ZONING INCENTIVES PROGRAM CASE STUDIES

This chapter is focused on the background of the incentive zoning programs in California, lessons learned from the case studies, and detailed case studies of six distinct community benefit programs used by various jurisdictions across the State.

Background

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. Throughout California, zoning incentive programs are establishing clearer, better-defined approaches to ensuring that community benefits from new real estate development projects fulfill unmet development objectives while also providing transparency to developers. Zoning Incentive programs commonly are founded on the concept of "value capture," an approach in which a public entity recovers value for public purposes. Public entities commonly create value with investments in public facilities and services (e.g., transit and utilities upgrades), as well as through changes to zoning codes that increase the potential value of land. Typically, when the public sector creates value in these ways, landowners enjoy an associated financial gain. However, value capture may be used to leverage specific outcomes of public interest or benefit that would not otherwise occur.

The State of California's Affordable Housing Density Bonus Law is an example of a zoning incentive value-capture program. Under this law, developers are granted additional density (i.e., the right to build additional market-rate units) in return for their development of affordable-housing units. Whenever a city offers planning and zoning flexibility, an additional increment of value is created, and it is appropriate for the project developer to share a portion of that value gain with the community for use toward a public benefit.

Emeryville

Miroo Desai, Senior Planner at the City of Emeryville, was interviewed by EPS to supplement case study research.

Motivation

The basis for the City of Emeryville's Development Bonus program was rooted in the 2009 verdict of the Palmer Case, where the court ruled that a City of Los Angeles affordable housing mandate violated state law. Due to this decision, inclusion of affordable rental units in market rate developments could no longer be upheld as a requirement. This decision meant that affordable housing production in California saw a sharp slowdown and, coupled with the dissolution of redevelopment in the state, ultimately prompted the City to develop their Bonus System Program in 2013.

Description

The City's formulaic 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, which could include 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”, and the program gives points for specific elements that are public benefits.

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:

(Number of Points/Maximum Points) x Bonus FAR Increment = Bonus FAR Amount

To qualify for a bonus, the public benefits provided must be significant and clearly beyond what would otherwise 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.

Modifications

Public benefits sought by the program originally included a detailed list of 19 different options. After a year and a half of this framework, the City noticed that some categories were being used by developers consistently, while others were never selected. Realizing that this pointed to imbalances between developer effort and benefit, the City revised and simplified these categories down to seven. **Table 1** shows the benefits sought in 2014, compared with the revised and still current list from 2016.

Table 1. Comparison of Emeryville Development Bonus Point System, 2014 vs. 2016

Original Program		**Revised Program (2016)**	
Public Benefit	Max. Bonus Boints	Public Benefit	Max. Bonus Boints
Public Open Space	50	Public Open Space	50
Sustainable Design	35	Zero Net Energy	50
Alternative Energy	50	Public Improvements	50
Water Efficiency	35	Utility Undergrounding	50
Energy Efficiency	35	Additional Family-Friendly Units	50
Public Improvements	50	Small Businesses	50
Utility Undergrounding	50	Flexible Community Benefit	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		
Concealed Mechanical Equipment	20		
Universal Design	50		
Flexible Public Benefit	N/A		

Some of the more specific categories were grouped together to become a single, less-nuanced category, and some were eliminated altogether. The City also revised all of the maximum bonus point numbers to 50, to further streamline the program.

Effectiveness and Reception

The program is still fairly new relative to typical development timelines, so in turn much of the results of the program have yet to be seen. However, there have been a number of small projects and one major project to take part in the program. The latter is known as the Sherwin Williams project and is now in construction. It consists of the redevelopment and new construction of four buildings containing 500 live-work units with 6,000 square feet of retail and gallery space. According to the project conditions of approval, the following provisions were tied to the granting of the project's density bonus:

- 17 Percent Affordable Housing Units
- West Oakland BART Shuttle Service
- Public Art Gallery and Community Room
- Building Pass Through
- Public Improvements and Utility Undergrounding

The benefits outlined above came out to a value of $7 million. This extracted benefit value was determined based off of five percent of the total construction valuation of the project, as determined by the Chief Building Officer.

Regarding smaller projects, the City has seen the "Additional Family-Friendly Units" benefit option being selected frequently. Another favored benefit has been writing a check to contribute towards "Support to Small Local-Serving Businesses".

The City also has an Affordable Housing Program (AHP), that requires developers to pay impact fees to mitigate the project's impact on the demand for affordable housing in the City, or alternatively, they can opt to provide on-site rental affordable units. The AHP impact fee has generated $2.2 million over the last five years (**Table 2**). The development bonus program works in conjunction with AHP, requiring at least half of a project's bonus points to be dedicated to the provision of affordable housing, as specified in **Table 3**. Nonresidential developments are required to pay an additional affordable housing impact fee.

