

Introduction

This section of the Northland Trails Recommendations Report addresses issues associated with the acquisition, financing and administration of trails and linear parks (hereinafter collectively referred to as “trails”). Land acquisition techniques range in levels of required initiative and commitment from a simple request for a land gift to the government’s required dedication as a condition of development. At the middle ground are zoning and subdivision regulations that can, with some strategic amendments, be used to require dedications, setbacks, and other desired elements to promote the Trail System. Numerous taxing methods authorized by state statute can be used to generate revenue to support the Trail System, ranging from a basic capital improvement sales tax to a more complex benefit district mechanism. Finally, the respective counties, designated governmental agencies may accomplish the ongoing operation and maintenance of the trails, benefit districts, nonprofit organizations, or trusts. **The goal of this section is to provide a set of “tools” which can assist the counties in creating the foundation for a successful Trail System. While all of these options are discussed herein, the respective counties based on their unique attributes, needs, and objectives must determine the ultimate combination of options.**

I. ACQUISITION, FINANCING AND ADMINISTRATION CONSIDERATIONS

- A. DEDICATION REQUIREMENTS/IMPACT FEES.** The authority to utilize both of these techniques arises from the county’s police power. Each is imposed through the exercise of this power as a condition of development approval. A dedication exaction is a condition or stipulation of approval that requires the applicant to convey an interest in land as a condition of the subject approval. An impact fee is, as it states, a fee, which is legislatively adopted (though it can be imposed on an ad hoc basis). The fee amount is calculated to cover the applicant’s fair share of the public infrastructure for which the fee is calculated. Generally, the fee amount is set based upon an established equivalent unit to offset the capacity of the infrastructure system being funded and consumed by the development proposed by the applicant. Exactions may be imposed at different points in the approval process. Traditionally, a dedication exaction is imposed as a condition of rezoning, award of a special/conditional use permit, or upon plat approval. More generally, an impact fee is assessed at one of the aforementioned points, but not collected until a building permit is issued.

The application of dedication exactions (e.g., dedication requirements and impact fees) must be done consistent with the legally protected property rights of affected property owners, and in a reasonable, non-discriminatory and non-arbitrary manner. While counties clearly have the legal authority to condition development permits to mitigate the impacts of a project on identifiable public resources and interests, such development exactions must have a “close fit” to the development’s impact. In Supreme Court parlance, land use regulations must “substantially advance” a legitimate state interest, and there must be an “essential nexus” between the asserted public purpose of a land use action and any conditions attached to approval of a development permit. In the case of a dedication exaction, the amount of land to be dedicated must be roughly proportionate in nature and extent to the development

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impact. The Supreme Court has yet to clearly decide whether this "rough proportionality" test applies to impact fees. Missouri courts require that both types of conditions on development approval must be reasonably related to the development's impact. Thus, dedication exactions and the impact fee amount for trails must be reasonably related to the development's impact on the availability of open spaces and recreational areas such as trails.

1. ***Subdivision Code Dedication Requirement.*** Amend the subdivision codes to allow dedication requirements where the property, with respect to which development approval is sought, is included in or adjacent to the proposed Trail System. A formal dedication ordinance can be adopted. The same result, however, can be achieved by the insertion of language such as "the Commission may require dedication" into the Codes at the appropriate point where the different development approvals are set forth. Appropriate references to the trail plan and how it relates to the increased populations caused by the subdivisions and the corresponding increased demand for public recreational facilities such as trails should also be added. For example, "any development within 100 feet of the Trail System, as specified in the Northland Trails Map & Guidelines, shall be required, as a condition of plat approval, to dedicate an interest in land for the purpose of establishing a trail, unless otherwise waived." This approach will result in substantial compliance, although in any given case, a refusal of the developer to comply and/or the commitment of the County to enforce the provisions may result in less than full compliance. The County may establish waiver criteria, based on the developers' ability, to demonstrate through an individualized determination that the dedication is not justified or roughly proportional to the impact of the development either because of a lack of requisite reasonable relationship, unique site circumstances, undue hardship, or other circumstances warranting a waiver.
2. ***Formal dedication ordinance*** – A formal dedication/impact fee ordinance may be adopted that establishes requirements for new development. Dedication and impact fee ordinances are legally defensible to the extent that they are related to new development and the dedications and/or impact fees are reasonably related to the impact created by the development. Requiring dedication without an individualized determination that the required dedication is roughly proportional to the proposed development's impact on the trail system (i.e., use of the system) may not be legally defensible or enforceable.
3. ***Zoning Code – "Trail Corridor" Requirements.*** Amend the zoning codes to introduce and establish the "trail corridor" concept by including language similar to the following: "Any development within 100 feet of the Trail System, as specified in the Northland Trails Map & Guidelines, shall have a setback from the trails or open space of at least 20 feet." For situations involving the development of a single parcel of land (not subject to the subdivision or platting process), the counties should also consider an amendment that would make the issuance of a building permit contingent upon the dedication of land and/or construction of a trail.
4. ***Administrative Appeal Process.*** Amend the zoning and subdivision codes, or establish a stand-alone requirement, to create an administrative appeals process

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to provide the local governments with the opportunity to correct alleged improper application of trail or green space requirements without immediate court action. For example, where a specific design standard or condition is imposed or a dedication exaction is required, the developer should have an appeals process available prior to judicial intervention. The Board of Adjustment could serve as the entity for these appeals, and could be established as either a final decision-maker or as a recommending body that would hold the formal adjudicative hearing but not make a final decision.

