

# DEVELOPMENT MANAGEMENT OVERVIEW

Prepared for the City of Cupertino

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## Introduction

Like many communities throughout the State, Cupertino is concerned about balancing the benefits of economic development with the effects of rapid growth. Impacts from growth can overwhelm a City's infrastructure and affect quality of life in the community. The City Council directed staff to evaluate ways to balance these issues, including a potential implementation of a community benefits program for development projects. The purpose of this overview is to present various methods to address growth, quality of life, and to provide a summary of development management approaches, including assessment of their benefits and constraints.

## History of Process

- General Plan

On December 4, 2014, Cupertino's City Council adopted an amended General Plan titled Community Vision 2040. The amended plan reflects community input, regulatory changes, best practices, and the desire to achieve community-building, sustainability, economic, and fiscal objectives. However, the City Council continued the considerations related to development heights, development allocations, and the potential for a Community Benefits Program until 2015. In May 2015, the City council voted to maintain current development allocations but also authorized staff to continue to study and collect public input on approaches to processing General Plan Amendments.

- Community Benefit Incentive Zoning

In early 2015, the City engaged Economic & Planning Systems, Inc. (EPS) to provide information regarding the advantages and disadvantages of incentive zoning based on study of a variety of existing Community Benefit Incentive Zoning (CBIZ) programs in California and to assist with discussions regarding a potential program in Cupertino.

- Growth Management

The City, with support from Burke, Williams, & Sorensen, LLP (BWS), also considered various alternative options to address growth and quality of life, including growth allocation programs and regulations implemented through General Plan land use designations and zoning.

## Summary of Development Management

The CBIZ and Growth Management programs studied reviewed for this study use a range of approaches to achieving community benefit contributions from new real estate development projects. In general, the programs generate community benefits using three principal approaches.

1. The program offers increased development potential (e.g., a density bonus) in return for a cash payment from the project developer;
2. The program offers increased development potential in return for project modifications and/or community improvements (e.g., affordable housing, parkland, green building features) provided by the developer; and

3. The program establishes a competition through which project proponents commit to providing community benefits in hopes of being selected as one of a limited number of project proponents to be allowed to submit a development application and seek entitlement.

### **Assessment of Community Concerns**

Residents and other stakeholders in Cupertino indicated throughout the General Plan and Development Management processes that the main areas of concern regarding development in the City are the following:

- Impacts on schools, such as facilities, land, and funding;
- Impacts on public facilities and utilities, such as libraries, community centers and utility systems;
- Impacts on public open space, parks and trails; and
- Impacts on transportation networks, including roadway congestion and transit capacity.

### **Community Benefit Incentive Zoning**

California cities have a long history of obtaining community benefits from real estate development through a variety of mechanisms, including fees, conditions of approval, and development agreements. Community Benefit Incentive Zoning (CBIZ) programs offer an alternative approach. CBIZ programs are structured around an exchange in which municipalities offer optional increases in development potential in return for public assets (or funds) desired by the community. The development incentive must be above what normally would be allowed and the public benefit must be beyond what otherwise would be required. Because these programs are optional, development outcomes vary based on the degree of participation in the plan. That is, some developments may not take advantage of the incentive while others will. The optional nature of the program creates increased uncertainty regarding the final urban form that ultimately will be achieved.

Additionally, the magnitude of the community benefit sought/expected must be equal to or less than the value of the incentive offered. In order to receive community benefits, the public sector creates value through the provision of an incentive (commonly increased development density). CBIZ programs are founded on the concept of "value capture." CBIZ programs must be carefully tailored to be attractive to project proponents and simultaneously achieve quality of life goals of the community. Program design and development should evaluate the range of potential development outcomes, including the built form and magnitude of expected community benefits, to ensure that the exchange of development rights for community benefits is desirable.

### **The Concept of Value Capture**

Cities and government agencies create real estate value with investments in public facilities and services (e.g., transit and utilities upgrades) as well as through changes to zoning code that increase the value of land. Typically, when the public sector creates value in these ways, landowners enjoy a financial gain in the form of higher land value, which is realized when they sell or develop their land. This increase in land value is an unearned financial benefit that accrues to the private sector, though it is generated (and commonly paid for) by tax-payer funded public entities. The term "value capture" reflects the situation in which the public sector reclaims some

of this unearned value created for the private sector by public sector activities. The State of California's Affordable Housing Density Bonus Law is an example of a value capture program. Under this State law, developers are granted additional density allocations in return for their development of affordable housing units, a policy goal for the State.

If the public sector seeks/expects to collect more value than is created, in the form of community benefits, it is unlikely that project proponents will use the program. Since the value of development incentives varies with market conditions, development incentives may be very valuable in a strong market but of lesser or no value in a weak market. Therefore, CBIZ programs respond to market conditions or anticipate that the program will not be used during periods of market weakness.

