kibel, *supra* note 14, 337–71 (citing studies that demonstrate parkland access disparities, then tracing such disparities across several governmental entities at the federal, state, and local levels). See also generally Stephen Clowney, *Landscape Fairness: Removing Discrimination from the Built Environment*, 2013 UTAH L. REV. 1 (2013). Intentional park exclusion historically occurred as a matter of law, whereas today park exclusion operates through more indirect legal and policy channels and as a legacy of historical exclusion. See Sarah Schindler, *Architectural Exclusion: Discrimination and Segregation Through Physical Design of the Built Environment*, 124 YALE L.J. 1934, 1990 (2015); Jane E. Schukoske, *Community Development Through Gardening: State and Local Policies Transforming Urban Open Space*, 3 N.Y.U. J. LEGIS. & PUB. POL’Y 351, 357–58 (2000) (citing cases).

by those in park-rich areas.<sup>249</sup> While the concept of environmental justice was first defined by advocates and commentators who expressed alarm at the disparate *harms* imposed excessively upon marginalized areas—for example, the disproportionate concentration of heavy industry, waste facilities, and other undesirable land uses near marginalized residential neighborhoods—the theory has since expanded to recognize that a lack of recreational and natural amenities in these same neighborhoods constitutes environmental injustice in another form.<sup>250</sup> Commentators have recently emphasized the unequal distribution of environmental *benefits* in local communities, with parks serving as a crucial cog in the push for local resource equity.<sup>251</sup> Advocates seeking greenspace equity do not ask local agencies to close facilities in park-rich neighborhoods. Rather, their efforts focus understandably on the acquisition process—on the sublocal decisions that guide parkland creation and could create more parks in areas currently lacking them.<sup>252</sup>

Land fragmentation and parkland inequity often share common histories of exclusion and segregation.<sup>253</sup> Even so, confronting their shared consequences is still a challenge that yields uneven remedies, one that demands deliberative institutional design.<sup>254</sup> Whether consciously or not, local park administrators adjudicate between efficiency and access when creating planning documents, drafting internal policies, considering whether to commit staff resources to a proposed donation, and deciding to allocate limited grant or millage funds towards a particular land purchase. How the policies and practices they employ correlate with these institutional outcomes, if at all, can frame a rubric for sublocal governance in the field of parkland acquisition and beyond.

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249. See *supra* Part I(A).

250. Catherine Millas Kaiman, *Environmental Justice and Community-Based Reparations*, 39 SEATTLE U. L. REV. 1327, 1338 (2016); Wyman & Spiegel-Feld, *supra* note 36, at 337.

251. Fox, *supra* note 45, at 852–53; Crawford, *supra* note 132, at 911. At the same time, however, because parks bring economic benefits to their surrounding communities, the creation of new parkland has also been associated with gentrification and displacement. See *supra* note 45 and accompanying text.

252. Kibel, *supra* note 14, at 340.

253. See K. Sabcel Rahman, *Constructing Citizenship: Exclusion and Inclusion Through the Governance of Basic Necessities*, 118 COLUM. L. REV. 2447, 2484 (2018) (discussing historical local patterns of fragmentation as a tool for segregation).

254. See *id.* at 2485 (“Exclusion and inequality constructed through differential access to public goods suggests that the remedy for this form of structural inequality requires the creation of governance institutions capable of overseeing and managing these goods and services, thereby providing a layer of checks and balances over the system and network of service providers.”).

### C. *Limits in the Methodological Framework*

A few qualifications and limitations should be acknowledged in the methodology set forth above. As a global point, it is worth reiterating a fundamental obstacle noted elsewhere in this Article: local and sublocal entities are incredibly diverse. Even a cross-section of park agencies that aims to be representative will not perfectly capture this governance landscape.<sup>255</sup> For instance, the cross-section of ninety-four agencies chosen for this Article was selected based on institutional size for the reasons set forth above—but in doing so, our conclusions may not speak for smaller agencies, nor for acquisition practices outside the metropolitan areas where larger agencies tend to be located.<sup>256</sup> Moreover, the 5,120 acquisitions ultimately mapped and analyzed represent the fifty agencies for which such analysis was possible. This biased the study towards entities with more effective recordkeeping and more usable public reference data, possibly self-selecting for agencies with more robust, formal, or deliberative acquisition regimes as well.

Institutional practices also differ in ways this Article does not directly capture. Despite the value of fee simple ownership,<sup>257</sup> some local agencies prioritize other property interests and acquisition forms, whereas others do not prioritize acquisition at all.<sup>258</sup> And despite generally sharing the normative

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255. See Rodriguez & Shoked, *supra* note 62, at 142 (acknowledging, in a study of local bikeshare policies, that “[l]ocal government law regimes, like law systems in general, differ in many variables” and thus “[i]t would be impossible . . . to provide a comprehensive review of all that legally sets apart the cities that have adopted bike share plans.”). Despite these differences, this Article operates on the assumption, reinforced by its empirical data, that there are trans-jurisdictional lessons to learn from comparing local governments. See Davidson, *supra* note 54, at 633 (“[T]he Article has assumed that an appropriate starting point is also trans-jurisdictional—factors that might be theoretically relevant to understanding local administrative praxis are not unique to California, or Missouri, or Maine . . .”).