5. ***Establish expanded sidewalk or multi-use trail requirements.*** Expand or adopt sidewalk requirements for all districts or lot sizes. Allow a waiver of the sidewalk requirement if established criteria are met. Define sidewalk to include "multi-use trail" where "appropriate" - allow or require a segment of the mapped trail system to be substituted for sidewalks where the trail is adjacent to or included in any given development.
 - a. ***Clay County's current sidewalk requirements:*** (1) Subdivision. "When required, sidewalks shall be constructed of concrete on both sides of the street as required and shall be a minimum of four feet wide by four inches thick. Construction of sidewalks along streets shall be the responsibility of the builder on each lot adjacent to the street. Sidewalks in common open spaces, greenways or parks shall be the responsibility of the subdivider. The maintenance of sidewalks shall be the responsibility of the adjacent property owner or homeowners association and shall not be the responsibility of the County. When required, sidewalks shall be constructed in the road right-of-way one foot (1') from the property line. Sidewalks shall also be installed in any pedestrian easements as may be required by the County Commission. Clay County Subdivision Regulations, § 7.08.B(1); (2) Planned Unit Development. It should be noted, however, that alternative sidewalk provisions are established by the County in its Planned Unit Development District regulations: "Sidewalks shall be built to county specifications along all public and private streets; however, an alternative pedestrian and sidewalk plan may be developed that provides pedestrian access between each use in the Planned Unit Development. Clay County Zoning Regulations, § 153.085(E)(17).
 - b. ***Platte County's current sidewalk requirements:*** "Sidewalks shall be constructed of concrete on both sides of all streets and shall be four feet wide by four inches thick. Construction of sidewalks along streets shall be the responsibility of the builder on each lot adjacent to the street. Sidewalks in common open spaces, greenways or parks shall be the responsibility of the developer. Sidewalks are not required in subdivisions zoned R-40, R-80, RE, or AG or where density is less than one (1) dwelling unit per acre. The maintenance of sidewalks shall be the responsibility of the adjacent property owner or homeowners association and shall not be the responsibility of the County or of any road district within the county. Platte County Subdivision Regulations. Article IV.C, footnote 6.

- c. *Trails in lieu of sidewalks*** – The counties’ subdivision codes currently contain provisions requiring developers to dedicate and/or construct streets for the interior subdivision, as well as for the areas abutting the subdivision (i.e., perimeter streets). The codes also require developers to dedicate and construct sidewalks in association with those streets. To the extent that the street and sidewalk provisions are legally defensible and enforceable, the counties may want to include code language (e.g., “waiver” or “in lieu of”) that allows an applicant for development approval to construct trails in lieu of the required sidewalks along designated streets as shown on the Northland Trails Map & Guidelines. The width of the trail will be 20 feet. Variation in trail width may be necessary to take into account the constraints of the topography and geometrics to ensure bicyclist and pedestrian safety. Caveat: “Waivers” and in lieu of” provisions should be drafted only after careful consideration of pedestrian and bicyclist safety issues. While a two-way trail on one side of an interior subdivision street may be acceptable, the same scenario along arterial and collector streets may present safety concerns, thus requiring trails to be established on both sides of the arterial and collector streets.
- d. *Replacement of existing sidewalks*** – Another option for the counties to advance the Trail System is to replace or modify existing sidewalks and tree/lawn areas within the street rights-of-way to trail standards along designated streets as shown on the Northland Trails Map & Guidelines. While this option would reduce the need to acquire additional interests in land for the core portions of certain trail segments, easement expansions may be required to meet trail standards (e.g., width), and it may require the counties to incur significant repair costs. Furthermore, the counties must evaluate the pedestrian and bicyclist safety issues before establishing such provisions. Finally, given the undeveloped nature (i.e., areas without sidewalks) of a large portion of the unincorporated areas, it may not be the most useful mechanism.

B. TAXING OPTIONS

- 1. *Sales Tax for Local Parks - § 644.032 et. seq.*** These statutory provisions allow for the imposition of a sales tax in an amount not to exceed one-half of one percent on all retail sales made within the counties. The purpose of the sales tax is specifically for the benefit of local parks, trails and/or storm water control. The ballot measure must be approved by a majority of the votes cast at a county or state general, primary or special election.
- 2. *Regional Recreation District - § 67.792 et. seq.*** These statutory provisions allow for the creation of a Regional Recreation District that may cross municipal and county boundaries for the purpose of creating, operating, and maintaining public parks, neighborhood trails, and recreational facilities and grounds. In the event that a Regional Recreation District already exists, an express statutory provision allows for expansion of that district. When a Regional Recreation District is organized, it shall be a body corporate and a political subdivision of the State, and may sue and be sued, issue general revenue bonds, and levy and collect taxes.

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The voters in the proposed district must approve a Regional Recreation District. A board of directors shall be appointed by the executives (i.e., county executive, presiding commissioner, or other chief executive of a county), with the advice and consent of the governing body of the counties, consisting of 7 residents of the district, none of whom shall be a member of the governing body of the county or an official of any municipal government located within the district. If authorized by voters, a district may levy: (1) a tax of not more than sixty cents per year on each one hundred dollars of assessed valuation on all property within the district; or, (2) a tax not to exceed one-half of one cent on retail sales.