CBIZ requires a healthy real estate market with sufficient market value to support the incentives. For example, in order for a CBIZ program that seeks to capture value from an incentive (such as increased density or greater development potential) to be successful, there must be market demand to support the higher-density, higher-cost real estate products that are made available through the zoning change. Currently, Cupertino has strong residential and commercial real estate markets and is a viable candidate for CBIZ in this regard.

### **CBIZ Program Basics**

Literature on the topic of CBIZ programs establishes two primary types of programs, including "negotiation-based" and "plan-based" programs. Negotiated community benefits may occur in the context of a Development Agreement or other negotiation process. Plan-based programs are "formulaic" (the term used here) and typically are implemented in a "ministerial" fashion, without discretion.

#### Negotiation-Based CBIZ Program

Under a negotiated approach, the development incentive and associated community benefits package are jointly agreed upon between the municipality and the project proponent. That is, the CBIZ program does not define fixed relationships between incentives and required community benefits. Negotiated programs are relatively costly to administer, may be perceived by the community as opaque processes, and may be viewed as risky by the development community. However, these programs offer the flexibility to increase or reduce community benefit requirements to reflect changing market conditions. The primary advantage of negotiation-based programs is that the potential for the community benefits requirement may be crafted to reflect the economics of the proposed project and the current real estate market, while the disadvantage is that the negotiation process can be labor intensive and may not be practical (particularly for smaller projects).

#### Formulaic (Plan-Based) CBIZ Program

Under a formulaic approach, specific development incentives are made available in return for the provision of commensurate pre-defined community benefits. The principal advantage of a formulaic approach is the reduction of project risk, for both the development community and the municipality and community, due to program certainty and lower program administration costs. The key disadvantage is that the program cannot respond to unique project challenges or fast-changing market conditions.

## City of San Diego Case Study

In 2006, the City of San Diego adopted its Downtown Community Plan. The primary goals of the Plan are to increase development intensity in the downtown area and to provide new community amenities. To this end, the City developed a density bonus program in conjunction with the plan.

### CBIZ Plan Description

The City of San Diego offers a formulaic, plan-based CBIZ with clearly defined incentives. The program allows additional density bonuses (greater FAR) and/or regulatory exemptions in exchange for specific voluntary community benefits or predetermined cash payments. The plan includes a menu of potential options that offer a variety of ways in which projects may achieve greater density through the provision of community benefits. The Plan defines the following bonus options:

- *Retail along active streets* - exempts retail/commercial and public uses on the ground floor from FAR calculations on designated Main Streets and Commercial Streets;
- *Historical Resources* – excludes the gross floor area of a historic structure from FAR calculations if the character of the structure is rehabilitated;
- *Affordable housing* – offers a FAR bonus (applied to the residential component of a project) for projects meeting on-site affordable housing requirements (bonus varies with the type of affordable housing being built);
- *Parks and Public Infrastructure* – offers a “FAR Payment Bonus Program” under which, depending on a site's location, developers can choose to purchase density allowances up to additional 5.0 FAR over base zoning; and
- *Specific Amenities and Improvements* – offers increases in FAR in exchange for the provision of improvements or amenities (urban open spaces, green roofs, family units, right-of-way improvements, and employment uses).

There also is a component of the program that consists of a *Transfer of Development Rights Program for Parks and Historical Resources* in which the Plan determines eligible “sending” sites and “receiving” sites for development rights. The Plan calls for a “TDR Bank” or other mechanisms to facilitate transfers.

**Figure 1** below illustrates the magnitude of combined incentives (bonus FAR) that may be pursued within San Diego’s Downtown Community Plan area. **Figure 2** provides a summary of the incentive program, including both the benefit requirement and the associated incentive provided by the San Diego program.



**Figure 2 Community Benefit Incentives**

Public Benefit/ Development Amenity	Maximum FAR Bonus (addition to base FAR)	Notes
<b>Affordable Housing</b>	Formulaic	In compliance with State Density Bonus Law
<b>Urban Open Space</b>		Must meet Downtown Design Guidelines and be open to the general public between the hours of 6 AM and 10 PM everyday
10% of site	0.5	
20% of site	1.0	
<b>Three-Bedroom Units</b>		10% of units with a minimum of five three-bedroom dwelling units
50% of residential GSF	0.5	
80% of GSF residential	1.0	
<b>Eco Roofs</b>	1.0	To receive max bonus roof must be accessible to residents
<b>Public Parking</b>	Formulaic	1 square foot of parking earns 1 square foot bonus development entitlement
<b>FAR Payment Bonus Program</b>	5.0	Set in 2007 at \$15/sf and updated annually based on CPI; funds parks, open space, and right of way acquisitions
<b>Green Building</b>	2.0	Performance path (allows applicants to demonstrate level of sustainability) and prescriptive path (select from a menu of green building options)