256. The connection between agency size and regional population is evident from the agencies used in this study. Agencies chosen for this Article represent nineteen of the twenty largest metropolitan statistical areas (MSAs) in the United States. See *Annual Resident Population Estimates and Estimated Components of Resident Population Change for Metropolitan and Micropolitan Statistical Areas and Their Geographic Components*, U.S. CENSUS BUREAU (July 1, 2020), <https://www.census.gov/programs-surveys/popest/technical-documentation/research/evaluation-estimates/2020-evaluation-estimates/2010s-totals-metro-and-micro-statistical-areas.html> [<https://perma.cc/GY7B-AN7H>] (showing the only non-represented MSA as Boston-Cambridge-Newton, MA-NH). Unsurprisingly, more populous states are also well-represented in the study, with thirteen local agencies in California alone.

257. See *supra* note 37 and accompanying text.

258. See, e.g., Telephone Interview with Amar Mohite, *supra* note 223 (discussing how the agency focuses on recreational amenities in existing parks and building flood infrastructure, not obtaining new park sites); Telephone Interview with Clement Lau, *supra* note 17 (discussing the agency’s focus on parkland expansion outside the fee simple acquisition model); E-mail from Tom Korosci, *supra* note 16 (discussing the agency’s focus on maintaining existing parkland).

goals of geographic efficiency and access equity—or at least, professing to share them<sup>259</sup>—agencies do not all define and pursue these goals identically. Some seek to achieve them through efforts that a geospatial analysis may not reflect, for example by bolstering public transit instead of creating new parks in greenspace deserts.<sup>260</sup> A meticulous accounting of these divergences falls beyond the scope of the present analysis. The metrics chosen and assessed serve as imperfect proxies for park agency policies and outcomes, an approach driven by the informal and heterogeneous nature of the field.

A number of statistically significant findings can nevertheless be drawn from the data.<sup>261</sup> But in light of the limitations described above, this Article stresses restraint in the sweep of its conclusions. It does not claim to offer the definitive account of local park acquisition or the final word on local acquisition regimes. What it aims to accomplish, as an empirical matter, is to identify where relationships appear in the data between institutional policies, practices, and acquisition outcomes, notwithstanding the myriad additional variables at play in the local parks universe. When statistically significant, these relationships are still instructive. They offer a snapshot of acquisition regimes—and lessons for those who administer and are impacted by them.

#### *D. Assessing the Results*

The empirical component of this Article analyzed 5,120 property acquisitions across fifty park agencies nationwide.<sup>262</sup> What can we learn from this analysis? As set forth above, each agency's internal acquisition regime was evaluated and classified, first based upon the nature and extent of its written procedures and second upon a scoring of its institutional practices—whether its acquisition regime is formal or informal, proactive or reactive in nature.<sup>263</sup> Every property was then mapped and assessed through the frameworks of geographic efficiency and access equity. When looking at its surrounding neighborhood, is a new park parcel located adjacent to existing parkland—or is

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259. See *supra* note 227 and accompanying text.

260. See Kibel, *supra* note 14, at 367 (discussing the use of public transit as a way to reduce park access inequities). See also Schindler, *supra* note 248, at 1954 (exploring a number of causes and manifestations of access inequity, including where a community lacks sidewalks or crosswalks). A park may be geographically proximal to a neighborhood but still poorly accessible in practice due to these and other impediments prevailing in the built environment.

261. See *infra* Part IV(D).

262. See *infra* Table 1. The fifty agencies reported acquiring a total of 5,508 properties since 2010. However, 388 of these properties could not be located and mapped, likely due to errors or deficits in the property data, the reference data, or both.

263. See *supra* note 225 and accompanying text.

it located in a neighborhood with no preexisting greenspace?<sup>264</sup> Is the new park in a low-income community or one more diverse than its metropolitan region as a whole?<sup>265</sup> Answering these questions yielded a trove of geographic data about each property, a snapshot of acquisition outcomes that could be compared against the written procedures and institutional practices of the park agencies.