3. ***Sales Tax for Capital Improvements - § 67.700.*** This statutory provision establishes the ability of counties to impose a sales tax on retail sales "for any capital improvement purpose designated by the county." The sales tax may be imposed at a rate of one-fourth of one percent, three-eighths of one percent, or one-half of one percent on the receipts from the retail sale of all qualifying tangible personal property or taxable services. All revenue received by the county must be deposited in a special trust fund and be used by the county solely for the designated purpose. The ballot measure must be approved by a majority of the votes cast at a county or state general, primary or special election.

4. ***Sales Tax for Storm Water Control and Public Works - § 67.729.*** This statutory provision allows for the imposition of a sales tax of not more than one-tenth of one percent for the purpose of funding storm water control and public works projects. However, all such taxes shall be collected by the State and distributed (less one percent for cost of collection) to the following political subdivisions: (1) The county which levied the sales tax, based on the ratio of the population of the unincorporated areas of the county to the total population of the county; (2) each municipality located wholly within the county, based on a similar population ratio; and (3) each municipality located partially within the county, based on a similar population ratio. Furthermore, the State may authorize refunds of the taxes collected under certain scenarios.

5. ***Transportation Development District - § 238.200 et seq.*** These statutory provisions allow for the creation of a Transportation Development District by election of qualified voters and the imposition of special assessments or taxes to fund, promote, plan, design, construct, improve, maintain and operate one or more projects or to assist in such activity. A project includes any bridge, street, road, highway, access road, interchange, intersection, shelter, rest area and any similar or related improvement or infrastructure. It appears that pedestrian and bicycle facilities, such as trails, may be included within the scope of such projects.
 - a. After creation of the Transportation Development District, a Board of Directors consisting of between 5 and 15 members (District residents) is elected by qualified voters to administer the District and to develop and submit proposed projects. A project requires approval by the Missouri Highways and Transportation Commission and/or the local transportation authority (the county), depending upon the project's location, ownership and future maintenance responsibilities.

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- b. A Transportation Development District may use any one or more of the taxes or other specifically authorized funding methods to fund a project, including special assessments, property taxes, real estate property taxes, business license taxes, and sales taxes.
 - i. **Special Assessment.** The district may make one or more special assessments that specifically benefit the properties within the district and that, among other objectives, improve the safety of bicyclists and pedestrians within the district.
 - ii. **Property Tax.** If approved by at least a four-sevenths vote, the district may impose a property tax in an amount not to exceed the annual rate of ten cents on the hundred dollars valuation.
 - iii. **Sales Tax.** A district may by resolution (subsequent to approval by qualified voters at a state general, primary or special election) impose a sales tax on retail sales made in the district, except the sales tax shall not apply to the sale or use of motor vehicles or public utility-type services. The sales tax may be imposed at a rate of one-eighth of one percent, one-fourth of one percent, three-eighths of one percent, one-half of one percent or one percent on the receipts from the retail sale of certain tangible personal property or taxable services. The district shall perform all functions incident to the administration collection, enforcement, and operation of the sales tax.
 - iv. **Alternate Sales Tax.** Any district that consists of all of one or more entire counties may by resolution impose a sales tax on all retail sales made within the district for any transportation development purpose designated by the district.

C. FEDERAL & STATE GRANTS

The following federal and state grant programs provide opportunities to leverage county funds for trail improvements. Those opportunities are described in this report.

1. ***Missouri Department of Conservation*** - Through the Missouri Department of Conservation and its Conservation Heritage Foundation, some trail projects have been funded. One example is a trail, overlook and benches on Eagle Bluffs Conservation Area in Boone County. Information on this funding source is available at the Heritage Foundation in Jefferson City at 573-751-4115, ext. 139 or 379.
2. ***United States Environmental Protection Agency, Office of Water; Clean Waters Act Section 319.*** - Under Section 319, states receive grant money which support a wide variety of activities including technical assistance, financial assistance, education, training, technology transfer, demonstration projects and monitoring to assess the success of specific nonpoint source implementation projects.

3. **Landmark Local Parks Program** - The Landmark Local Parks Program is funded by the State of Missouri and applications are accepted statewide from local city and county governments to renovate outdoor recreation facilities. This program is administered by the Missouri Department of Natural Resources and has set \$144,000 as the maximum grant amount and will reimburse up to 50 percent of cost for land acquisition or development projects and up to 65 percent for renovation or restoration projects.

