



**CENTER FOR COMMUNITY INNOVATION  
UNIVERSITY OF CALIFORNIA — BERKELEY**

Citywide Community Benefits  
Policies in Oakland



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## **Abstract**

Oakland has experienced a dramatic rise in privately-financed development projects over the last several years. After decades of suffering from a weak real estate market, Oakland has few policies in place that mandate benefits from these developments in return for the right to develop. Thus, unlike in many California cities, in Oakland there is no guarantee that residents will have access to the benefits of private development projects or that the projects will mitigate their negative impacts on surrounding communities. In response, community groups have used their leverage in the development approval process to negotiate community benefits agreements (CBAs), in which a developer commits to providing community benefits within a proposed development in exchange for community groups' support. While negotiations over CBAs have successfully increased the benefits in private developments and have served as a valuable tool for collaboration between community groups and developers, the ad hoc nature of these community benefits campaigns results in high costs to communities and developers, as well as uncertain outcomes for all stakeholders. This paper explores options for implementing a citywide policy regarding community benefits that could increase benefits within private developments and reduce the costs and uncertainty inherent in the project-by-project implementation of community benefits campaigns.

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## Table of Contents

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Executive Summary	2
Interview Respondents	3
Introduction	5
Background	9
Development Policy in Oakland	
Development in Oakland	
Community Benefits Campaigns and Agreements	
Data and Methodology	19
Themes	20
Paying the Price of the Community Benefits Negotiations Process	
Balancing Uncertainty and Flexibility	
Defining Community	
Creating a Development-Friendly Environment	
Producing Real Benefits	
Taking City Initiative	
Policy Alternatives	27
Menu Point System	
Incentives for Negotiating a Community Benefits Agreement	
Community Impact Reports	
Community Standards Policies	
Attaching Requirements to Discretionary Decisions	
Recommendations	41
Bibliography	43
Appendix A: A Summary of Community Benefit Agreements Nationwide	49
Appendix B: Data and Methodology	54



## Executive Summary

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Oakland has few policies to ensure that private development projects benefit the communities in which they are located. While the city supports these projects through infrastructure investments, programmatic planning resources, permit approval, and often discretionary decisions regarding land use and project size and design, it does not require that private developments address their impacts on surrounding communities. Community benefits campaigns, and the agreements that result, are one tool for ensuring communities' needs are addressed on a project-by-project basis. The campaigns attempt to secure community benefits - such as housing, workforce, and livability benefits - in proposed developments in return for community support of the project. When the negotiations result in a community benefits agreement (CBA), community groups can enforce the developers' commitment to provide these benefits.

The CBA is thus a model for collaboration between the conflicting interests of community groups and developers as well as one valuable tool of the community benefits movement and its goal to secure public benefit in private development. However, the ad hoc nature in which community benefits campaigns are waged represents high costs to community groups, developers, and city governments, as well as uncertain outcomes regarding future developments. A citywide policy regarding community benefits may address this weakness and potentially build upon the strengths of the CBA as a tool for promoting responsible development.

Through a series of interviews with stakeholders in Oakland, I explore the potential opportunities and dangers of implementing such a policy, with attention to the common concerns expressed by developers and community groups. These themes - paying the price of the community benefits negotiations process, balancing uncertainty and flexibility, defining community, creating a development-friendly environment, producing real benefits, and taking city initiative - then become the criteria by which to evaluate five citywide community benefits policy options.

In order to increase community benefits in private development in Oakland, decrease the uncertainty faced by developers and communities, and address the concerns raised by Oakland stakeholders, I recommend, based on this analysis, that the City of Oakland:

1. Implement policies to require a **minimum threshold of community benefits in developments** requesting major discretionary decisions from the city
2. Adopt **community standards policies**, starting with an inclusionary housing ordinance
3. Adopt a **community impact report** policy
4. Encourage **community benefits agreements** on a project-by-project basis



## Interview Respondents

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This project is based in large part on information collected and opinions expressed through a series of interviews. It would not have been possible without the generosity of time of the following interview respondents (listed alphabetically):