Before turning to the statistical analysis, it is worth offering some initial observations. Of the 5,120 park properties mapped, 1,999 of them—or 39% of the total—are located adjacent to existing greenspace.<sup>266</sup> An additional 2,282 fall within a 0.25 mile radius of existing parkland, meaning that the vast majority of acquisitions mapped for this Article (just under 84% of the total) are located in communities with preexisting greenspace, a striking outcome when considering that over 100 million Americans lack walkable park access.<sup>267</sup> The demographic data paints a more balanced picture. Almost half of the acquired properties (2,307, or 45%) are located in census tracts that are lower-income than their metropolitan region as a whole, while 2,251 properties (44%) fall in census tracts that can be considered diverse when compared against the regional baseline.<sup>268</sup> Even so, these results indicate that most of the properties acquired over the past ten years are *not* in low-income areas; likewise, most are not in areas of relative diversity. Considering the emphasis agencies place on access equity, these outcomes may be surprising.<sup>269</sup>

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264. Two metrics were used to answer this question. First, using shapefiles of park properties located in the city or county at issue, each acquired parcel was scored based upon its adjacency, a measure of whether any *other* park parcel shares a common boundary with it. Second, a similar assessment was performed to identify whether any other park parcels fall within a 0.25-mile radius of the acquired one.

265. For each acquired parcel, census data illuminated whether that parcel is (1) located in a census tract where household income falls below its Metropolitan Statistical Area's (MSA's) median household income, (2) located in a census tract where households fall disproportionately below the federal poverty level, as compared against the MSA as a whole, and (3) located in a census tract where the percent of non-Hispanic whites is ten percent or more above that of the MSA as a whole. These metrics were used to approximate census tracts—and thus, roughly, neighborhoods—that are on average poorer or more diverse as compared against their metropolitan regions. All data was drawn from *American Community Survey*, U.S. CENSUS BUREAU (2019) (Table S0601).

266. See *infra* Table 1.

267. See *id.*; Joseph W. Kane & Adie Tomcr, *Parks Make Great Places, But Not Enough Americans Can Reach Them*, THE BROOKINGS INST. (Aug. 21, 2019), <https://www.brookings.edu/blog/the-avenue/2019/08/21/parks-make-great-places-but-not-enough-americans-can-reach-them/> [<https://perma.cc/DFR6-YJ2X>].

268. See *infra* Table 1; see also *supra* notes 264, 265 (discussing the census data underpinning these figures).

269. See *supra* note 227 and accompanying text. Of the thirty-seven mapped agencies that articulated acquisition priorities, thirty-four indicated access and equity as a goal.

Yet raw acquisition numbers explain only so much in a vacuum. Adjacent property may be easier to acquire and cheaper to maintain; lower-income areas might have higher densities and less available land for new greenspace.<sup>270</sup> An agency might have expended significant time and resources since 2010 to create new parks elsewhere, even if these efforts are not proportionately reflected in the raw numerical outcomes. Standing alone, acquisition outcomes speak to prevailing land use patterns and other externalities, not simply to the policies that enabled them.

More instructive is a comparative assessment of these outcomes: whether there are any statistically significant associations between an agency's acquisitions and its internal regimes. Do agencies with express, detailed, and operational written procedures acquire more park property? Is an agency that proactively engages stakeholders in the acquisition process more likely to acquire properties in low-income areas? What about an agency that displays informal acquisition practices? These questions seek to understand where casual connections exist, if anywhere, between salient institutional frameworks and their policy results.

To answer them, statistical tests were employed to study associations between the categorical variables, with a p value less than 0.05 being considered statistically significant.<sup>271</sup> Profitably, following these tests, a number of significant associations emerged from the exercise. In addition, cautious conclusions could also be drawn from a few associations that were *not* deemed significant.

A prominent takeaway runs through the results: having written plans and procedures translates into acquisition volume. Stark differences emerge when comparing authorities coded as 4s (indicating express, detailed, and operational planning and procedure documents) with those coded as 1s (indicating no acquisition planning documents). Even when controlling for the varying sizes of park jurisdictions,<sup>272</sup> the former acquired significantly more properties than the latter, with medians of 103.5 and 4.0 park parcels acquired since 2010,

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270. See Kibel, *supra* note 14, at 362 (noting the interplay between density, income, and park need).

271. The Wilcoxon rank-sum test was used to compare acquisition counts and counts per 100 square miles of property by agency priorities, and a Kruskal-Wallis test was used to compare counts by the coded score of an agency's written plans. A Fisher's exact test was used to test the associations of categorical variables. All models were created by Harlan McCaffery, M.A., M.S., Statistical Consultant, Center for Human Growth and Development, University of Michigan.