4. **U.S. Department of Transportation Federal Highway Administration - Bicycle and Pedestrian Provisions Summary** - Bicycle and pedestrian projects are broadly eligible for funding from almost all the major Federal-aid highway, transit, safety, and other programs. Bicycle projects must be "principally for transportation, rather than recreation, purposes" and must be designed and included in state and Metropolitan Planning Organization plans.
 - a. **FEDERAL-AID HIGHWAY PROGRAM (80% federal:20% local FUNDS)**
 - i. **National Highway System** funds may be used to construct bicycle transportation facilities and pedestrian walkways on land adjacent to any highway on the National Highway System, including Intrastate highways.
 - ii. **Surface Transportation Program (STP)** funds may be used for either the construction of bicycle transportation facilities and pedestrian walkways, or non-construction projects (such as maps, brochures, and public service announcements) related to safe bicycle use and walking.
 - iii. Ten percent of each State's annual STP funds is set aside for **Transportation Enhancement Activities (TEAs)**. The law provides a specific list of activities that are eligible TEAs and this includes "provision of facilities for pedestrians and bicyclists, provision of safety and educational activities for pedestrians and bicyclists," and the "preservation of abandoned railway corridors (including the conversion and use thereof for pedestrian and bicycle trails)."
 - iv. Another ten percent of each State's **STP** funds is set aside for the **Hazard Elimination and Railway-Highway Crossing programs**, which address bicycle and pedestrian safety issues. Each State is required to implement a Hazard Elimination Program to identify and correct locations, which may constitute a danger to motorists, bicyclists, and pedestrians. Funds may be used for activities including a survey of hazardous locations and for projects on any publicly owned bicycle or pedestrian pathway or trail, or any safety-related traffic calming measure. Improvements to railway-highway crossings "shall take into account bicycle safety."
 - v. **Congestion Mitigation and Air Quality Improvement Program (administered by MARC)** funds may be used for either the construction of bicycle transportation facilities and pedestrian walkways, or non-

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construction projects (such as maps, brochures, and public service announcements) related to safe bicycle use. Projects must demonstrate an air quality benefit by either reducing motor vehicle miles of travel or congestion levels.

- vi. **Recreational Trails Program** funds may be used for all kinds of trail projects. Of the funds apportioned to a state, 30 percent must be applied to motorized trail uses, 30 percent for non-motorized trail uses, and 40 percent for diverse trail uses (any combination). Program administered by the Missouri Department of Natural Resources/ Division of State Parks; applications due in January.
- vii. Provisions for pedestrians and bicyclists are eligible under the various categories of the **Federal Lands Highway Program** in conjunction with roads, highways, and parkways. Priority for funding projects is determined by the appropriate Federal Land Agency or Tribal government.
- viii. **National Scenic Byways Program** funds may be used for "construction along a scenic byway of a facility for pedestrians and bicyclists." To be eligible, a facility must be designated by the state and federal transportation agencies as a "scenic byway."

D. SPECIAL CONDITIONS FOR FEDERAL TRANSPORTATION FUNDS

- 1. **Protection of Non-motorized Transportation Traffic** - The Secretary shall not approve any project or take any regulatory action that will result in the severance of an existing major route, or have an adverse impact on the safety of non-motorized transportation traffic and light motorcycles, unless such project or regulatory action provides for a reasonable alternate route or such a route already exists.
- 2. **Users of a Bicycle and Pedestrian Facility** - Motorized vehicles are not permitted on trails and pedestrian walkways except for vehicles used for maintenance purposes, motorized wheelchairs, and, when State or local regulations permit, snowmobiles and electric bicycles. Electric bicycles are defined for the purposes of this Act as a bicycle or tricycle with a low-powered electric motor weighing under 100 pounds with a top motor-powered speed not in excess of 20 miles per hour.

E. DONATIONS AND DEVELOPER INCENTIVES – There are a large number of voluntary mechanisms for acquiring land and building trail infrastructure that may be implemented in areas where development is occurring or likely to occur. Such mechanisms generally involve variances or modifications to zoning or subdivision requirements to reduce the cost of development or increase the return on the developer investment. Obviously, this approach requires (1) the existence of development in or near the area of the trail; (2) requirements that can be waived without harming the public safety or interest; and (3) a willingness of the public to

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allow the waivers to acquire desired trail sections. The variance or code waivers can be used as an incentive to obtain dedication and construction of trail segments on the site of the development, or in some circumstances even at locations offsite or unassociated with the development.¹ Examples of developer incentives include:

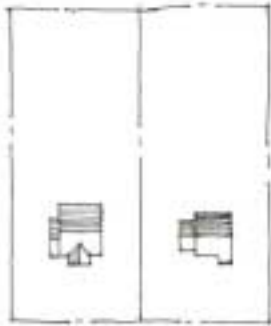
1. **Density bonus** – This mechanism grants the developer greater density than permitted by a Master Plan or zoning district in exchange for the developer’s dedication of the land for a trail and/or trail construction. Incentive or bonus zoning is a land use regulatory technique that allows a county to obtain various public amenities from a builder or developer without having to pay for them directly. Normally, an incentive zoning system will allow a developer to exceed an existing height or density regulation in return for providing one or more public amenities, such as public plazas, parks, and pedestrian space. Incentive zoning typically benefits the landowner or developer, since the value of the bonus can be designed to equal or exceed the cost to the developer of supplying the public benefit. The most common examples of incentive zoning are an increase in density in the form of bonus floor area and an increase in the number of dwelling units or the number of square feet of commercial space on a site. A density bonus may also take the form of reduced requirements for off-street parking and loading, mixed uses, and other modifications commonly allowed within a planned unit development (PUD). The respective counties currently have some basic incentive zoning provisions in place in the form of PUD regulations (Platte County Zoning Regulations, Article IV; Clay County Zoning Regulations, §153.035). See subsection 4, below.