Wendall Chin	Alameda County Central Labor Council
Peter Cohen	Asian Neighborhood Design
Elissa Dennis	Community Economics
Kim Diamond	Pulte Homes
David Dologite	East Bay Asian Local Development Corporation
Juliet Ellis	Urban Habitat
Amie Fishman	East Bay Housing Organizations
Michael Ghielmetti	Signature Properties
John Goldstein	Partnership for Working Families
Howard Greenwich	East Bay Alliance for a Sustainable Economy
Julian Gross	Attorney
Gilda Haas	Strategic Action for a Just Economy
Mimi Ho	Asian Pacific Environmental Network
Richard Holliday	Holliday Development
Madeline Janis	Los Angeles Alliance for a New Economy
Patrick Kennedy	Panoramic Interests
Jeffrey Levin	City of Oakland, Community and Economic Development Agency
Margaretta Lin	East Bay Community Law Center
Dan Lindheim	City of Oakland, Mayor's Office
Barry Luboviski	Alameda County Building Trades Council
Dwayne Marsh	PolicyLink

Andy Nelson	Urban Strategies Council
Jeff Pace	The Unity Council
Dawn Phillips	Just Cause Oakland
Sean Rogan	City of Oakland, Community and Economic Development Agency
Daniel Rossi	City of Oakland, Office of the City Attorney
Phillip Tagami	California Commercial Investments

## Introduction

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Urban population growth, combined with local governments' fiscal stress, has resulted in an increased demand for urban local government services and a decrease in the funds available to these governments for providing such services. Private investors are again attracted to central cities, seeking to meet the demands of the growing population, but raising equity concerns regarding residents' access to the benefits of this growth. In response, localities and community groups have become more involved with local economic development decisions and have begun to expect that public investments in support of private development, as well as municipal governments' discretionary decisions regarding development design and approval, result in benefits for local residents. To provide this public benefit and to ensure that the external costs of development are shared by the developer and local government, localities have attached requirements to development approval.

While it has long been common for localities to attach such requirements to development projects that receive public subsidies, it is becoming more common – and necessary – for urban governments to extend these requirements to developments that are funded entirely through private sources. Private investment in hot market areas is rising, with little need for incentives such as development subsidies, tax breaks, or public financing.<sup>1</sup> Thus many projects are built without subsidy and escape the requirements localities attach thereto. However, these private development projects, which typically offer market rate housing units, commercial, retail, and/or office space, represent costs to the municipality in which they are sited.

Developments, even those funded purely with private investment, rely on services supplied and value added by local governments. City staff invest time and resources in project plans and government bodies make zoning and planning decisions that allow private developments to proceed, thus conferring value to the land on which the development is located and adding to the future profitability of the development for its investors. New developments require public investments in infrastructure such as streetscape, lighting, and road improvements. Developments that bring new residents to a neighborhood can increase the municipality's cost to provide services such as police and fire protection and public transportation, as well as increase the demand for city-funded public goods such as libraries and parks. In fact, in states like California, where

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<sup>1</sup> In addition, localities' use of public subsidies as a strategy to not only attract investment, but to indirectly invest in public benefits through encouraging development, has proven to be ineffective at achieving both goals. "First, much research has suggested that . . . public subsidies to private development do not necessarily lead to benefits that 'trickle down' to the majority of local residents. . . . Second, many traditional supply-side strategies have been found to be ineffective because they tend to move business around rather than create new capital investment . . . and tend not to produce job and tax base benefits commensurate with the expenditure of local revenues." Reese 1998, p. 687.

the law limits the property tax revenues that cities can collect, studies have proven that “new developments cost local governments more to serve than they pay in taxes.”<sup>2</sup>

In addition, new housing, office, or commercial developments bring more people to a neighborhood, often accompanied by new investment in the neighborhood’s physical amenities. This can lead to an increase in housing demand and rising housing prices in the surrounding area. As a result, those who lived in the neighborhood prior to the development, especially renters, are at risk of displacement. Often they are priced out or forced out of their homes, as rents increase and landlords of low-cost housing sell their properties. While new developments attract new residents who can afford the area’s higher housing prices, displaced residents often cannot access the newly built units, thus contributing to an increased need for publicly-funded affordable housing units in the area. Therefore, communities that experience a surge in private investment may appear to be “revitalizing” while their local governments are unable to fund the increased demand for services the investment generates and local residents are at risk of displacement and unable to access the benefits of the investments.