272. Jurisdictional size was drawn from 2010 census data when an agency's jurisdiction is coterminous with the boundaries, and thus the census-defined land area, of a city or county. See generally *Census of Population and Housing*, U.S. CENSUS BUREAU (2010). For special purpose agencies and other cases of non-coterminous coverage, local shapefile data was used to map and estimate jurisdictional area.

respectively.<sup>273</sup> These distinctions present across the board. Agencies in the middle of the spectrum—those coded 2s and 3s, *i.e.* those with generic or aspirational written policies—acquired more properties than those with no written policies, yet fewer properties than agencies with operative and detailed plans.<sup>274</sup> A similar trend evidenced when considering geographic outcomes: agencies higher on the spectrum were significantly more likely to acquire properties near existing greenspace and *also* significantly more likely to acquire properties in low-income and diverse communities.<sup>275</sup> Simply put, the more full-throated the policy, the more acquisitions of all stripes we can expect to see in the final tally.<sup>276</sup>

Yet these conclusions come with a twist. While *having* written plans and procedures appears significant, the priorities expressed in those documents do not necessarily translate to real-world outcomes. Statistical tests were performed to compare each agency's self-professed priorities—whether it values geographic efficiency, access equity, neither, or both—with the geographic outcomes found in the raw data. No statistically significant associations emerged from this exercise.<sup>277</sup> Agencies that value geographic efficiency did not, to a statically significant degree, acquire more property near or adjacent to existing greenspace.<sup>278</sup> Likewise, agencies that value access equity were not associated with more acquisitions in low-income communities, nor in communities more diverse than their regions at large.<sup>279</sup> We ultimately

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273. *See infra* Table 2.

274. Agencies coded as 2s (indicating references to acquisition in larger planning documents) acquired a median of 25.0 parcels while agencies coded as 3s (indicating discrete yet aspirational acquisition plans and documents) acquired a median of 49.5 parcels. *See id.*

275. These results were demonstrated through both bivariate and multiple regression modelling. When comparing agencies coded as 4s with those coded as 1s, the former was 11.8 times more likely to acquire properties near existing greenspace and 12.2 times more likely to acquire properties in low-income census tracts.

276. *See infra* Table 2.

277. *See infra* Table 3.

278. *See id.* While agencies that value geographic efficiency did acquire more properties adjacent and proximal to existing greenspace, the p values for these associations are 0.301 and 0.125, respectively, indicating that the null hypothesis cannot be rejected and there might not be a correlation between values and outcomes.

279. *See id.* One association comes close to our significance threshold: agencies that prioritize access equity acquired a median of 19.5 properties in diverse communities (with an interquartile range of 2.0 to 53.0), whereas those that did not express this priority in planning and policy documents acquired a median of only 1.0 properties in diverse communities (with an interquartile range of 0.5 to 3.0), yielding a p value of 0.07. A statistically significant association between these variables might emerge from a larger sample size. On the other hand, the p value for the association increases when controlling for jurisdictional size (to a value of 0.19), cautioning against any predictions as to how these numbers might shift under different circumstances.



cannot reject the null hypothesis with respect to any of these associations. Although this does not prove that an agency's stated priorities have no connection with its acquisition outcomes—a larger sample size might evince a correlation that the current data does not—it suggests a possible disconnect between the two.

If the priorities listed in planning and policy documents are uninformative, what factors, then, can anticipate park acquisition outcomes? The institutional practices of local park agencies offer a partial answer. Whether an agency's acquisition practices are formal (or informal) and proactive (or reactive) is significantly associated with its ability to create new parkland in diverse and low-income communities. Agencies with formal practices have acquired a median of 56.0 parks in low-income communities since 2010 and 22.0 parks in communities more diverse than their regions, figures that contrast with 8.5 and 2.5 parks, respectively, among informal agencies.<sup>280</sup> Reactive agencies, conversely, have acquired far fewer properties in low-income (13.5 versus 56.0), high-poverty (5.5 versus 20.5), and diverse (4.5 versus 41.0) communities when compared against proactive ones.<sup>281</sup> All of these associations carry p values well below 0.05.<sup>282</sup> Interestingly, institutional *structure* also plays a role in access equity outcomes, as special purpose park agencies also acquire significantly more properties in low-income communities than do general purpose city and county agencies.<sup>283</sup> Three factors thus correlate with access equity acquisitions: formality, proactivity, and being a special purpose entity.

However, no such trends are evident where the goal of geographic efficiency is assessed. Agencies with formal acquisition practices were not statistically more likely to create new parks adjacent or proximal to existing greenspace.<sup>284</sup> Nor was geographic efficiency associated significantly with proactive or reactive governance models.<sup>285</sup> While some distinctions emerge in the data that might prove notable with a larger or different sample size,<sup>286</sup> none

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280. See *infra* Table 4.

281. See *id.*

282. See *id.*

283. Special purpose agencies have acquired a median of 69.5 park properties since 2010 (with an interquartile range of 44.0 to 128.0), in contrast with a median of 6.5 park properties (with an interquartile range of 0.0 to 22.0) acquired by general purpose agencies. The p value for this association is 0.005, indicating a confident rejection of the null hypothesis.