Source: City of San Diego

**Plan Efficacy**

Under the San Diego plan (as of 2012), 13 out of 18 eligible projects had used at least one of the FAR bonus options. Five of the projects elected to use the affordable housing density bonus leading to 141 new affordable units in the downtown. Three projects built 3-bedroom units creating 87 new units total.<sup>1</sup> The popularity of eco roofs prompted staff to increase benefits

<sup>1</sup> Statistics from City of San Diego

requirements in the 2012 program amendments (i.e., the bonus FAR of 1.0 for an eco-roof, has been amended to 0.5 to 1.0 FAR depending on whether the eco-roof is accessible to residents). A recent update to the Plan has increased the maximum FAR available through the bonus payment program.

## City of Emeryville Case Study

The City of Emeryville's City Council adopted an updated General Plan in October 2009. The new Plan introduces a CBIZ program which offers height and density increases in return for community amenities.

### CBIZ Plan Description

The City of Emeryville's formulaic "Bonus for Community Amenities" program allows developers to participate in a voluntary points-based bonus system in which bonus development capacity is exchanged for community benefits. Intensity, height, and density bonuses are permitted after developers provide certain community amenities, including family-friendly housing, green architecture, and public open space. The Emeryville General Plan notes that the bonuses are "discretionary and contingent on excellence in design." The program gives points for specific elements that are public benefits.

Public benefits sought by the program include public open space, sustainable design, alternative energy, water efficiency, energy efficiency, public improvements, utility undergrounding, transportation demand management, family-friendly housing, neighborhood centers, support for small businesses, public art, public parking, bike stations, significant structures, EV charging stations, concealed mechanical equipment, universal design features, and other "flexible" public benefits. The points system for the community benefit elements is based on cost, desirability, quantity, and importance to the community. Points are redeemed for additional FAR, building height, and density. The bonus FAR increment is capped by zoning district.

The FAR bonus is calculated by multiplying (1) the total number of points divided by the maximum number of points by (2) the maximum allowed FAR bonus increment, as follows:

$$\text{(Number of Points/Maximum Points)} \times \text{Bonus FAR Increment} = \text{Bonus FAR Amount}$$

To qualify for a bonus, the public benefits provided must be significant and clearly beyond what otherwise would be required by City code provisions, conditions of approval, and/or environmental review mitigation measures. Development bonuses are in addition to any density bonuses for affordable housing. **Figure 3** summarizes the points that may be awarded to a project for specific community benefits defined by the Emeryville program.

**Figure 3 Summary of Emeryville Development Bonus Point System**

<b>Public Benefit/ Development Amenity</b>	<b>Maximum Bonus Points</b>
Public Open Space	50
Sustainable Design	35
Alternative Energy	50
Water Efficiency	35
Energy Efficiency	35
Public Improvements	50
Utility Undergrounding	50
Transportation Demand Management	35
Family Friendly Housing	50
Neighborhood Centers	35
Small Businesses	35
Public Art	20
Public Parking	35
Bike Station	35
Significant Structures	35
Electric Vehicle Charging Stations	35
Mechanical Equipment	20
Universal Design	50
Flexible Public Benefit	N/A

Source: Emeryville Zoning Ordinance

**Plan Efficacy**

The relatively new CBIZ program in Emeryville has been used successfully by one project, and another project is currently under review by City staff. During 2013, the City’s Planning Commission approved a mixed-use project that exceeded base zoning allowances. This project sought residential density that exceeded the base by 11 dwelling units per acre, a commercial FAR that exceeded the base by 0.24, and height that exceeded the base by 20 feet. Given the zoning and bonus program parameters, the project needed to achieve a community benefits score of 100 (the height sought was 100 percent of that allowed with community benefits). The project application successfully included commercial space that met the “Neighborhood Centers” criteria (35 points), provided sufficient “Energy Efficiency” upgrades (35 points), and featured reuse of a “Significant Structure” (35 points), earning the project a total of 105 points. The proposed community benefits were included as conditions of approval.

## City of Berkeley Case Study

The City of Berkeley initiated its Downtown Area Plan effort in 2005. In early 2012, after six years of effort and nearly two hundred public meetings, the City Council adopted the current Downtown Area Plan (DAP). The DAP includes the provision that all new buildings must provide significant public benefits and that buildings over 75 feet must provide additional, significant community benefits.