Municipalities have employed a range of policies to address these concerns, from reactive (mitigating negative impacts of development) to proactive (creating public goods where none existed previously). When community members have determined that city policies do not sufficiently address the impacts of a given project, they have employed their own tools as well. With one such tool, a community benefits agreement (CBA), community groups enter into a negotiations process with a developer to set “forth a range of community benefits that the developer agrees to provide as part of a development project” in return for community support of the project.<sup>3</sup> Developers value this support, as it adds to their certainty of achieving final approval from the local government. CBAs are thus mutually beneficial agreements between community groups and developers.

Each community benefits agreement is a project-specific contract that results from a unique community campaign and negotiations process, whereby community groups and developers work to resolve and meet their often conflicting needs regarding a given development project. The CBA is thus one tool to facilitate negotiations that hammer out differences regarding community benefits, as well as a result of this process. Therefore, community benefits negotiations and the agreements that result provide one valuable model for increasing collaboration between community members and developers and for ensuring that development produces public benefit.

However, community benefits campaigns and negotiations require large time and resource investments from community groups, developers, and local government

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<sup>2</sup> Ryan 1991, pg. 402

<sup>3</sup> Gross, LeRoy, and Janis-Aparicio 2005, p. 9

agencies, which often mediate the process. While a CBA can increase certainty for developers by securing future support for a proposed project, often the time spent in campaigns and negotiations over community benefits and the unknown costs and timeline of these processes, can increase the uncertainty developers face in project planning. This may discourage development and hinder localities' growth potential. Therefore, in seeking to increase community benefits and decrease this uncertainty, are project-by-project community benefits campaigns the only way to address the impacts of development on communities? Or could a citywide policy regarding community benefits agreements create a more standardized and less resource-intensive process for achieving these ends?

This paper will explore this question in the context of Oakland, California. In the first section, I will present a brief background of Oakland's policies to address the public benefits of development in subsidized and unsubsidized projects as well as an illustration of the city's current development landscape. I will also briefly explain the mechanics and goals of community benefits campaigns and agreements as well as the long-term goals of the community benefits movement, in which the CBA is a strategic tool. In exploring the potential for using CBAs as a model for citywide policy, it is important to understand the goals behind this tool as well as the context in which it is used. This section will also offer a brief overview of two recent community benefits campaigns waged around large-scale private development projects in Oakland.

In the next section, through an analysis of interviews with key stakeholders, I will examine the strengths and weaknesses of CBAs as a model for addressing the costs and benefits of development, emphasizing the common themes among what are often thought to be disparate viewpoints. Options emerge from these common themes for citywide community benefits policies to increase the public benefit of development, reduce uncertainty for developers, improve community participation in the city's development approval and planning processes, and reduce the cost of the negotiation process. The third section will examine five of these policy options, project how each will meet the above goals, and present interviewees' key concerns. In the final section, I will present policy recommendations for Oakland to achieve these goals.

Oakland's recent experience with community benefits campaigns has led many involved or interested in development to look towards potential citywide policies that can increase both the certainty of benefits for community members and the certainty of costs for developers. Community groups and developers in cities across the country are approaching this same challenge and none have yet identified an effective policy to legislate the negotiations that produce a CBA. This is due in large part to the difficulties and challenges inherent in such a policy, which will be explored throughout this paper. Because these issues are currently being debated and explored, no models for implementing such a policy exist. This paper therefore intends to contribute to the ongoing discussion by drawing attention to the common concerns of the varied groups of stakeholders in Oakland development, thus bridging the gap between them and moving the conversation forward toward more effective policy-making.



## Background

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### Development Policy in Oakland

#### *Subsidized Projects*

Publicly subsidized development projects in Oakland are subject to different requirements regarding benefits, fees, and exactions than those that do not involve direct public subsidy. Table 1 describes the requirements the city places on publicly-subsidized projects, including the minimum subsidy amount and type of contract to which each requirement is applied.