2. **Subdivision/lot size modifications** – A reduction in lot size (as opposed to increasing overall density of the entire developed tract), and lot dimension variances are also potential incentives. For example, if a property has a creek running through it in such a manner as to leave too little land on one or both sides to develop lots of the size required by the subdivision code or the applicable zoning district, a modification could be made in exchange for dedication of the creek and adjoining area for the trail. Although the lot would be substandard in size, the actual green space for the lot would remain intact as public space. Accordingly, the same number of houses may still exist, although the lot sizes on paper may be smaller.

¹ Communities may grant zoning amendments in exchange for concessions from applicants provided that the concessions are reasonably related to the requested rezoning. If no such reasonable relationship exists, contract rezoning is an unconstitutional contracting away of the police power. *State ex rel. Missouri Highway and Transportation Comm’n v. Sturfels Farm Limited Partnership*, 795 S.W.2d 581 (Mo. Ct. App. 1990).

Figure 1
Subdivision/Lot Size Modifications

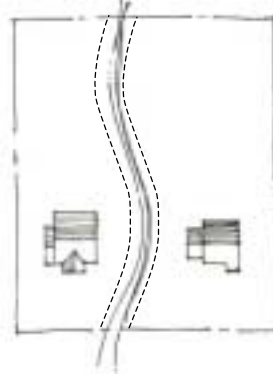
Standard Lot with No Natural Feature
- area is subdivided into lots meeting minimum lot standards



Standard Lot with Natural Feature - only one lot meeting the minimum standards can be subdivided

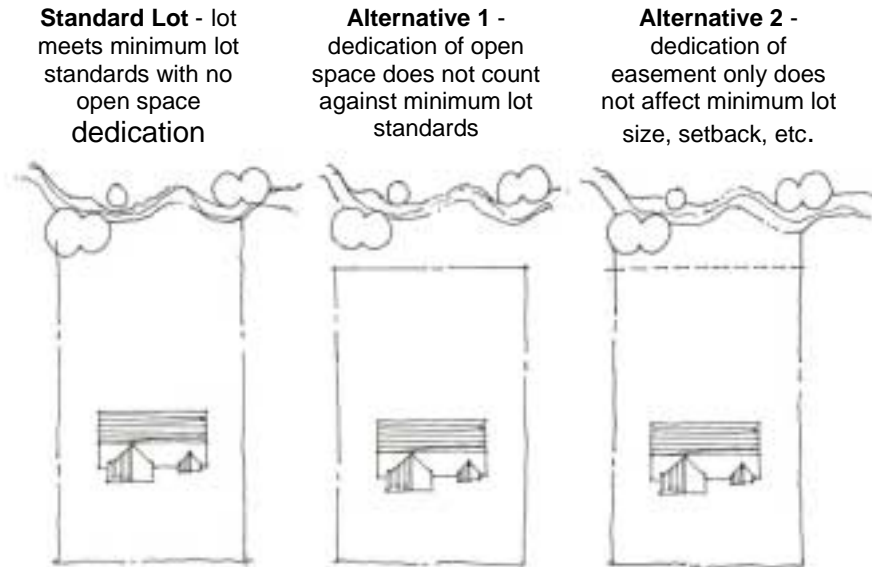


Alternative - smaller lot is permitted in exchange for dedication of open space - overall density is preserved



- 3. Neutral dedication provisions** – Ensure that the dedication of land is "neutral" to the developer and does not cause a reduction in lot size or developable land by allowing dedication of trails (with limitations) to have no effect on the remaining density, setbacks, etc. after the dedication. For example, if a trail is sought at the back of a lot where there is a 30-foot building setback, the zoning code would be modified to allow any dedicated space to count as part of the lot setback, even though it no longer is part of the lot.

Figure 2
Neutral Dedication Provisions



In other words, ensure that the developer is not "punished" by loss of useable ground as a result of the dedication. Another available option is to allow easements to be dedicated as opposed to the conveyance of a fee simple interest. This ensures that density, setbacks, lot dimensions are wholly unaffected by the dedication of the trail, thereby obtaining the same result as the first option.

- 4. Planned Development and Conditional Use Permit conditions** – Planned development provisions, such as those established in the Clay County Zoning Regulations, §153.035, and the Platte County Zoning Regulations, Article IV, generally allow for an area of land, controlled by a landowner, to be developed as a single entity with a designated number of dwelling units and square footage of commercial and industrial uses. The plan allows modifications of lot size, bulk, type of use, density, lot coverage and open space, to allow developers to achieve a more flexible design, especially in exchange for a development exaction. The Trail Plan and/or other greenspace requirements can be incorporated as an integral part of the approval procedures so that a condition or factor in granting the approval is whether the developer has provided the trails or green space applicable to the site sufficient to warrant the approval. Generally, only trails or greenspace onsite or adjacent can be made a condition of granting the planned development approval. The use of conditions in a planned zoning is technically a "voluntary" incentive because the developer is not required to seek the planned zoning but may opt to use the more restrictive "as of right" zoning district under which the property is currently zoned. The counties should ensure that they have the appropriate degree of discretion to control the design and use modification requested by the developers and the authority to deny an application if not in the public interest.

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The counties may also consider the additional requirement of compliance with the Trail Plan and the dedication and construction of trails as conditions for approval of conditional use permits (CUP).