Table 2. Emeryville Affordable Housing Impact Fees Fund

Account Description	2015 Actual	2016 Actual	2017 Actual	2018 Actual	2019 Actual	Total
58470 RESIDENTIAL IMPACT FEES	-		28,000	28,122		**56,122**
58480 NON-RESIDENTIAL IMP FEES	479,168	446,055	1,105,258	52,477	129,632	**2,212,591**
	479,168	**446,055**	**1,133,258**	**80,599**	**129,632**	**2,268,713**
					Fund balance as of 6/30/2019	**463,565**

Table 3. Bonus Points for Affordable Units in Project

Bonus Points Awarded	Rental Projects				Ownership Projects
	TOTAL	Very Low Income	Low Income	Moderate Income	Moderate Income
5	12.5%	2.8%	4.3%	5.3%	20.5%
10	13.0%	2.9%	4.5%	5.5%	21.0%
15	13.5%	3.1%	4.7%	5.8%	21.5%
20	14.0%	3.2%	4.9%	6.0%	22.0%
25	14.5%	3.3%	5.0%	6.2%	22.5%
30	15.0%	3.4%	5.2%	6.4%	23.0%
35	15.5%	3.5%	5.4%	6.6%	23.5%
40	16.0%	3.6%	5.6%	6.8%	24.0%
45	16.5%	3.7%	5.7%	7.0%	24.5%
50	17.0%	3.9%	5.9%	7.2%	25.0%

Table 4 outlines how additional fee payment affords bonus points to these nonresidential developments. The Emeryville Municipal code gives the following example to explain the fee payment:

"If the current fee for nonexempt uses were four dollars ($4.00) per square foot, to earn thirty (30) points, an additional fee of two dollars and forty cents ($2.40) per square foot would be required (sixty percent (60%) of four dollars ($4.00)) for a total of six dollars and forty cents ($6.40) per square foot. A use type that is normally exempt from the affordable housing impact fee would not pay the base fee of four dollars ($4.00) per square foot, but would pay the fee increase of two dollars and forty cents ($2.40) per square foot."

Table 4. Bonus Points for Nonresidential Uses

Bonus Points Awarded	Additional Fee
5	10%
10	20%
15	30%
20	40%
25	50%
30	60%
35	70%
40	80%
45	90%
50	100%

According to the City, the Development Bonus Program is regarded to be positively received and accepted by developer applicants. There have not been complaints expressed or clarifications needed, and the perception is that it is a clear program with straightforward requirements.

San Francisco

Carly Grob, Senior Planner at the City of San Francisco, was interviewed by EPS to supplement case study research.

Description

The City of San Francisco affords additional density to developments through the programs described below.

HOME-SF

Established in 2017, the optional program is designed to incentivize building more affordable and family-friendly housing in neighborhood commercial and transit corridors. HOME-SF grants density bonuses and zoning modifications for mixed-income projects that set aside 20 to 30 percent of units for low, middle and moderate-income families. Family-friendly housing is also incentivized if the project includes 40 percent two or more-bedroom units.

100% Affordable Housing Bonus Program (AHBP)

The AHBP was developed in 2016 to offer incentives to developers who built projects for solely for low and very-low income households. The incentives offered include additional height and density. Compared to HOME-SF, the eligibility requirements are not as stringent.

Analyzed State Density Bonus

The Program offers a streamlined process for developers requesting a density bonus that is aligned with the State Density Bonus. Affording up to a 35% increase in density, it includes a set menu of concessions, incentives, and waivers that project sponsors may choose to help achieve their bonus in an expedited fashion.

Individually Requested State Density Bonus Program

If a developer's project doesn't meet the requirements for the Analyzed program or HOME-SF, it can use this program to still achieve additional density. Other incentives may be requested through this individual review process. This customized approach also allows for more zoning district options than the Analyzed State Density Bonus Program.

Transferable Development Rights (TDR)

Transferable Development Rights is a land use planning tool that enables a parcel's unused development rights to be allocated to a different parcel, giving the advantage of adding more density and therefore more value to the receiving development. For the selling parcel, an idle property right is turned in to payment. From a city perspective, they receive the benefit of maintaining overall density, enabling selling parcels to unlock funds for preservation or other community-beneficial purposes, and in some case, receiving an administrative fee for overseeing a transfer.

San Francisco created its TDR Program in 1985, as a response to a boom in high-rise office towers and subsequent anxiety over potential demolition of historical buildings. At the same time, the City simultaneously downzoned all of the Downtown Commercial C-3 district, capping the FAR at 9:1. This move served to make TDR in high demand for developers looking to exceed their now diminished development rights. Originally, the program was only available in the C-3 district, but within the district sending and receiving sites could be located anywhere (not limited to direct proximity). This allowed for a broader and more useable TDR marketplace.

The Central SOMA Plan's Special Use District extends the program to historic buildings and 100% affordable housing sites in the Plan area. It allows purchase of TDRs from both public and private properties in the Plan area or the Downtown's C-3 Districts for a portion of the FAR. The maximum amount of TDR that is eligible for transfer is the difference between the allowable gross FAR permitted and the gross FAR of the existing development on the site.

The City's Planning Department does not serve as a broker of sales but they do oversee the program, monitoring TDR transfer, use, and cancellation. They are also responsible for approving applications, reviewing status reports and preservation plans, and updating a TDR database. [3]

According to the latest numbers from a 2013 report by Seifel Consulting, 2.3 million square feet of unused, certified TDR are in the marketplace and an additional 2.7 million square feet of TDR is eligible to be certified on private properties but has not yet been certified.

Table 5. FAR Limit on TDR Transfer Parcels by District

Transfer Lot District	FAR
C-3-S	5.0
C-3-C	6.0
C-3-G	6.0
C-3-O (SD)	6.0
C-3-R	6.0
C-3-S (SU)	7.5
C-3-O	9.0
P	7.5

Source: San Francisco Planning Department.