### CBIZ Plan Description

The DAP, through a negotiation-based CBIZ program, allows seven buildings to be built in the downtown area that exceed 75 feet, and these projects must provide significant community benefits beyond those that would otherwise be required. Three buildings up to 180 feet in height may be located in the "Core Area" and an additional four buildings up to 120 feet may be located in the "Core" and "Outer Core." **Figure 4** presents the land use map for Downtown Berkeley. The community benefits package required for projects over 75 feet might include affordable housing, supportive social services, green building features, open space, transportation demand features, job training, and/or employment opportunities.

The applicable public benefit requirements are to be included as conditions of approval and the owner shall enter into a written agreement that is binding on all successors in interest. The DAP also calls for establishment of a voluntary "Green Pathway" development review process that would provide a streamlined permit process for buildings that provide extraordinary public benefits.

### Plan Efficacy

To date, not one building over 75 feet in height has completed the Berkeley CBIZ program application process. The Residences at Berkeley Plaza (2211 Harold Way) is the first project over 75 feet to request approval under the DAP (it is potentially one of the three buildings that may be built to 180 feet in height). The project applicant submitted *Documentation of Project Significant Community Benefits for the City of Berkeley* on October 20, 2014, offering community benefits including a Project Labor Agreement, retention of an existing cinema, transportation demand management features, and privately-owned public open space. The City's Zoning Adjustments Board (ZAB) has met twice to hear public comments and to discuss the proposal. The ZAB's initial comments suggest that the proposed community benefits package is unsatisfactory and that additional meetings and negotiations will be necessary for the applicant to secure approval. Given concerns voiced by the ZAB, Berkeley's City Council is currently reviewing the proposed community benefit package offered by the project.



In most of the commercial areas, the maximum base height for a project without community benefits is 32 feet (typically 2 stories). Development above this Tier I level requires community benefits. The LUCE calls for projects seeking development above the base level to be sorted into two tiers (Tier II and Tier III). Tier II projects must provide community benefits that will be considered through a discretionary permit or Development Agreement (DA) process. Tier III projects require additional community benefits to be negotiated in a DA.

Santa Monica's five priority categories of Community Benefits are:

1. Trip reduction and traffic management;
2. Affordable and workforce housing;
3. Community physical improvements (e.g., streets, open space, neighborhood retail);
4. Social/cultural facilities; and
5. Historic preservation.

Santa Monica's approach to administering the community benefits program has evolved from that originally envisioned by the LUCE. In recent years, projects that sought to develop at levels above the base entitlement needed to pursue a DA with the City. Through revisions to the LUCE, the City now is seeking to require Tier II projects to pay higher existing nexus-based fees and provide affordable housing. These additional fees likely will take advantage of nexus studies that justify the maximum fee levels. As community benefits may constitute an exaction under California Law, the City seeks to demonstrate a proportional relationship between the community benefit payment and the impact of the project.<sup>2</sup> While the Planning Commission had considered a points system for Tier II projects, Santa Monica anticipated that this approach would be too challenging to implement.

### **Plan Efficacy**

In recent years, Santa Monica has relied heavily on the use of DAs to negotiate optimal community benefits. While the DA process is highly flexible and allows for a diverse range of potential benefits, these agreements commonly are time consuming and expensive to implement. Despite this, the market potential for development in Santa Monica is exceptionally strong and as of 2012, 24 DAs had been approved or were pending since the adoption of the LUCE in 2010. While developer interest in pursuing projects above base zoning in exchange for community benefits is strong, the City is seeking to curtail the number of projects that come through a DA process due to the time and cost burden for the City.

### **City of Mountain View Case Study**

Mountain View's City Council adopted the North Bayshore Precise Plan in December 2014. This plan established a CBIZ program in each of the Plan Area's four "Character Areas." The Plan also capped total non-residential net new development in the Plan Area at 3.3 million square feet.

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<sup>2</sup> See Planning Commission Report: Zoning Ordinance Update: Implementing Tier 2 Community Benefits, April 3, 2013.

Due to the constraint on development potential created by the development cap, the CBIZ program ultimately evolved into a commercial development allocation process.

### **CBIZ Plan Description**

The City of Mountain View General Plan recognizes incentive zoning as a strategy to procure desired community benefits. In accordance with this strategy, the North Bayshore Precise Plan offers a formulaic CBIZ program with bonus FAR available in exchange for specific categories of community benefits, including transportation improvements, green buildings, and public benefit or district-improvement projects. Each Character Area is governed by a tiered bonus FAR program in which a base FAR is allowed for all development, while higher tiers of bonus FAR may be earned through the provision of approved community benefits (up to a maximum FAR).

**Figure 5** presents the details of the tiered CBIZ system in place in North Bayshore.

Based on the North Bayshore area's transportation capacity and other planning considerations, the Precise Plan also established a cap on net new non-residential development (office, R&D office, industrial, service, and retail uses) in the plan area. With a strong economy creating intense localized demand for workspace, technology firms including Google and LinkedIn sought to expand in the highly desirable North Bayshore area. The Plan's development cap constrained supply which resulted in a shortage of office space development potential within North Bayshore.