**Table 1: Oakland places several requirements on projects with city contracts and those involving public subsidies<sup>4</sup>**

Requirement	Threshold	Type of contract
20% local business utilization requirement	\$100,000 – construction \$50,000 – professional services	All contracts
Equal benefits for domestic partners	\$25,000	All contracts
Living wage	\$100,000 – City Financial Assistance Recipient \$25,000 – contractor with city	All contracts but those covering construction
Prevailing wage	\$1,000	Construction
50% local employment and 15% apprenticeship	\$100,000	Construction

#### *Redevelopment Areas*

Oakland has ten Redevelopment Areas, covering approximately 40% of the city's land and a majority of its assessed value, including the downtown and industrial belt.<sup>5</sup> Per state law, 15 percent of all housing units built in Redevelopment Areas over a 10 year period must be affordable to low income residents. In addition, state law requires 20 percent of tax increment financing funds (TIF) from Redevelopment areas to be spent on affordable housing. Oakland exceeds this requirement by allocating 25 percent of TIF funds to this use. These requirements are placed on the Redevelopment Agency's activities and its use of TIF funds, giving the agency discretion in how and where to meet the required spending and production of affordable units. As such, the requirements are not implemented in individual projects, nor do they oblige individual private developments to include affordable housing.<sup>6</sup>

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<sup>4</sup> City of Oakland, Compliance and Social Justice Policies, July 2006.

<sup>5</sup> City of Oakland Redevelopment Agency website.

<sup>6</sup> Tax increment financing is used in Redevelopment Areas where land value is expected to increase due to redevelopment efforts, thus increasing the area's future tax revenues. These increased tax revenues are

Every Redevelopment Area adopts a unique plan, which may include provisions regarding community benefits, and forms a Project Area Committee, an advisory body made up of community representatives who offer input into the area's plans and development proposals. The West Oakland Redevelopment Area Five-Year Implementation Plan, for example, requires developers to engage and seek input from the West Oakland Project Area Committee (WOPAC) before submitting project proposals to the Redevelopment Agency. The Plan also requires the WOPAC to evaluate and make recommendations about the approval of potential projects based on a ranking system that assigns points to the project according to the housing, workforce, and livability benefits included in its proposal.<sup>7</sup>

### *Privately-funded projects not in Redevelopment Areas*

Oakland has no requirements around wages, hiring, job training, or contracting for unsubsidized development projects.

The Oakland Jobs/Housing Linkage Fee Ordinance, adopted in 2002, requires developments to pay a \$4 per square foot impact fee for all office and warehouse space over 25,000 square feet. This fee is to mitigate the acknowledged impact of commercial development on affordable housing demand by funding affordable housing construction.<sup>8</sup> The City currently imposes no affordable housing impact fees on other types of development, but is currently considering adoption of an Inclusionary Housing Ordinance to require that a certain percentage of units in market rate housing developments are affordable to low-income residents or that the developer pay an in lieu fee towards future affordable housing development.

Oakland imposes a modest school impact fee of \$0.36 per square foot of commercial developments and \$2.24 per square foot of residential developments. In addition, the city requires developers to conduct a sanitary service and sewage capacity analysis of new projects and, if the development is found to exceed the capacity of the current system, to provide 50% of the cost of necessary system improvements.

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called the "tax increment" and, per federal and state Redevelopment law, they can be used to finance the debt issued to pay for the area's redevelopment efforts. Therefore, bonds issued by the Redevelopment Agency to finance neighborhood improvements are financed through the increase in tax revenues these improvements create. Affordable housing requirements are placed on the agency's use of these funds.