- F. EVALUATION CRITERIA FOR TRAIL DEDICATION AND CONSTRUCTION.** - In evaluating the dedication of land and easements, and the design and construction of trails, criteria should be developed by the respective counties indicating design appropriate to the site's natural, historic, and cultural features, and otherwise meeting the requirements of the respective development ordinances. Each affected parcel of property will present a unique set of facts and circumstances that requires individual consideration by the counties. Each county should contemplate an evaluation that may involve not only the Planning Commission, but the Parks Board and staff as well. This evaluative process will usually take place during the review of applications for preliminary plat approval, rezoning, special/conditional use permit, or preliminary development plan approval. Diversity and originality in lot layout and property dedication should be encouraged to achieve the best possible relationship between development and conservation/recreation areas. In addition, these criteria may help ensure that the dedicated land is not merely low-quality land, poorly suited for trail use. The evaluation criteria should be established to determine whether the proposed dedication/acquisition satisfies some of the following elements: protects and serves floodplains, wetlands, and steep slopes; preserves and maintains mature woodlands, existing fields, pastures, meadows, and creates sufficient buffer areas; maintains or creates an upland buffer; designs around existing tree lines, hedgerows, between fields or meadows, and minimizes impacts on large woodlands; leaves scenic views and vistas unblocked or uninterrupted; protects wildlife habitat areas; designs around and preserves sites of historic, archaeological, or cultural value; protects rural roadside character; improves public safety; provides active recreational areas; offers adequate screening from nearby commercial or residential development; makes connections to commercial or residential development; facilitates pedestrian and bicycle access; provides open space that is reasonably contiguous and whose configuration is in accordance with the respective zoning ordinances as well as the Trail Plan.
- G. NOT-FOR-PROFIT ORGANIZATIONS.** The Clay and Platte County representatives on the Steering Committee have stated their interest in establishing separate not-for-profit organizations to represent the interests of the respective counties on issues including public education and promotion of the Trail System, acceptance of charitable contributions and land donations, land acquisition, assistance with the maintenance of the trails, and other responsibilities associated with those portions of the Northland Trail System within the respective counties. Not-for-profit organizations may take various forms, including public benefit corporations, grantor trusts, land trusts, and foundations. The effectiveness of a specific type of not-for-profit organization is contingent upon the goals and objectives sought to be accomplished and whether the role is to be ancillary and supportive, or more primary, proactive and independent of the governmental entity. The table and text (see Table 1) describe the attributes and disadvantages of each organization.

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1. **Public Benefit Corporation** - Public benefit corporations (not-for-profit organizations) may be established in accordance with Missouri law and can be awarded tax-exempt status pursuant to §501(c)(3) of the Internal Revenue Code for the purpose of promoting the Northland Trail Plan, accepting dedications of land and money, facilitating land exchanges, and developing and maintaining the Northland Trail System. Nonprofit corporations may function either with or without tax-exempt status. Nonprofit public benefit corporations hold their assets in “charitable trust.” A charitable trust is an entity that holds money or assets used for charitable purposes.

A public benefit corporation could assist with the promotion, acquisition and operation of the trails in the following ways: (1) it assists with donations, fundraising commitments, and grant applications by showing public, not just government, support. The nonprofit organization may serve as a recipient of donations, including both monies and land, and to acquire land to maintain or to transfer to other entities in furtherance of natural resource and open space conservation, including the Bi-County Trail System; (2) Equally important is the role that such an association can have in support of ballot measures related to funding. Chapter 115.646 prohibits the County or other local governments from contributing or expending public funds to favor or oppose any ballot measure. Accordingly, an association can provide the funding and support for publicly promoting ballot issues in furtherance of the Plan. (Chapter 115.646, however, does not prohibit elected officials from personally supporting a ballot issue, or even publicly supporting the issues in their capacity as an elected official, as long as public funds are not spent.) Please be aware that §501(c)(3) tax-exempt status cannot be obtained or retained during the time in which the nonprofit organization provides support for legislation, ballot measures, or other political activities, however, this tax-exempt status will not be adversely affected by the provision of purely objective, educational information associated with the Trail System. Nevertheless, it may continue to be an authorized nonprofit organization even without qualifying for tax-exempt status. Finally, an organization established pursuant to §115 of the Internal Revenue Code may successfully avoid the political activity limitations placed upon §501(c)(3) organizations, but a §115 entity must qualify as an “instrumentality” of government, thus negating one of the expressly stated goals of the Steering Committee (i.e., separation of or distancing the nonprofit organization from the government); (3) By placing certain selected decision-making authority into the control of the nonprofits board of directors pursuant to one set of bylaws, thereby streamlining decisions concerning the funding for and maintenance of the trails; (4) It creates operational flexibility in the event that the entities otherwise responsible for maintenance of the trails (e.g., the respective parks and recreation departments) become unresponsive or ineffective; (5) It establishes a mechanism for tax deductible contributions; and (6) It may serve a promotional or educational role and act as a liaison between citizen organizations and developers to promote responsible land development without what might be perceived by some potential donors as undesirable government involvement.