Modifications

HOME-SF

Initially, the HOME-SF program included only one option of bonus, which included an additional 30 percent of density or two additional stories. The City was hearing that developers generally weren't interested in the two-story bonus, as this specific jump would reclassify a project as a high-rise, which would thus result in raised construction costs and other constraints. Only one project was approved under this structure. After a year in place, the City revised the program to introduce the three tiers that are currently in place. Now the City has 8 or 9 HOME-SF projects that have utilized the tiered system, using mostly the first or second options.

The tiered system is temporary but the Planning Department would like to see it made permanent, as it seems to be leading to increased density.

The program also originally required a conditional use application, which meant that the Commission had to find the project necessary and desirable for the community. Now, however,

[3] EPS made multiple requests to the San Francisco Planning Department for a copy of the most recent TDR database, however this information was never shared.

the program has its own project distinction, and while it still has to go to the Commission for approval, the stipulation that it be necessary and desirable for the community no longer applies.

Table 6. HOME-SF Tiered Benefit System

	Zoning Modifications Awarded	Additional Height Awarded Above Existing Height Limit	On-Site Affordablility Requirement
Tier 1	Relief from Denisity Limit. 7 predetermined zoning modifications.	No Additional Height	20-30%
Tier 2		1 Story	25%
Tier 3		2 Stories	30%

Source: City of San Francisco Planning Department

<u>Transferable Development Rights (TDR)</u>

The program has seen a number of refinements over the years. In addition to extending the geography of the eligible transfer district, and expanding the transfer sites category from beyond historic structures, the City has made amendments to allow development rights to be transferred freely across the four types of downtown commercial zoning districts, which include office, retail, general commercial and support services. Prior to the amendment, they could only be transferred across like commercial zones.

The City also made improvements on the administrative side to start recording transfer details. From the program's beginnings all the way to 2010, TDR sale prices and transactions were not required to be recorded. This lack of recordkeeping made it so that the City did not have an accurate pulse on the market for TDR.

Effectiveness and Reception

<u>HOME-SF</u>

Because this program cannot be applied in form-based zoning districts (most of which are located in the east side of the City) it has therefore been a useful tool for increasing density on the west side of the City. These western neighborhoods haven't been particularly receptive to the changes though. The City has seen a lot of pushback occurring from residents concerned over impact neighborhood on character – introducing higher-density development into areas where it has generally been lower.

In terms of utilization, ten projects have taken advantage of the program, including those that were approved before the tiered system was introduced. Small and midsized projects, ranging from 10 to 20 units, are more often adding only a single story. This addition seems to be the "sweet spot" between a visual perception that is not overly bulky and a more profitable development.

<u>100% Affordable Housing Bonus Program (AHBP)</u>

According to the Planning Department's projections, they anticipate that the program could yield as many as 5,000 new affordable units over the next 20 years.

<u>Analyzed State Density Bonus</u>

The City does not have any projects that have taken advantage of the Analyzed State Density Bonus.

Transferable Development Rights (TDR)

The TDR program is often viewed as a very successful program, due to the fact that it has been able to take advantage of millions of developable square feet that would have otherwise sat idly or forced out the presence of landmark structures in the City. Nearly 100 historic buildings around the City have sold their TDR, and while this is a success for the program, it is worth mentioning that these buildings could be at somewhat of a disadvantage in the future. Should they ever need to grow or change their physical buildout, they are restricted from adding square footage.

While there seems to be a strong supply of TDR from the most recent counts, its desirability is handicapped by the fact that the TDR is held by relatively small blocks that on their own wouldn't warrant enough value to a developer on an individual level. Therefore, assembling of multiple sites is required, creating a hurdle and disincentive from a potential buyer's perspective.

San Francisco's program allows third parties such as developers with entitled or proposed projects, brokers, investors, and financial institutions to own TDR. In this system, rights are often not readily implemented due to holder speculation that their value may increase with time. Based off a recommendation from the Seifel report, the City does appear to now require unused or expired TDR to re-enter the market, however, it is unclear what specific timeframe these rights are held to.[4]

The 2013 Seifel Report made a number of recommendations for the program going forward, which included annually reporting on TDR certification, use, and market pricing. The report also suggested implementing a property and transfer tax on TDR transactions based on price upon transfer. It is yet to be seen if these recommendations have been carried through.

Sunnyvale

Amber Blizinski, Principal Planner at the City of Sunnyvale, was interviewed by EPS to supplement case study research.

Description

Within the City of Sunnyvale, the Peery Park Specific Plan was researched because of its hybrid structure, consisting of both defined and negotiated benefits. Adopted in 2016, the Specific Plan details land use types and infrastructure needed for a 446-acre industrial part of Sunnyvale. The intent behind the Plan's Community Benefits Program is to maximize public benefits while preserving project feasibility.

The Program uses a tiered system, with the base tier consisting of the lowest maximum permitted FAR percentage and three successive tiers of increasing maximums. As permitted FAR

[4] Seifel Consulting. *TDR Study: San Francisco's Transfer of Development Rights Program*. San Francisco Planning Department, 2013, pp. 1–83, *TDR Study: San Francisco's Transfer of Development Rights Program*.

increases, levels of required Community Benefits provisions increase accordingly. The different tiers also require specific application processes and different approval authorities. Requirements are further differentiated between Futures Sites and all other sites.

Defined Community Benefits

The defined benefits indicated the maximum increase in FAR percentage, from five to 17 percent. Every benefit with the exception of Childcare offers a tiered calculation method, affording more FAR for stronger benefits afforded.