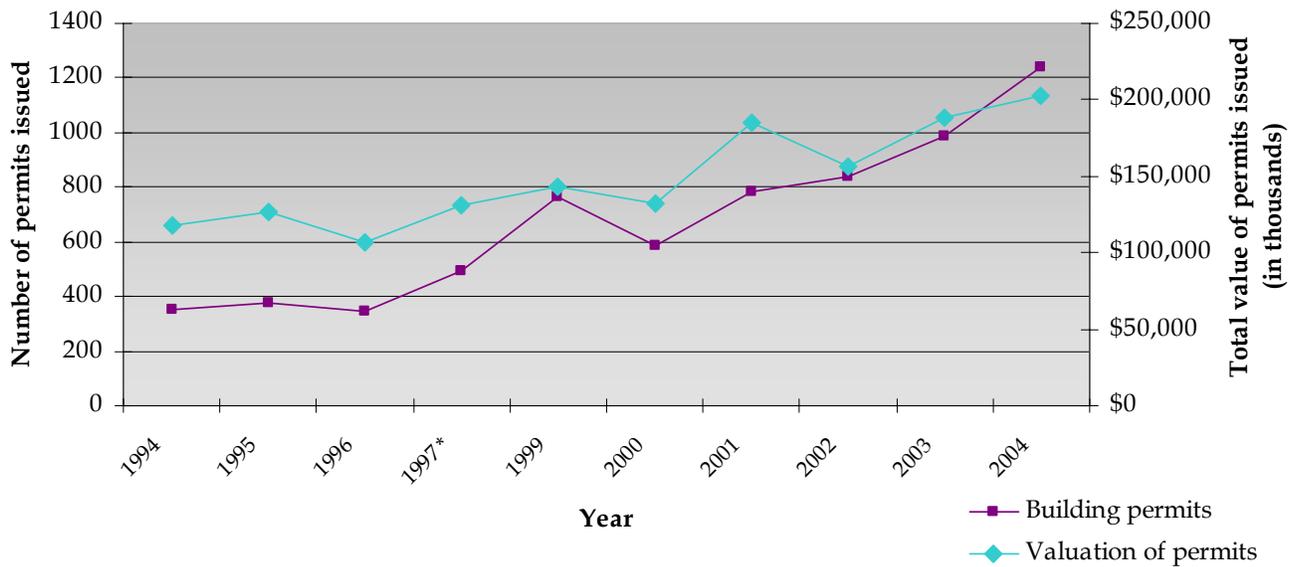
<sup>7</sup> This requirement applies to projects within the West Oakland Redevelopment Area that involve over \$250,000 of Redevelopment funds or that are involved in a competitive bidding process. (City of Oakland, *West Oakland Five-Year Implementation Plan*, 2003.)

<sup>8</sup> City of Oakland, Oakland Jobs/Housing Linkage Fee Ordinance, 2002.

## Development in Oakland

The development rate in Oakland has increased substantially over the last decade. Figure 1 illustrates the rising trend in new residential development from 1994 to 2004, through the growing number of residential building permits issued annually for new development, as well as the increasing total value of the permits issued.

**Figure 1: New residential development increasing since 2000.**



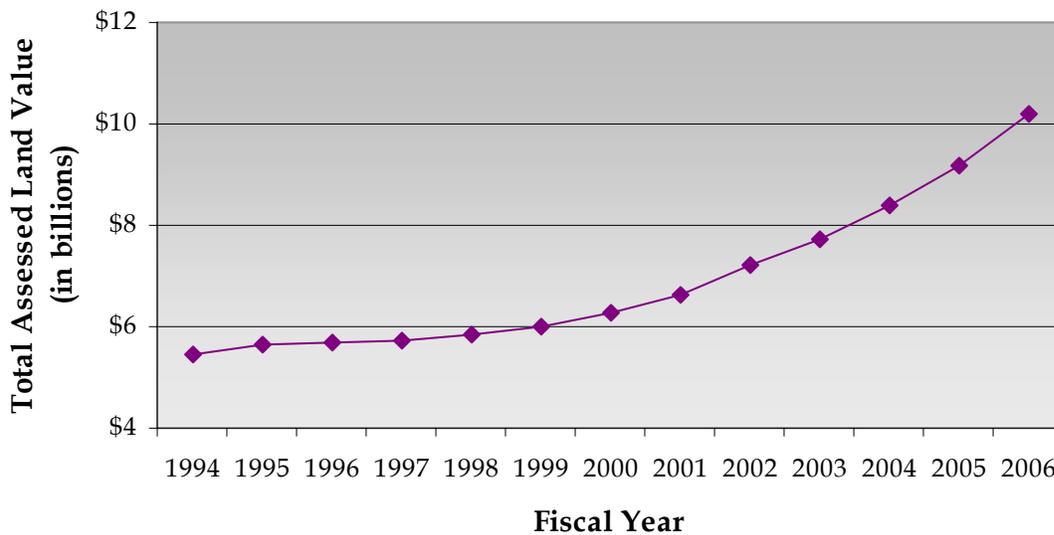
Valuations represent 2007 dollars.