Northland Trails and Greenways, an example of a public benefit corporation, has been organized as a §501(c)(3) corporation exclusively for educational, charitable,

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historical, scientific, conservation and recreational purposes. Public benefit corporations may have the ability to acquire land interests to hold in trust, and to apply for and expend the money of federal, state, and local governments. Public benefit corporations also have the ability to make distributions to organizations that qualify as exempt organizations under §501(c)(3). Thus, such an organization may give money to or receive money from another nonprofit organization that is established for the purpose of developing a Trail System.

Of all foregoing benefits associated with a nonprofit organization, perhaps the most significant legal advantage relates to the ability to spend money on election issues and promotion of the Trail System (caveat: this beneficial attribute is not available in conjunction with §501(c)(3) tax-exempt status). Except for this limited purpose, the local governments are generally as well, if not better, suited to administer and maintain the Trail System, and to receive and transfer land and funds for trail-related purposes. Local governments are generally better suited to own and operate a system of trails because of their significant additional advantage of limitations on liability as a result of the Counties' sovereign immunity. Nevertheless, the creation of a public benefit corporation would establish a separate non-governmental entity – a stated goal of the Steering Committee.

Since there are two counties involved in the Northland Trail Plan, the formation of one nonprofit organization to assist in development of the entire bi-county trail system plan has some benefits, such as one organization that promotes and receives donations for the combined bi-county Trail System. On the other hand, two separate nonprofit organizations, when independent actions are coordinated in furtherance of joint Plan implementation, could be just as beneficial and actually be more advantageous particularly with respect to support for county-specific revenue raising efforts such as sales tax measures and the like. Accordingly, whether the unified or separate nonprofit option is chosen is not particularly significant. What matters is how effectively the selected approach works to make the bi-county Trail System a reality. If two nonprofit organizations are created, it is possible to advertise, promote, and otherwise publicly appear to function jointly as one entity without emphasizing the actual legal separation.

2. **Grantor Trust** - As an alternative to a nonprofit organization, the Counties may choose to create grantor trusts as support organizations that would perform the Counties' functions for the exclusive benefit of the Trail System. A grantor trust would be an entity separate from the county. A grantor trust could have a board of trustees separate and distinct from, but appointed by, the governing bodies of the Counties. The trust would serve virtually the same function as the nonprofit organization, i.e., a conduit or "feeder" for channeling donations of the trail-designated lands and funds to the Counties. The grantor trust is a sound alternative because it eliminates the considerable reporting effort associated with a §501(c)(3) nonprofit organization and would have all the tax-exempt attributes of a public entity trust.

3. **Land Trust** - A land trust is a nonprofit, voluntary organization that works closely with landowners to obtain land interests and restrict land uses for the purpose of protecting undeveloped, natural, open spaces which are increasingly threatened by development pressures. Land trusts use a variety of tools such as conservation easements that permanently restrict the uses of the land, land donations and purchases and strategic estate planning. The Platte County Land Trust is a private, nonprofit, §501(c)(3) corporation dedicated to protecting open space, promoting responsible land use, and developing parks and recreational uses throughout Platte County by acquiring land and interests (easements) for those specific purposes.

Land trusts are excellent mechanisms for protecting and preserving land. However, they may be limited in the sense that the named land trust is designated to maintain and manage the land in perpetuity, without transfer to other entities. Furthermore, a land trust typically does not have the capacity to receive government revenues for the purpose of acquiring land and constructing and maintaining a Trail System. Finally, a land trust is typically not structured to handle the operation and maintenance responsibilities associated with a project like the Northland Trail Plan.

4. **Trails Foundation** - A foundation may be created that utilizes charitable contributions and grants specifically designated for trails-related purposes. In the current context, a trail foundation could be established to support the government's objective of creating, operating and maintaining the Northland Trail System. Foundations have been established all over the nation – such as the Johnson County, Kansas Parks Foundation, the San Mateo County Parks and Recreation Foundation, and the Dallas Trees and Parks Foundation – for the purposes of supporting parks, greenways and other recreational facilities. In many situations, a county's parks and recreation department may not have adequate resources allocated for expansion and improvement, or even for basic maintenance, of its facilities. A trail foundation may be instrumental in assisting the government with accomplishing its objectives. The most common mode of operation is for the foundation to be established as a §501(c)(3) corporation and to solicit tax deductible contributions from individuals, businesses and community organizations to supplement the existing parks, trails and services available in the community. While a foundation (in contrast to a public benefit corporation) typically is not involved in the actual creation, operation and maintenance of a community's trails, its objectives are ancillary or supportive, thereby adding value and strengthening those community assets by creating awareness, educating the public, sponsoring special fundraising events, and providing money to the primary entity (e.g., the County) in order to further its objective of developing its facilities (e.g., the Northland Trail System).
5. **County Ownership, Maintenance and Liability Issues** - Counties have sovereign immunity for all but two categories of tort lawsuits, and have capped liability where immunity does not exist. Accordingly, there is definite liability advantage to the County having ownership and maintenance of the Trail System.

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Furthermore, the County can utilize volunteers for maintenance and Revised Statutes of the State of Missouri (RSMo) protects such volunteers from liability (with limits). §537.118. It would be advantageous to accept land donations through the nonprofit organization or the trust, where feasible, and for the Counties (or district) to accept a transfer of that property interest for the purpose of developing, operating and even for maintaining the Trail System so as to retain the benefit of sovereign immunity, as well as more centralized decision-making functions.