284. See Table 4.

285. See *id.*

286. See *id.* The most prominent of these distinctions is the association between reactive governance and acquisitions made within 0.25 miles of an existing park. Reactive agencies acquired a median of 16.0 such properties, in comparison with 63.5 properties acquired by proactive agencies.

of the tests conducted for this Article found a significant relationship between institutional practices and adjacent or proximal acquisition outcomes. In particular, local agencies appeared to obtain similar numbers of park-adjacent parcels regardless of their governance models.<sup>287</sup>

These statistical tests offer several normative lessons about the sublocal legal regime of parkland acquisition. Despite the heterogeneous nature of local park agencies and the acquisition approaches they take, the results indicate, first and foremost, that patterns *do* exist in these operative frameworks and that the policy choices of local officials *do* translate into particular geographic outcomes on the ground. As a matter of process, having written plans and policies appears to serve a valuable signaling function: it demonstrates to internal and external stakeholders that the agency is committed to creating new parkland. The process of writing plans and policies might spur stakeholders to expend more resources on acquisition, perhaps by emphasizing the agency's mission to internal actors and clarifying its accountability to public observers. Conversely, it is also possible that an agency's written plans and policies reflect what its institutional culture has already embraced, a codification that can reinforce and perpetuate that culture going forwards.<sup>288</sup> In either case, these written documents make a difference. Among the authorities analyzed for this Article, they correlated with increased rates of park acquisition, on balance a normative civic value for local communities.<sup>289</sup>

But ultimately, as a matter of substance, planning documents do not translate into acquisition outcomes. Here, a distinct conclusion can be drawn from the analysis: agencies acquire more parks in areas traditionally deprived of greenspace when their acquisition practices are more formal or more proactive in nature—or where the agency is a special purpose government body. What do these characteristics have in common? Why might they all promote access equity outcomes? Harkening back to the examples drawn from Miami, Cleveland, Atlanta, and Cook County, a common thread running through all four is a deliberate, affirmative effort to draw diverse stakeholders into the acquisition process. Formal acquisition regimes expressly include a variety of community voices when park creation is being considered.<sup>290</sup> Proactive regimes also make a conscious effort to engage outside stakeholders, even when such engagement is not mandated by external law or internal

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287. *See id.*

288. *See supra* notes 176–77, 182–86 and accompanying text (regarding expertise and institutional culture).

289. *See supra* Part I(A).

290. *See supra* notes 204–07 and accompanying text (describing Atlanta's formal regime).

policy.<sup>291</sup> And special purpose districts, while considered less politically accountable in the legal literature,<sup>292</sup> nevertheless appear more likely to operate with formal requirements that encourage stakeholder engagement.<sup>293</sup>

Bringing more stakeholders to the table offers an opportunity for geographic parkland diversity. Whereas the process of expanding an existing park can occur organically—a neighbor reaches out; an employee spots a for-sale sign; a parcel becomes available that the agency had long eyed to extend a trail corridor<sup>294</sup>—the process of placing a new park in a new community demands something more from a local agency. It asks that agency staff actively seek opportunity, listen to prodding community voices, and solicit guidance from governmental partners, including those who offer funding sources or geospatial tools the agency may lack. It demands a measure of creativity and collaboration, qualities both promoted when internal and external stakeholders are actively emboldened to produce novel governance outcomes.<sup>295</sup>

A permissive and discretionary legal regime gives sublocal institutions the freedom to forge such an environment. Yet it also, of course, grants agencies a blank check to adopt far less robust acquisition policies. The lessons drawn from our empirical study hint at a path forward—at a way to promote acquisition regimes that closer align an agency's stated priorities with its operative outcomes.

## V. RECOMMENDATIONS AND CONCLUSION

Sublocal institutions are consequential sites of policymaking. In an ecosystem of permissive external authority, sublocal administrators are handed the keys to the car, delegated the power to make a series of seemingly small decisions—whether to accept a parcel donation, engage a real estate broker, or

291. See *supra* notes 86–92 and accompanying text (describing Cleveland Metroparks' proactive regime).

292. See, e.g., Sara C. Galvan, *Wrestling with Muds to Pin Down the Truth About Special Districts*, 75 *FORDHAM L. REV.* 3041, 3070 (2007); Frug, *supra* note 141, at 1781–84.

293. See *supra* notes 137–38 and accompanying text. Special districts also are traditionally promoted as apolitical vehicles of technocratic expertise. Richard Briffault, *The Local Government Boundary Problem in Metropolitan Areas*, 48 *STAN. L. REV.* 1115, 1145 (1996). In this role, special district employees, by virtue of their specialized knowledge and political insulation, may succeed in accommodating sources of acquisition data outside of the political process, yielding more diverse acquisition outcomes. The statistical analysis conducted for this Article suggests as much. To a statistically significant degree, special districts had more complete and mappable acquisition data than general purpose governments, indicating that these entities possess the resources and skills to leverage geospatial tools.