\* 1998 data is missing

Construction Industry Research Board, *Building Permit Summary*. 1994-2004

In addition, the land value in Oakland has risen markedly since 1999. After a growth of only half a billion dollars in the city’s assessed land value over the five year period beginning in 1994, land value started a dramatic increase in 1999 and has continued to rise ever since. The city’s total land value increased from approximately \$6 billion to over \$10.2 billion in 2006, proving that Oakland has become, and remains, a desirable place to develop.

**Figure 2: Land value in Oakland has increased at increasing rate since 1999<sup>9</sup>**



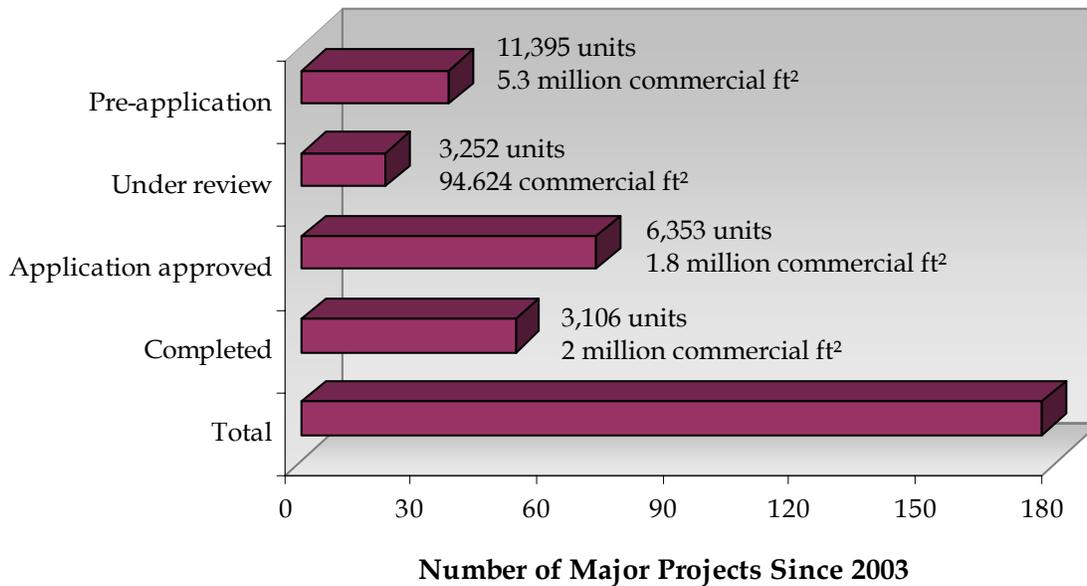
City of Oakland, *Comprehensive Financial Reports*, FY 2003 and FY 2006

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<sup>9</sup> These numbers represent total assessed value, or full cash value, of all taxable property within the city and does not include the value of improvements made to properties. Dramatic increases in the total assessed value, then, represents new developments and an increase in the buying and selling of existing property. (City of Oakland, *Comprehensive Annual Financial Reports*, Fiscal Years 2003 and 2006)

As another illustration of the development landscape in Oakland, Figure 3 summarizes the major residential and mixed-use projects that are in the development pipeline or have been completed since 2003.<sup>10</sup> These 176 projects encompass approximately 24,100 residential units and 9.2 million square feet of commercial and retail space.