6. **Summary** - While each of the foregoing organizations has beneficial attributes, and a governmental entity has definite liability-related benefits, the one organizational structure that provides the greatest levels of functional capability and flexibility is the public benefit corporation, especially in the context of the Steering Committee's objective of minimizing government visibility and the actual involvement of the respective Counties. Therefore, the Counties should consider the creation of public benefit corporations, with the following attributes and express purposes associated with the Northland Trail System:
 - a. **Tax-exempt status pursuant to §501(c)(3)** – with the caveat that this designation should not be sought until after the counties have completed any anticipated support for legislation, ballot measures or other political activities promoting the Northland Trail System (Note: because the political activities may not be a one-time effort, the counties should give careful consideration to the perceived importance of tax-exempt status, the level of political involvement to be exerted by the public benefit corporation, whether the dissemination of “educational” information, rather than actual political promotion, is an adequate role, and whether another nonprofit entity should be established solely for the purpose of providing political support)
 - b. Establish, promote, and provide support for the development, operation, and maintenance of the Northland Trail System;
 - c. Support and sponsor ballot measures;
 - d. Provide public education;
 - e. Accept land dedications and monetary donations, and facilitate land exchanges for the benefit of the Northland Trail System;
 - f. Make decisions and provide advice relating to the timing, location, and method of development, operation and maintenance of the Trail System, in accordance with the Northland Trail Plan;
 - g. Serve as a liaison between citizen organizations and developers;
 - h. Apply for and expend the money of federal, state, and local governments;

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- i. Make distributions to organizations that qualify as tax-exempt under §501(c)(3) for the purpose of advancing the Trail System;
- j. Hold land in trust for later transfer to the respective Counties for development of the public trails;
- k. Utilize conservation easements, in addition to traditional land conveyance mechanisms, to restrict land uses for the purpose of protecting undeveloped, natural, open spaces from development pressures.

H. RECOMMENDED ACTION:

1. The Counties should amend their respective comprehensive plans and formally adopt (by resolution) the Trail Plan as part of those comprehensive plans, thereby creating more legal force in support of the Trail Plan.
2. Add trails section to zoning code allowing increase in density in any district if the developer elects to build and/or dedicate trails. As with all dedication options, the provision would be subject in each case to approval of the County Commission in choosing to accept the particular property offered.
3. Enact a mechanism for a dedicated tax to support trail acquisition, development, and maintenance. Alternatives include the creation of a Regional Recreation District, specifically dedicated sales taxes, or a ½ cent Capital Improvement Tax, as recently approved by Platte County.
4. Alter subdivision codes to allow modification to lot size and dimensional requirements for preservation of open space or dedication/construction of trails. Standards would be required to ensure that the modifications are appropriate at the site and warranted.
5. Add provision to planned development zoning sections, incorporating Trail Plan by reference and creating as a condition of any planned development the dedication and/or construction of trails.
6. Alter the zoning and subdivision codes to provide that dedication of land (or dedication of land and constructed trails) shall count in calculating lot size, setbacks, or other dimensional requirements.
7. Amend the respective subdivision ordinances to incorporate express reference to the Trail Plan to place developers on notice of such development exaction requirements. The Trail Plan should also be incorporated into each ordinance by reference.
8. Create an administrative appeal process to provide the local government with the opportunity to correct improprieties without court intervention.

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9. Establish dedication provisions in the zoning/subdivision codes allowing easement, right-of-way or fee simple dedications, subject to approval (or option of) the County on a case-by-case basis.
10. Educate the public on the tax benefits of donation and assist owners by facilitating donations, possibly through use of a nonprofit "friends" of the Trail System or a trust.
11. Establish specific submittal and evaluation criteria for the dedication and acceptance of trails.
12. Nonprofit Organization – The counties should consider the creation of nonprofit organization(s) for the promotion and administration of the Trail Plan.
13. Each county should own and maintain the trail system within its jurisdictional boundaries.
14. Fee for public dedication of right-of-way. The Counties may wish to consider charging fees for acceptance of otherwise private roads to defray the cost of county maintenance of such roads and for the creation of trails along such right-of-way, or to receive fees in lieu of the creation of trails if the specific location is not consistent with the acceptance criteria.
15. Road design criteria. The Counties should ensure that road design criteria require bicycle lanes or other pedestrian design elements unless otherwise waived by the respective county engineer.

Any legislative lobbying, election, or campaign effort is off-limits for a §501(c)(3) organization; such activity may cause an organization to lose its tax-exempt status. However, educational and informational efforts are allowable and will not adversely affect an organization's tax-exempt status. There is a fine line between legislative lobbying and providing educational information. The distinction is not well defined; there is no bright-line test. However, if the information provided is objective and factual, and does not expressly promote a political agenda or position, there is a good chance that it would be found to be educational information (if challenged).

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TABLE 1
Attributes and Disadvantages of Types of Not-For-Profit Organizations.

	Public Benefit Corp.	Grantor Trust	Land Trust	Trails Foundation
Not-for-Profit	*	*	*	*
§501(c)(3)	*		*	*
Land Transfer	*	*	*	
Land Purchases and Acquisition	*		*	
Accept Charitable Monetary Donations	*	*	*	*
Assistance with Trail Maintenance	*			
Primary Role (Strategic decision-making, proactive involvement)	*			
Ancillary Support Role	*	*	*	*