1. Innovation-Friendly Development
2. Open Space/Landscaping
3. Publicly Accessible Open Space
4. Public Access Easement
5. Retail
6. Childcare
7. Publicly Assessible Recreation
8. Parking
9. Green Benefits

Flexible Community Benefits

Under the flexible benefits, the maximum increased FAR percentage is determined through negotiations with the City.

1. Innovation Anchor Facilities
2. Transportation/Streetscape Improvements
3. TDM Programs or Facilities
4. Sustainability Project Elements
5. Community Facilities or Services
6. Community Programs
7. Community Benefits Fund
8. Other Community Benefits

Modifications

There have been no changes or modifications to the plan, due to the fact that all available square footage has been used. There is however talk of updating the Specific plan to increase capacity, which will be further addressed toward the end of 2019.

Effectiveness and Reception

Every single project has taken advantage of the Green Benefits option, as developers are generally already used to incorporating such requirements. Retail and public open spaces are also popular options; however, none are built yet.

The City has collected $2.4 million in flexible community benefits, which are due at occupancy. Because most projects are still under construction, the City is assuming they will collect another $7 million once additional projects are complete.

From the City's perspective, the Program has been very beneficial. Taking advantage of their flexible community benefits fund to provide a local match, they applied for and were awarded a Metropolitan Transportation Commission (MTC) grant to engage with Santa Clara Valley

Transportation Authority for a shuttle service within the specific plan. Other City Council priorities that have benefited from the funds include upgrades to fire stations and the construction of a new Civic Center.

San Diego

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.

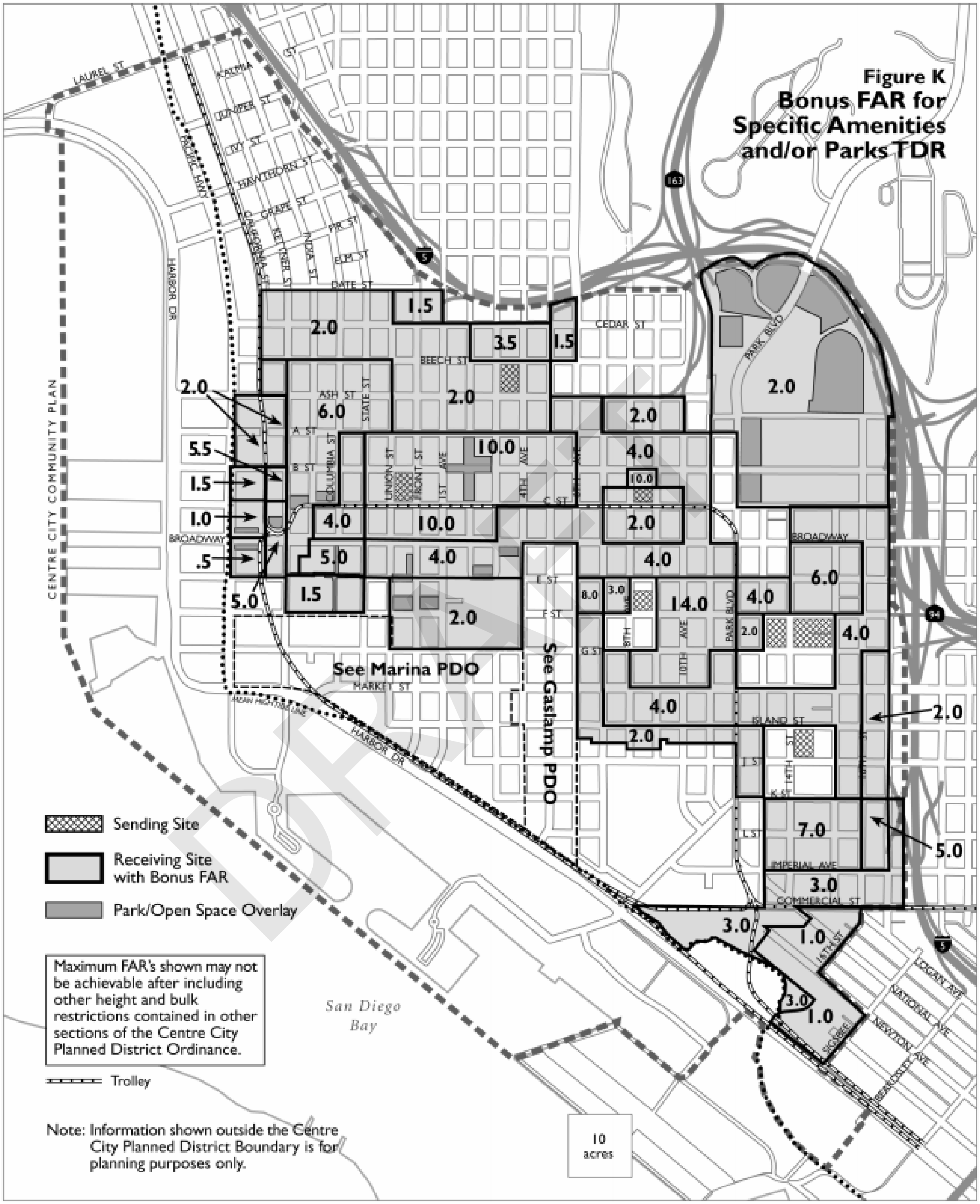
Description

The City of San Diego offers a formulaic Floor Area Ratio Bonus Program (FARBP) 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:

- *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);
- *Urban Open Space* – requires a portion of the site to be allocated for urban space, with Covenants, Conditions, and Restrictions (CC&Rs) recorded to ensure ongoing maintenance and use.
- *Three-Bedroom Units* – grants a bonus if 10 percent of dwelling units are three-bedrooms.
- *Eco-Roofs* – supports reduced storm water run-off, lower energy consumption, and decreased urban heat island effect.
- *Employment Uses* – calls for the provision of employment uses within projects.
- *Public Parking* – offers a square foot of FAR bonus for every square foot of dedicated public parking area.
- *FAR Payment Bonus Program* – allows FAR to be purchased. Fees are used to fund public parks and enhance public right-of-way improvements.
- *Green Building* – offers bonus for projects achieving a targeted level of building performance.

Figure 2 below illustrates the magnitude of combined incentives (bonus FAR) that may be pursued within San Diego's Downtown Community Plan area. **Table 7** provides a summary of the incentive program, including both the benefit requirement and the associated incentive provided by the San Diego program.

Figure 2 Map of Bonus FAR Provisions



Source: San Diego Municipal Code

Table 7. Community Benefit Incentives

Public Benefit/ Development Amenity	Maximum FAR Bonus (addition to base FAR)	Notes
Affordable Housing	Formulaic	In compliance with State Density Bonus Law
Urban Open Space		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	
Three-Bedroom Units		10% of units with a minimum of five three-bedroom dwelling units
50% of residential GSF	0.5	
80% of GSF residential	1.0	
Eco Roofs	1.0	To receive max bonus roof must be accessible to residents
Public Parking	Formulaic	1 square foot of parking earns 1 square foot bonus development entitlement
FAR Payment Bonus Program	5.0	Set in 2007 at $15/sf and updated annually based on CPI; funds parks, open space, and right of way acquisitions
Green Building	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

Modifications

After one year of being in place, the Program was amended to improve bonus details. The refinements included implementing a sliding scale for the eco-roof bonus calculation, fine-tuning the applicability of the three-bedroom unit bonus to primarily residential projects, and removing the Public Right of Way improvements program from the offering entirely.

Furthermore, in 2012, the elimination of redevelopment and the loss of tax incremental funding led to additional modifications to expand areas where FAR could be purchased and increase amounts available for purchase. This alteration served to increase revenues for the Bonus Fund.

Plan Efficacy

Table 8 outlines how the FARBP has been utilized since its inception, examining how many projects have used a single FAR bonus, as well as those that have used multiple. The City notes that as the economy recovered from the Great Recession, developers did not maximize their FAR potential, leading to many 5-6 podium buildings.

Table 8. Overall Utilization of the FARBP (as of 2017)

Item	# of Projects	Percent of Total
Total Projects Eligible to Utilize FARBP Since 2006	85	N/A
# of Projects which Utilized the FARB	33	39%
# of Projects Utilizing Multiple FAR Bonuses	20	24%

Source: City of San Diego

Table 9 looks at how often specific bonus programs were utilized and how many additional residential units were generated to increase the amount of housing downtown. In 2017, the most recent year the program was analyzed, the City stated that the FAR Payment Bonus Program had been the most popular for built projects, followed by Eco-Roof. For approved projects, Green Building was the most popular followed by Affordable Housing.

Table 9. Specific Bonus Program Utilization and Results (as of 2017)

FAR Bonus Program	# / % of Projects	Bonus DU	Results / Comments
FAR Payment	16 / 19%	478	Over $10 million generated for public parks and enhanced ROWs.
Green Building	16 / 19%	522	Construction of more sustainable buildings.
Eco-Roof	12 / 14%	194	Landscaped roofs provide bio-filtration and building cooling.
Affordable Housing	14 / 16%	849	Production of 377 affordable DU.
Three-Bedroom Units	10 / 12%	223	Production of 242 3-BR DU.
Urban Open Space	5 / 6%	129	Production of 5 open spaces areas.
Employment Use	1 / 1%	n/a	Sempra Building
Public Parking	1 / 1%	104	Required by DDA for 7th & Market; 200 public spaces.
Total DU generated from FARBP		**2,499**	

Source: City of San Diego

Issues and Opportunities

The 2017 Analysis report of the FARBP program identified areas for enhancing the specific FAR Bonus Programs. These comments and recommendations are summarized below:

<u>Urban Open Space:</u> Although the program has not been widely utilized, its bonus levels were deemed appropriate and changes were not recommended.

Three-Bedroom Units: The City is concerned that market-rate projects may be occupied by younger renters in roommate situations, rather than families, which may or may not be an unwanted consequence. The primary question posed was whether the maximum size limit should be increased from 1,300 to 1,600, as the current size is posing design issues for developers.

Eco-Roofs: The program may have potential enforcement issues in the future regarding maintenance. The price-per-square-foot of the FAR Bonus Payment was set at $15 per sq. ft. in 2007 and is adjusted annually for inflation on July 1st of each subsequent year based on the Consumer Price Index (CPI) for urban San Diego County.

Public Parking: It appears to be undesirable to developers, possibly stemming from the cost of constructing parking as well as issues related to allowing the greater public into a building's garage. In addition, there is no minimum threshold or design criteria for public parking which could present problems.