294. See *supra* notes 192, 194, 213–14 and accompanying text.

295. See generally Sheila R. Foster & Christian Iaione, *The City As A Commons*, 34 *YALE L. & POL'Y REV.* 281 (2016) (on the role of collaboration in dynamic governance).

apply for a grant—that aggregate and translate into real impacts on a local community: they influence where parkland is created and where it is not, where park resources and priorities are allocated within a jurisdiction and where they are not. Aggregated even further, these policy choices beget law—a heterogeneous regime of plans and practices, written and unwritten, that adjudicate between contrasting acquisition priorities and shepherd properties through the acquisition process.

Local park agencies should be intentional with their lawmaking power. Agencies that wish to expand their greenspace footprint—a common goal expressed by administrators<sup>296</sup>—should go beyond unwritten institutional practice to signal this goal in public-facing documents (such as strategic plans) as well as through internal ones (such as acquisition checklists and operations manuals). By doing so, an agency can voice its commitment to parkland acquisition while simultaneously honing a rubric for internal implementation, actions that this Article has found may help promote local parkland creation.

In addition, agencies that seek to expand greenspace in neighborhoods traditionally underserved by parks should think introspectively about their institutional practices. Rather than simply endorsing equity as an aspirational goal or including equitable considerations on acquisition checklists, local officials should consider those local models that have successfully broadened the stakeholders incorporated into the process. Agencies in Miami-Dade and Atlanta offer useful examples of formal governance practices, whereas agencies in Cleveland and Cook County provide a blueprint for infusing proactivity into the acquisition regime. The analysis conducted for this Article found that these traits—formality and proactivity—are associated with more equitable and geographically diverse acquisition outcomes.

To be sure, though, our empirical findings are not categorical in degree. As noted in the legal scholarship, an *excess* of formality may curtail some of the values of sublocal governance<sup>297</sup>—a theory that attracts, at best, some mixed passing support in our empirical study. The Miami-Dade Park & Recreation Department, for instance, which has expressed concern that its acquisition policies are too formal,<sup>298</sup> struggled to match the total acquisition output of its peers.<sup>299</sup> Yet Atlanta's Department of Parks and Recreation, which likewise

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296. See *supra* note 38.

297. See, e.g., *supra* notes 66 and 71 and accompanying text.

298. See *supra* note 85 and accompanying text.

299. In total, the Department has acquired only forty-nine properties since 2010 (or 2.6 properties per 100 miles of jurisdiction), which places it well below the median of 103.0 properties acquired by all agencies with formal acquisition models studied in this period.

employs notably formal acquisition practices,<sup>300</sup> added more park properties on a per-capita basis than any other agency studied for this Article.<sup>301</sup> Where exactly to draw the formality line is a question for future research. At minimum, our conclusions suggest that an element of formality is valuable when pursuing certain acquisition outcomes, a takeaway that some local agencies have already drawn from their anecdotal experience.<sup>302</sup> At minimum, then, local officials could formalize practices that presently operate informally—for example, by requiring notice to an outside stakeholder at a particular stage in the process—even without rising to the level of Miami-Dade or Atlanta.

Each of these tweaks could occur internally, in the realm of local or sublocal administration, and as a result none would fundamentally change the extant regime of local park acquisition. But without compromising the ultimate discretion enjoyed by sublocal actors, external sources of authority could still encourage those reforms, where feasible, by gently establishing a default framework for parkland acquisition regimes.

In particular, states can play a broader role in setting local acquisition agendas without eroding local autonomy.<sup>303</sup> As a rudimentary measure, states can bolster a requirement that some already impose upon local governments: the obligation to create comprehensive planning documents.<sup>304</sup> Along with asking that local entities engage in land use planning, states could require them to consider long-range park and open space goals—and specifically consider *how* parkland expansion plans will be implemented and *where* those expansions will take place. Such a procedural mandate does not impose onerous tasks upon local officials or hamper local decision-making; even so, it prompts park

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300. See *supra* notes 204–07 and accompanying text. The Green Team’s express and extensive involvement in the acquisition process is a structural element not shared by other agencies studied for this Article.

301. Atlanta has acquired 164 park properties since 2010, or 123.2 properties per 100 miles of jurisdiction area.

302. See, e.g., Resolution 2018-41, *supra* note 120 (finding that “broad, inclusive, and unweighted” acquisition criteria are less effective than specified and weighted ones).