As the Precise Plan process evolved, planning staff recognized that demand for office space would outstrip maximum allowable supply. In response, staff established "Precise Plan Bonus FAR Review Guidelines," which require applicants seeking bonus FAR to submit community benefit proposals for consideration in the commercial FAR allocation process (see text box at right). The guidelines established criteria for community benefit proposals and set a due date for submittals. With this approach,

#### **North Bayshore Bonus FAR Review Guidelines Qualifying Criteria**

- Consistency with Precise Plan vision and guiding principles
- Effect on trip cap and roadway performance
- Habitat enhancements
- Small business preservation
- Non-auto transportation improvements
- Enhanced community benefits
- District-wide improvements
- Project phasing
- Impact on staff resources
- Quality of application materials

**Figure 5 North Bayshore Precise Plan Bonus FAR Program**

<b>FAR</b>	<b>Gateway Character Area<sup>1</sup></b>	<b>Core Character Area<sup>2</sup></b>	<b>General Character Area</b>	<b>Edge Character Area</b>
<b>Base FAR</b>	<b>1.0</b>	<b>0.45</b>	<b>0.45</b>	<b>0.45</b>
<b>Maximum FAR</b>	<b>2.35</b>	<b>1.5</b>	<b>1.0</b>	<b>0.65</b>
<b>Tier 1</b>				
Bonus FAR	Up to 0.50	Up to 0.30	Up to 0.30	Up to 0.20
Benefits	Public benefit or district-improvement project, focusing on transportation	LEED Platinum or alternative green building standard; public benefit or district improvement project focusing on transportation	LEED Platinum or alternative green building standard; public benefit or district improvement project focusing on transportation	LEED Platinum or alternative green building standard; public benefit or district improvement project focusing on transportation
<b>Tier 2</b>				
Bonus FAR	Up to 0.50	Up to 0.25	Up to 0.25	
Benefits	Higher-performing green building; zero net green building; public benefit or district improvement	Higher-performing green building; zero net green building; public benefit or district improvement	Higher-performing green building; zero net green building; public benefit or district improvement	
<b>Tier 3</b>				
Bonus FAR	Up to 0.35	Up to 0.25		
Benefits	Higher-performing green building; zero net green building; public benefit or district improvement	Higher-performing green building; zero net green building; transfer of development; public benefit or district improvement		
<b>Tier 4</b>				
Bonus FAR		Up to 0.25		
Benefits		Transfer of Development		

(1) Applicants can only request one green building Bonus FAR above 1.5 FAR  
(2) Applicants can only request one green building Bonus FAR above 0.75 FAR

Source: City of Mountain View North Bayshore Precise Plan

the City created a competition for the limited amount of office development allocation in North Bayshore. In response, applicants sought to propose desirable projects with significant community benefits that would score well against the evaluation criteria.

When the submittals were in, the total square footage proposed far exceeded the cap on non-residential development. As a first step in the Bonus FAR Review process, City staff preliminarily evaluated each proposal based on the Precise Plan guidelines. Applicants providing sufficient community benefits were approved to be included in the commercial allocation process conducted by the City Council. Through the allocation process, the Council approved 1.4 million square feet of LinkedIn's requested 1.6 million square feet, 515,000 square feet of Google's 2.5 million requested square feet (enough for one piece of its envisioned four-part campus), and the full development requests from Broadreach Capital Partners and Rees Properties for smaller projects. The City Council made the allocation decisions based on the criteria in the Bonus FAR Review Guidelines. A particular community benefit noted by council, but not explicit in the criteria, was the economic diversity that would be supported by the LinkedIn proposal (as compared with a Google expansion, since that firm already is the top employer in the City). The Council's allocation decisions allow selected projects to move forward with formal development plans for review and approval (i.e., allocations are not guarantees of project entitlement).

### ***Plan Efficacy***

Mountain View's North Bayshore commercial allocation process resulted in a tremendous response from private sector project proponents. Due to the competitive nature of the process, applicants devised creative community benefit plans and offered extensive benefits, above what likely would have offered outside of a competitive process. From an economic perspective, it is notable that the competitive process allowed project proponents to make their own proposals based on their willingness to pay (i.e., the market determined the value of community benefits achievable).

While the North Bayshore community benefits strategy was highly beneficial for the City of Mountain View, the success is attributable to a "perfect storm" of unique local market conditions and a hot economy. In addition, the process was not without a cost. A City staff representative indicates that the process was very burdensome because the pooling of applications created a high volume of proposal review activity over a very brief time period. However, the staff member also indicated that the process was "exciting" and the City is very pleased with the outcome. While the City will continue to use the tiered Bonus FAR policy structure in future plan, it is uncertain whether the success of the North Bayshore Bonus FAR Program is replicable.