FAR Payment Bonus Program: Has been the most popular, and provides highly desired funds for park and PROW improvements.

Green Building (GB): As the California Building Code has increased requirements around sustainable building, these program goals are easier for developers to achieve as they are already being required.

The analysis notes that there is a degree of competition between the various programs and over-incentivizing one could preclude the use of another. Weighting or amount of incentive for a program should thus closely correlate with its public benefit.

Culver City

Michael Allen, Currenting Planning Manager at the City of Culver City, was interviewed by EPS to supplement case study research.

Description

The City of Culver City established their City-wide Community Benefit Incentive Program in 2008.

The Program affords an increase from 35 units per acre to 50 (a 40% increase) for mixed-use projects. The public benefits that trigger the bonus allowance are described as a menu of options to developers, and include the following:

- Streetscaping improvements
- Public parking (in excess of that required by code)
- Pocket parks and open space (minimum 5,000 sf)
- Green construction
- Other benefits as approved by Council

In general, benefits must be provided in addition to what may be required as part of project approvals. The Community Benefits Contribution, defined as the developer's cost to provide the Community benefits, is a proportional share of the Additional Base Density Value. This additional value is defined as the profit derived from the additional number of units permitted through increased density. The benefits must also be incorporated on-site, unless the developer is providing an in-lieu fee to fund an off-site improvement.

To derive the required quantity of developer contribution, the number of additional units is multiplied by 15 percent of the market value of the unit. This value is agreed upon by the City and developer after being reviewed by a third party. Once the 15 percent is determined, 50 percent of this “value enhancement” is set as the requirement for community benefits.

Culver City also requires robust community engagement throughout the process. Three community meetings must be hosted by the developer, separate from those stipulated as part of the entitlement process. These are meant to gather community benefit buy-in or feedback, as even with the predetermined menu of benefits, developers still need to get community buy-in. Community comments are expected to be reported back to the City Council for changes to be made. According to Planning staff, however, they have yet to see projects follow through entirely with this process.

Modifications

The program was updated in 2017, nine years after its establishment, to respond to more relevant City goals and priorities. Released in a resolution, the new version added affordable housing and mobility measures as community benefits, and removed public parking in excess of that required. The other remaining benefits include pocket parks and public open space, and streetscape improvements.

Effectiveness and Reception

From the perspective of the developer, the formula for determining the contribution amount is seen as complicated and confusing. When trying to evaluate the market value of the unit, this can yield a wide range, which reduces the developer’s ability to anticipate funds that will need to be set aside. Furthermore, the multiplication of 15 percent of the market value doesn’t appear to have any basis, besides the result of a negotiation by Council members.

The process for implementation could also be improved, as developers struggle with when to solidify their community benefits. The City’s current process is for the Council to first adopt a community benefit district before approving community benefits for a specific project.

Further modifications to the program are not currently in the works, but the Planning Department is aware of areas for improvement. To better react to changing priorities of the future, the City believes it would be prudent to be more flexible in how they are outlining community benefits. By providing a broader initial framework, they would be able to avoid the need for ongoing resolution amendments.

Planning staff ultimately believes that the most beneficial improvement would be to develop a long-range community benefits plan at a city-wide level. Ideally, this plan would already have community districts in place, and an associated, approved menu of options for each. By laying out districts, separate areas could focus more intently on separate needs, such as open space, transit, or affordable housing. The development of such a plan would benefit both developers and the community, as each stakeholder group would know what to anticipate.

Los Angeles

Giselle Corella, City Planning Associate at the City of Los Angeles, was interviewed by EPS to supplement case study research.

Description

In 1975, the City of Los Angeles created their first provisions for brokering the transfers of floor area. These provisions were standardized and codified in the Municipal Code in 1988, designated as the "Transfer of Floor Area Rights" (TFAR) Program, to apply to Downtown's Central Business District. Because the base Floor Area Ratio (FAR) in the CBD is set fairly low, the developer demand for unused floor area is high. This demand creates pressure on historic and other low-density buildings in the area to be redeveloped for more dense purposes. This pressure is relieved by permitting designated "sending" (e.g. low density) sites to sell/transfer their already-granted and unused floor area rights to parcels that are deemed eligible for receival by the City.

To be able to take advantage of the program, the proposed transfer must fit the following guidelines:

1. The increase in Floor Area generated by the proposed transfer is appropriate with respect to location and access to public transit and other modes of transportation, compatible with other existing and proposed developments and the City's supporting infrastructure, or otherwise appropriate for the long-term development of the Central City;
2. The transfer serves the public interest; and
3. The Transfer is in conformance with the Community Plan and any other relevant policy documents previously adopted by the Commission or the City Council.

The Los Angeles Central Library's air rights transfers is known as one of the programs most successful transactions. In the exchange, the US Bank Tower located across the street, purchased the air above the library to help them achieve the rights to construct their seventy-three-story tower. This resulted in a $50 million benefit to the City, which enabled them to rehab the Library's historic structure.

Modifications

The program has been modified a number of times throughout its history. It was first amended in 1985 to allow for larger transfers and to include an ordinance intended to preserve historic downtown buildings, specifically the City's Central Library.[5]

In 2010, a number of amendments were made including the stipulation that the City Planning Director will approve projects less than 50,000 SF, and projects larger than 50,000 SF go before Planning Commission for approval. Another amendment added new definitions to allow mixed use projects within 1,500 feet of rail transit stations to be eligible for transfers of additional floor area.