303. See, e.g., Richard Briffault, *Our Localism: Part I—the Structure of Local Government Law*, 90 COLUM. L. REV. 1, 6 (1990) (“New legal doctrines and governmental structures are needed to encourage state governments to take a state-wide perspective on local problems.”); Darien Shanske, *The (Now Urgent) Case for State-Level Monitoring of Local Government Finances: Protecting Localities from Trump’s “Potemkin Village of Nothing”*, 20 N.Y.U. J. LEGIS. & PUB. POL’Y 773, 773–74 (2017) (arguing for state oversight to improve local knowledge and decision-making). See also generally David Schleicher, *Constitutional Law for Nimby’s: A Review of “Principles of Home Rule for the 21st Century” by the National League of Cities*, 81 OHIO ST. L.J. 883 (2020) (discussing the value of state oversight over local power); Kazis, *supra* note 187, at 2365 (discussing the value of shifting some land use authority to state government).

304. See *supra* notes 139–40 and accompanying text.

agencies to think discretely about their acquisition planning while simultaneously giving other local stakeholders an opening to express their voice in the exercise.<sup>305</sup> It also serves a basic signaling function. By specifically incorporating park acquisition into larger planning requirements, states can remind local residents and officials that there exists, at baseline, a regime of parkland acquisition, even if permissive and heterogeneous in nature, and that the structure of this regime might matter to local communities.

Yet states can go a step further, however, by drafting simple default standards that local agencies can voluntarily adopt.<sup>306</sup> These standards could include template documents—such as acquisition checklists for agency staff, proposal forms for members of the public, and template operations manuals—that promote more proactive and formal acquisition practices. A local agency that has already developed a tailored set of acquisition policies may elect not to adopt the state standards, choosing instead to rely upon those practices that have proven effective over time and become embedded into its institutional culture. But an agency with no written guidelines, high rates of staff turnover, or reactive acquisition practices—or more broadly, an agency that simply has not consciously considered its institutional approach to park acquisition—might find the state-issued standards appealing.<sup>307</sup> Adopting them, moreover, could quickly and painlessly solidify the contours of an acquisition regime that had been opaque and inconsistent beforehand.<sup>308</sup>

None of these state-level actions should be politically contentious.<sup>309</sup> Nor should they constrain local park agencies in setting priorities and making acquisition decisions. Instead, states would forge a model that is both more modest and more ambitious in scope—one that cultivates a corpus of cross-jurisdictional best practices, shedding light upon a legal regime that presently flies well below the radar and rarely crosses regional lines. Stakeholders could continue to make parcel-by-parcel acquisition decisions at the lowest and most informal level of governance. But other levels of government would weigh in,

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305. See Clowney, *supra* note 248, at 51 (advocating for procedural mandates as “comparatively undemanding” mechanisms that nevertheless can promote public participation, encourage information-gathering by local officials, and ultimately reach better governance outcomes).

306. See, e.g., Shanske, *supra* note 303, at 774 (advocating for simple default rules at the state level to guide effective local action).

307. See Bronin, *supra* note 202, at 2157 (discussing how localities adopt state and national standards wholesale, in part because such standards pose an easy and appealing model in the face of local governmental inertia).

308. See Shanske, *supra* note 303, at 810 (arguing that default rules “dispens[e] and dispers[e] expert knowledge to local decisionmakers”).

309. See *supra* notes 30, 33–36 and accompanying text (noting political support for parkland creation).

too, lending knowledge and structure to the world of park acquisition—and perhaps, paving the way for institutional refinement in other fields of sublocal governance as well.

## APPENDIX

Table 1

Agency	Properties Mapped	Geographic Efficiency		Equity and Access	
		Properties Adjacent to Other Parks	Properties within 0.25 Mile Radius of Other Parks	Properties in Census Tract Below MSA Income	Properties in Diverse Census Tract
City of Anchorage	8	6	7	1	0
County of Maui	20	0	7	17	17
City of Bakersfield	24	11	21	8	24
San Diego County	377	237	359	104	248
Los Angeles County	26	1	25	18	22
Mountains Recreation and Conservation Authority	745	11	744	160	583
Midpeninsula Regional Open Space District	163	0	155	0	86
City of Honolulu	13	13	13	4	10
City of Detroit	21	7	9	21	21
City of Oklahoma City	10	10	10	6	0
City of San Antonio	255	249	253	182	242
St. Louis County	16	9	16	13	5
City of Kansas City	13	0	12	12	12
Prince Georges County	123	100	123	60	93
Montgomery County (MD)	116	116	116	65	46
Miami Dade	47	39	45	12	18
Palm Beach County	4	4	4	4	0
Lee County	56	0	17	39	0
Volkas County	4	1	4	1	0
Milwaukee County	103	96	101	43	11
City of Phoenix	69	2	67	62	6
Pima County	95	0	7	22	62
King County	424	68	424	218	10
City of Seattle	348	328	348	132	36
City of Minneapolis	23	0	19	17	7
Three Rivers Park District	60	19	36	30	0
Prince William County	7	6	7	3	2
Arlington County	4	4	4	0	1
City of Raleigh	8	8	8	3	1
City of Portland	22	8	22	22	12
Cook County	99	0	50	78	52
City of Chicago	82	0	77	56	53
City of Colorado Springs	122	2	11	78	0
City of Denver	27	5	17	23	8
Allegheny County	6	1	6	2	0
City of Cincinnati	7	3	7	1	1
Cleveland MetroParks	341	63	81	56	36
City of Columbus	141	20	97	128	4
City of Wichita	12	7	7	8	1
Johnson County	26	24	26	0	0
City of Atlanta	157	7	135	130	103
City of Philadelphia	0	0	0	0	0
Westchester County	0	0	0	0	0
Montgomery County (OH)	0	0	0	0	0
City of Scottsdale	0	0	0	0	0
City of Louisville	16	11	16	5	1
East Bay Regional Park District	223	213	223	56	163
Santa Clara County	36	1	28	14	22
Mecklenburg County	528	205	428	328	207
City of Aurora	93	84	89	65	25
<b>Totals</b>	<b>5120</b>	<b>1999</b>	<b>4281</b>	<b>2307</b>	<b>2251</b>
Percent of Total Mapped		39%	84%	45%	44%