## **Growth Allocation Programs**

Growth management is a tool that has been used by California cities for over 40 years. Some growth management ordinances are related directly to a lack of inadequate infrastructure, such as limited sewer capacity, water constraints or school overcrowding, while others are adopted to maintain quality of life, stemming from factors such as open space and low population density. While growth management may be broadly used to refer to any tool a local government may employ to manage growth, such as urban limit lines, general plan designations or zoning, this section focuses on growth allocation systems that regulate the amount of development that can take place in any given period of time, such as programs that adopt a housing cap or a commercial square footage cap.

A number of cities in California have adopted growth allocation programs that include housing or commercial caps. The City of Petaluma, the first city in California to adopt a residential growth management system in the early 1970s, has a maximum annual allotment of units. In addition, the City of Livermore has set a cap on residential units every three years, with numbers ranging from 140 to 700 units. In these cities, development applications are reviewed on a first-come, first-served basis.

Other cities have implemented growth allocation programs that operate as a “competition,” whereby developers seek to obtain development allocations through an application process conducted on a fixed schedule, typically once a year. Generally, applicants will be required to obtain growth allocations in order to proceed with development. The City of Morgan Hill adopted such an approach in 1977 through a citizens’ initiative. The program is still being implemented and is described in more detail below. A few California cities have adopted competitive growth allocation programs, which were later eliminated or suspended. For example, the City of Brentwood implemented a competitive growth management program for residential projects (the RGMP) for a number of years during its greatest periods of growth. The RGMP was suspended in 2011 due to the recession. Similarly, in 2005, the City of Ventura eliminated its development cap and competitive process.

Cities that adopt programs with housing caps now have to comply with state regulations adopted in 1980, which require an ordinance that limits the number of residential building permits allowed to show that “such ordinance is necessary for the protection of the public health, safety, or welfare of the populations of such city . . . .” (Evidence Code section 669.5.) In addition, state law requires cities to adopt Housing Elements to provide for growth consistent with its Regional Housing Needs Allocation (RHNA) requirements. Therefore, cities have greater constraints than when growth allocation programs were originally adopted.

While the City of Cupertino currently sets city-wide development allocations over its General Plan horizon, it does not currently have a competitive or metering process in place. To assist Cupertino with evaluation of potential growth management approaches, the section below reviews the City of Morgan Hill’s current growth management program.

### **City of Morgan Hill Case Study**

The City of Morgan Hill’s Residential Development Control System (RDCS) relies on a competitive process to issue allotments to developers who wish to build residential units in the City. The City has used this system since 1977, prior to the implementation of the RHNA process by Housing

Element Law or the requirement for public health and safety findings when limiting residential permits. The impetus of the RDCS was to address the impacts of intense growth at a time when the infrastructure was not prepared to absorb the growth. During this period, population growth in the City was impacting the ability of the City to provide sewage treatment, water and other necessary municipal services. The RDCS was initially adopted by ballot measure and has been modified through ballot measures over the years to meet the City's needs and address exemptions. The City has also adopted implementing ordinances and policies.

The competition is based on an evaluation system that utilizes a series of standards and criteria set forth in the Morgan Hill Municipal Code. Morgan Hill's General Plan describes the RDCS in the following way, with allowances for small development projects:<sup>3</sup>

"This system shall provide for awards of development allotments based on the number of points scored for all development proposals biennial competition, or outside of a competition but based on requiring projects to achieve a minimum point score . . . . The point scale used shall take into account the impact of the proposed development on the following public facilities and services: water supply system, sanitary sewer and treatment plant, drainage and runoff, fire and police protection, traffic and other municipal services.

Proposed developments shall be awarded points for provision of schools, and related facilities, open space, orderly and contiguous development, public facilities, parks and trails, low-income and moderate income housing and housing for the elderly, and diversity of housing types; and for quality of architectural design and site design.

Small residential developments provide special benefits to the City by encouraging local developers, providing design variety, and promoting utilization of smaller lots. These developments do not impose as high a burden on municipal services as do larger projects, because their demands are incremental and they tend to be infill developments. Such small developments may be unable to compete with larger developments in terms of the levels of amenities provided. In order to treat small developments in a manner reflecting their benefits to the community, the Residential Development Control System shall be designed to provide for small development through appropriate means selected by the City Council, such as a separate small project competition and a more streamlined and less costly process."

The process takes places on an annual or biennial basis and developers who wish to build housing units are required to compete for the ability to obtain a development allocation. The process begins by dividing projects into categories for purposes of the competition, including "small" projects (7 to 15 units), multi-family housing, senior housing, and open market (more than 15 units).