These 2010 amendments also included additional specifications regarding the public benefit payment. In its original form, the TFAR required developers to make a Public Benefit Payment to the City of $35 per square foot of transferred floor area, which was designated for affordable housing, open space, historic preservation, public transportation and public/cultural facilities. Today, the payments may also benefit job training and outreach programs, affordable child care; streetscape improvements, public arts programs, and homeless services programs.

[5] "Los Angeles, California." *Smart Preservation*, smartpreservation.net/los-angeles-california/.

The public benefit payment amount is now contingent upon the following formula:

"The Public Benefit Payment under any Transfer Plan shall equal: (1) the sale price of the Receiver Site, if it has been purchased through an unrelated third-party transaction within 18 months of the date of submission of the request for approval of the Transfer, or an Appraisal, if it has not; (2) divided by the Lot Area (prior to any dedications) of the Receiver Site; (3) further divided by the High-Density Floor Area Ratio Factor; (4) multiplied by 40%; and (5) further multiplied by the number of square feet of Floor Area Rights to be transferred to the Receiver Site."

Example: If Receiver Site with a Lot Area of 100,000 square feet (before any dedications) was purchased for $40,000,000 (through an unrelated third-party transaction within 18 months of the date of submission of the request for approval of the Transfer), the Public Benefit Payment under a Transfer Plan transferring 100,000 square feet of Floor Area Rights would equal: (a) $40,000,000 (the purchase price); (b) divided by 100,000 (the Lot Area of the Receiver Site); (c) divided by 6 (the High-Density Floor Area Ratio Factor); (d) multiplied by 40%; and (e) multiplied by 100,000 (the number of square feet of Floor Area Rights to be transferred) = $2,666,666.67 (or $26.67 for each square foot of transferred Floor Area Rights).

Effectiveness and Reception

Today the TFAR program is mainly a revenue generating program for the City. Besides the Central Library, the Convention Center and Staples Center have been mutually beneficial sources of transferable development rights. Because of its well-established history in downtown LA, and its multiple revisions and refinements, the program is well understood and utilized in the City. The current effectiveness, however, while still strong, is beginning to curb, as less and less rights are still on the table in the area. This situation has led the City to look more comprehensively at how they can realize community benefits.

The Downtown Community Plan, the relevant policy document for the program, is now in the process of being updated. A draft of the Plan outlines a broader Community Benefits Framework, which strives to prioritize affordable housing and the provision of on-site community benefits through a transparent process.

New development within the Downtown Plan Area may participate in the Downtown Community Benefits Program, as permitted by the applicable zoning regulations. The zoning will outline a base maximum and bonus maximum development capacity, and in some cases a base and bonus maximum story height. Development projects can elect to exceed the base maximum building size by participating in the Community Benefits Program.