Table 2

Written Policy Code	"1" <i>Agencies with no acquisition planning or procedure documents</i>	"2" <i>Agencies with generic acquisition references in other planning or procedure documents</i>	"3" <i>Agencies with discrete yet aspirational acquisition planning or procedure documents</i>	"4" <i>Agencies with discrete and operative acquisition planning or procedure documents</i>	p value
Properties Acquired	4.0 [0.0;15.0]	25.0 [10.0;43.5]	49.5 [20.0;103.0]	103.5 [27.0;223.0]	<b>0.006</b>
Properties within 0.25 Mile Radius of Other Parks	0.4 [0.0; 2.2]	6.5 [3.2;19.2]	7.3 [0.6;25.5]	8.8 [4.0;33.8]	<b>0.001</b>
Properties in Census Tract Below MSA Income	0.2 [0.0; 1.1]	5.6 [1.8;15.1]	6.7 [1.0;12.4]	4.4 [1.1;39.5]	<b>0.009</b>
Properties in Diverse Census Tract	0.0 [0.0; 1.0]	5.2 [0.6;14.1]	1.3 [0.5; 4.6]	3.8 [0.7;11.2]	<b>0.031</b>

All numbers indicate properties acquired per 100 square miles of jurisdiction area. Brackets indicate the interquartile range for each association.

Table 3

Self-Professed Priority	Geographic Efficiency			Access Equity		
	Not Indicated	Indicated	p value	Not Indicated	Indicated	p value
Properties Adjacent to Other Parks	6.5 [ 1.0;51.5]	8.0 [ 3.0;39.0]	0.678	3.0 [ 1.5; 6.0]	7.5 [ 2.0;68.0]	0.301
Properties within 0.25 Mile Radius of Other Parks	26.5 [ 7.5;78.0]	26.0 [16.0;135.0]	0.434	16.0 [11.5;16.5]	32.0 [12.0;123.0]	0.125
Properties in Census Tract Below MSA Income	20.0 [ 8.0;65.0]	23.0 [12.0;78.0]	0.818	13.0 [ 7.0;26.0]	22.5 [ 8.0;78.0]	0.344
Properties in Diverse Census Tract	22.0 [ 1.0;41.0]	12.0 [ 2.0;86.0]	0.914	1.0 [ 0.5; 3.0]	19.5 [ 2.0;53.0]	0.07

Brackets indicate the interquartile range for each association.

Table 4

Acquisition Model	Formality			Proactivity		
	Not Indicated	Indicated	p value	Indicated	Not Indicated	p value
Properties Adjacent to Other Parks	8.5 [0.5;21.5]	7.0 [0.5;98.0]	0.698	7.5 [0.0;116.0]	4.5 [1.0;19.0]	0.36
Properties within 0.25 Mile Radius of Other Parks	19.5 [10.0;62.5]	67.0 [14.0;129.0]	0.128	63.5 [17.0;223.0]	16.0 [7.0;89.0]	0.059
Properties in High Poverty Census Tract	3.0 [0.0;13.5]	13.0 [5.5;49.5]	<b>0.026</b>	20.5 [12.0;50.0]	5.5 [0.0;11.0]	<b>0.004</b>
Properties in Census Tract Below MSA Income	8.5 [0.5;34.5]	56.0 [15.5;91.0]	<b>0.011</b>	56.0 [22.0;130.0]	13.5 [2.0;60.0]	<b>0.028</b>
Properties in Diverse Census Tract	2.5 [0.0;18.5]	22.0 [8.5;98.0]	<b>0.011</b>	41.0 [10.0;62.0]	4.5 [0.0;22.0]	<b>0.02</b>

Brackets indicate the interquartile range for each association.

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