Each year, the City Council of Morgan Hill determines the total number of allotments available for the next available competition, based upon a formula that calculates the number of units

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<sup>3</sup> Morgan Hill's General Plan, <http://www.morganhill.ca.gov/DocumentCenter/Home/View/1148>

available in the population cap divided by the number of years left in the RDCS.<sup>4</sup> The total number of allotments is then divided into the competition categories. City staff then evaluates projects according to a set of objective standards and criteria in 14 separate categories: (1) schools; (2) open space; (3) orderly and contiguous; (4) public facilities; (5) parks and paths; (6) housing needs; (7) housing types; (8) quality of construction; (9) lot layout and orientation; (10) circulation efficiency; (11) safety and security; (12) landscaping; (13) natural and environmental; and (14) livable communities. Morgan Hill's Municipal Code provides the specifics of the City's point system, which grants the highest number of points for the categories of schools, open space and housing types.

Morgan Hill's Municipal Code has been amended to implement the RDCS originally adopted by ballot measure. It sets forth specific and detailed guidelines for how points are earned in each category. For example Section 18.78.210 sets forth the following standards and criteria for obtaining points with respect to schools:

"18.78.210 - Schools.

A. The provision of school facilities and amenities as attested by agreement with the Morgan Hill Unified School District (MHUSD) to the extent such consideration is not in conflict with state law. (twenty-five points)

B. Standard and Criteria:

1. Sixteen points will be awarded for the payment of the district-adopted developer fees as provided by the Leroy F. Greene School Facilities Act of 1998. Full market value credit will be applied to a direct payment to the School District, for donated land, construction, or other services provided by a developer or project property owner that relate to provision of school facilities.

2. Up to six additional points may be awarded to a project where: At the time of application submittal or applicant commits as part of the first year of the first phase of the current application, a safe walking route exists or will be provided between the project site and existing or planned MHUSD schools, or charter school licensed by the MHUSD, the Santa Clara County Board of Education or the State Department of Education. A safe route is defined as continuous sidewalks and/or paved pedestrian pathways cross walks and traffic signals at designated street intersections between the project and a school site.

.....

3. Up to six additional points may be awarded to a project which:

a. Provides off-site pedestrian safety improvements or traffic safety improvements, including adjacent related roadway improvements near a MHUSD school. Any proposed pedestrian and traffic safety improvements cannot be redundant of improvements committed to in other categories. The cost of the

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<sup>4</sup> Growth Management, Morgan Hill 2035, Existing Conditions White Papers, City of Morgan Hill, May 16, 2013.

improvements must be valued at eight hundred twenty-five dollars per point per unit. The pedestrian improvements and traffic safety improvements must be made to an elementary school within three-quarters of a mile (straight line distance) of the edge of project site or the same improvements can be made to a middle or high school within the City's Urban Service Area (USA). (up to two points for safety improvements in proximity to a school and up to four points for safety improvements on roadways serving schools within the City's USA)

....”

With respect to schools, applicants will receive more points if they agree to provide safe routes to school or other pedestrian or traffic safety improvements. Because all projects are required to pay development impact fees, the payment of these fees does not differentiate the applicant pool. Other categories are treated similarly. Applicants receive more points if they provide a greater number of desired improvements.

The Planning Commission then considers all projects that have submitted applications, typically in one meeting, and projects with the highest number of points receive building allocations. Thereafter, the project applicant is allowed to apply for the land use entitlements required to proceed with the proposed project. All projects that receive RDCS allotments must enter into a Development Agreement. There also is an appeals process to the City Council for those entities who disagree with the Planning Commission's determination.

Historically, Morgan Hill has received more requests for allotments than the City has available. However, more recently, most projects have been able to receive allocations. In addition to the time required to process requests for allocations, Morgan Hill also must continue to monitor the projects to ensure compliance with the RDCS program.

While it appears that the RDCS has served Morgan Hill well, the administration has been time intensive and has required a significant amount of staff time. Morgan Hill currently is in the midst of its Morgan Hill 2035 project and is considering how to streamline and improve the system “to be more efficient, effective, and sustainable while maintaining its most important benefits: a population cap, pace of development; high quality development; and contribution toward community amenities.”<sup>5</sup>

### **Benefits and Constraints**

Growth allocation programs with a competitive process provide benefits to the public and ensure a good pace of development. However, they are administratively burdensome as they require a great deal of staff time to implement. Further, if proposed development is less than the annual allocation, there will be less competition for required allocations and fewer points will be required for a project to move forward. A complicated growth allocation system also may discourage developers that are not familiar with the system or City processes from filing applications. Where growth allocation programs set a cap on the number of residential units, they must be consistent with a city's Housing Element and also may draw more scrutiny if they are challenged in court.