Figure 3. Level of Incentives and Community Benefits for Residential Development

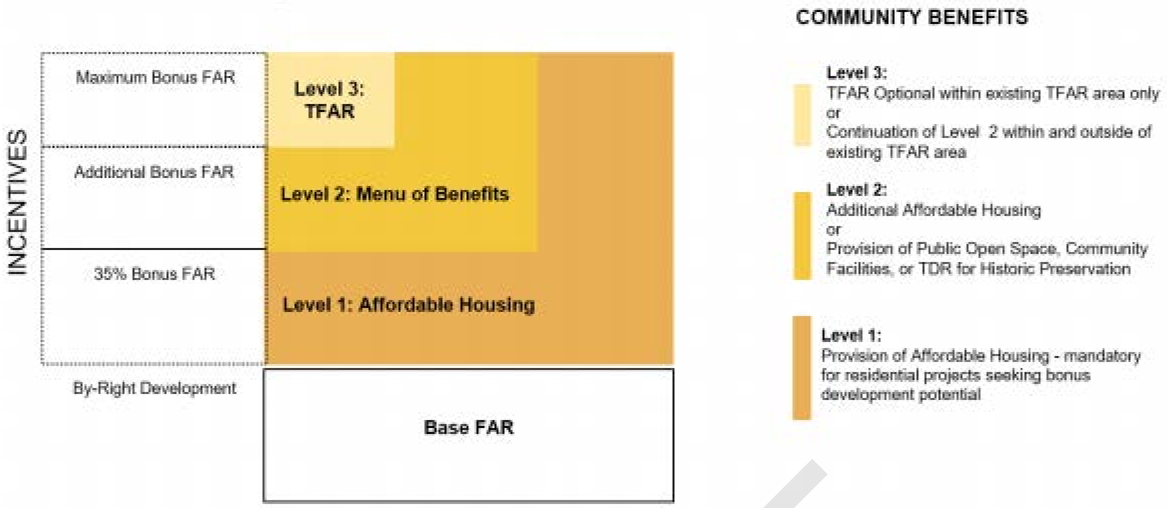
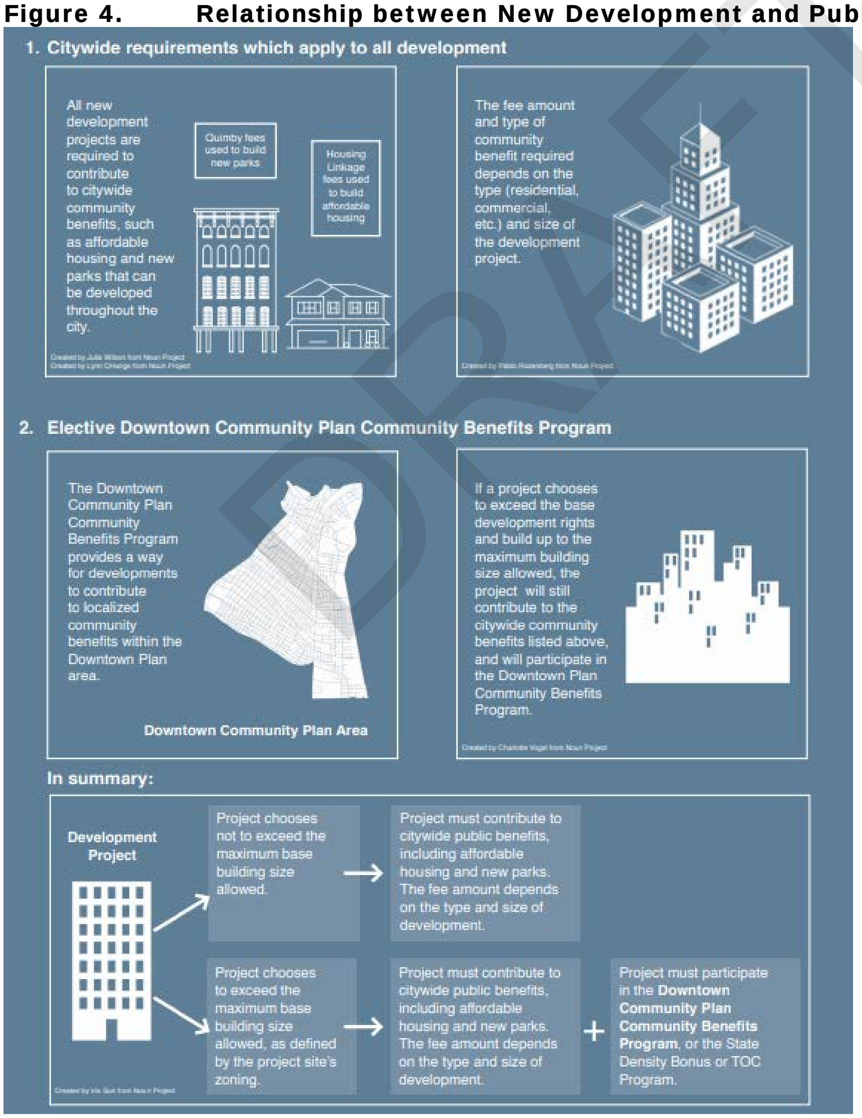


Figure 4. Relationship between New Development and Public Community Benefits



Source: City of Los Angeles

Case Studies: Lessons Learned

This analysis focuses on the case studies of community benefit programs in Emeryville, San Francisco, Sunnyvale, San Diego, Culver City, and Los Angeles. Based off a comprehensive review of each case study, the following findings were seen as key lessons learned from zoning incentive and TDR programs that the City of Oakland should take into account for future policy and program development.

1. ***Streamline community benefit categories.***

   The City of Emeryville revised their program categories from 19 down to seven. Some of the more specific categories were grouped together to become a single, less-nuanced category, and some were eliminated altogether. This led to less confusion and better engagement with developers.

2. ***Anticipate that benefit categories will compete among themselves.***

   The City of San Diego recognized that there is a degree of competition between the various categories and over-incentivizing one could preclude the use of another. Weighting or amount of incentive for a program should thus closely correlate with its public benefit.

3. ***Design a flexible framework of benefits.***

   The City of Culver City advocates that to better react to changing priorities of the future, the Community Benefits program should not have too many rigid, detailed categories. By providing a broader initial framework, the need for future resolution amendments is diminished or eliminated. Their Planning staff ultimately believes that the most beneficial improvement would be to develop a long-range community benefits plan at a city-wide level.

4. ***Consider smaller-scale bonuses for smaller-scale projects.***

   With San Francisco's Home SF Program, small and midsized projects (ranging from 10 to 20 units) that have been approved for a bonus are often adding only a single story, even if they could add two. This one-story density bump seems to be the "sweet spot" between a visual perception that is not overly bulky and a more profitable development.

5. ***Offer a FAR payment bonus program category.***

   Several cities acknowledged that their simple fee payment category, rather than one tied to an explicit capital or programmatic need, was often the most commonly utilized option. In addition to being straightforward for the developer, this route gives the City discretion to decide how the funds would best be utilized based on current community conditions and needs.

6. ***Minimize restrictions to eligible TDR transaction sites.***

   The approach of allowing non-adjacent sending and receiving sites across zoning districts, taken by the City of San Francisco, has led to a more dynamic, appealing, and better-utilized marketplace.

7. ***Require unused or expired TDR to re-enter the market.***

   San Francisco's program has allowed third parties such as developers with entitled or proposed projects, brokers, investors, and financial institutions to own TDR. In this system, rights are often not readily be implemented due to holder speculation that their value may increase with time.

8. *Incorporate a public benefit payment to TDR transactions.*

The City of Los Angeles collects a fee from developers for processing the transfer. This fee can be put towards historic preservation, but also towards a range of other community benefits, such as affordable housing, open space, public transportation, public/cultural facilities, job training and outreach programs, affordable child care, streetscape improvements, public arts programs, and homeless services programs.