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<sup>5</sup> See City Council Staff Report, Morgan Hill 2035: RDCS Update, April 1, 2015.

Lastly, once the criteria and standards in the program are established, it may be difficult to encourage flexibility and to respond to changing market conditions or City desires or trends. The fact that a number of cities have either eliminated or suspended previously adopted growth allocation programs and that Morgan Hill is looking at other approaches is indicative of the inherent difficulties in implementing such a program.

## **Land Use Regulation**

Growth and development have traditionally been regulated through land use designations and zoning. Cities implement and control growth and development through their General Plans, Specific Plans and zoning, and can address impacts of development through development impact fees and city regulations, such as enhanced design review regulations.<sup>6</sup> Cities also enter into negotiated Development Agreements with developers, which allow for developers to obtain vested rights and for the City to negotiate desired community amenities to address the impacts of development.

In California, State Planning and Zoning Law allows the legislative bodies of cities and counties to establish their own procedures for the processing of amendments to their General Plans. While General Law cities, such as Cupertino, are limited to four (4) General Plan Amendments each year, cities may dictate the method used to process/evaluate any such amendments.

In addition to reviewing projects for General Plan consistency and quality of life goals, cities can also implement additional nexus fees (such as community facilities fees, transportation impact fees, utility impact fees, etc.) and additional design review guidelines to address the impacts of development.

## **Conclusions**

The following is a summary of conclusions based on the review of the various Community Benefit Incentive Zoning (CBIZ) models, Growth Allocation models, and the consideration of land use regulation as a community benefit model:

1. Formulaic zoning incentive programs (e.g., City of San Diego Downtown Community Plan) provide less discretion since the development incentives and community benefits are predetermined and codified by zoning.
2. Discretionary zoning incentive programs (e.g., City of Berkeley Downtown Area Plan) require protracted negotiation and discussion before the City can determine that a project applicant's offer of "substantial community benefits" warrants granting of a bonus in height or floor area ratio. Also, the lack of specific criteria can lead to lack of transparency, difficulty in administering the program and lack of consistency between projects. A discretionary CBIZ program also would require updates to the City zoning code.

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<sup>6</sup> Although not located in the United States, the City of Vancouver, British Columbia, Canada, has adopted a community benefits program that combines the city's ability to rezone development sites with community benefits. In Vancouver, developers are required to provide Community Amenity Contributions (CACs) when the City Council grants development rights through rezoning. CACs are in-kind or cash contributions that are used to fund community centers, libraries, parks and other community spaces. Such a program, however, would not be workable under California law.

3. Metering residential development annually (e.g., Morgan Hill, Brentwood, Livermore) would require changes to the recently adopted Housing Element and additional HCD review. The City also would need to ensure that any metering program would still allow its housing obligations to be met. Even if the process is implemented only for non-residential development, the program provides less flexibility and is more cumbersome to administer. Such a program would require a process that involves detailed criteria, scoring, and a specific checklist of community benefits, as well as deadlines for processing and project construction.
4. A development cap or metering approach establishes a supply constraint, which may support a competitive process. When market demand exceeds supply, projects would be required to showcase community benefits in order to be considered for processing. The Mountain View and Morgan Hill case studies offer good examples of this type of process. In both cities, competition for project entitlements has generated substantial public benefits from new development, but the programs are time and labor intensive for City Staff to implement and the success of the competition is highly dependent on market conditions. In addition, these processes introduce additional investment risk for development investors active in the community due to increased uncertainty about project approval.
5. Growth allocation programs implement growth planned in the General Plan, and can achieve community benefits. However, while these programs work well in years in which there are projects competing for development, in years during which there are fewer projects the community benefits offered in order to compete for allocations are not as significant.
6. Though no specific examples have been identified, a process that includes procedures for projects that require General Plan Amendments can provide the most flexibility, because development assumptions are not already built in and cities have discretion to amend their General Plans, except with respect to legal requirements for Housing Elements. This approach would provide the ability for the City to review a development proposal and determine if it meets the goals and quality of life standards of the City, such as through the provision of community amenities. If multiple proposals for general plan amendments are submitted, based on the case studies examined here, it seems likely to increase the community amenities offered by project proponents, particularly when economic conditions are strong.

In considering its options to address growth, manage development, and respond to the community concerns, Cupertino should consider implementing a program that achieves the following:

- Ability to achieve goals of General Plan
- Ease of implementation
- Desire for flexibility as opposed to specific requirements (as in a General Plan or zoning)
- Ensure a diverse and vital economic base
- Ensure the City can meet its housing obligations
- Ability to achieve orderly development of the City through a managed process
- Ensure that additional development can achieve/improve facility, service and quality of life standards for the community