**Figure 3: Hundreds of Major Projects Fill Oakland's Development Pipeline**

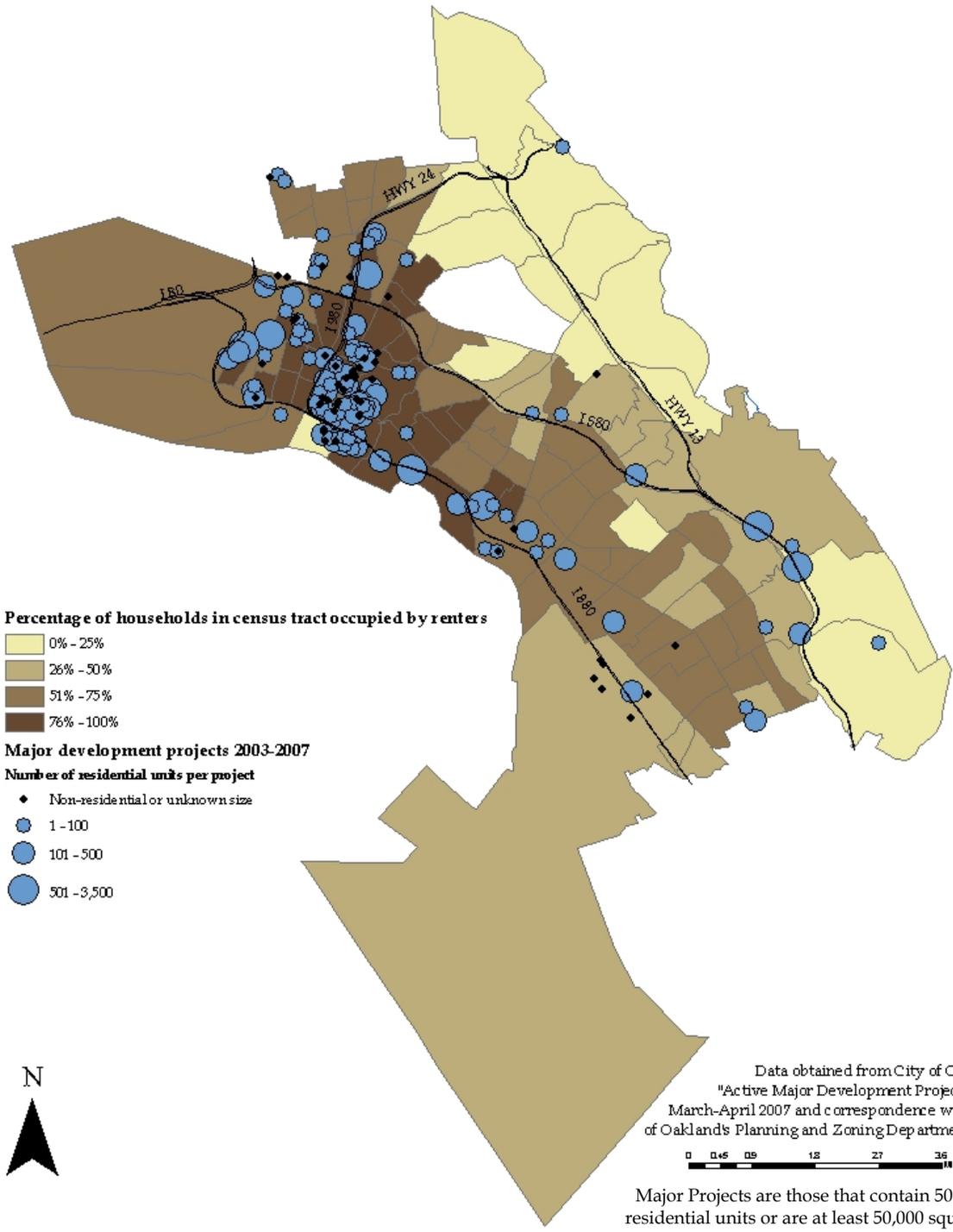


City of Oakland, *Active Major Projects List*, March-April 2007

While there are major development projects planned or in progress throughout the city, most are clustered in downtown, West, and East Oakland neighborhoods. As Map 1 below illustrates, most of Oakland’s active or completed major development projects since 2003 are located in neighborhoods in which over half of the households are renter-occupied. These projects, which likely will result in rising housing prices in the surrounding neighborhoods, may put residents at risk of displacement. Therefore, many communities concerned about development projects’ impacts are utilizing tools to mitigate these impacts and create public benefit.

<sup>10</sup> The City of Oakland defines a ‘major project’ as one that includes over 50 residential units or is over 50,000 square feet in size.

**Map 1: Oakland's Major Development Projects are Concentrated in Areas with a High Proportion of Renters**



## Community Benefits Campaigns and Agreements

A community benefits agreement is a legally-binding contract signed by community groups, a developer, and often the city government. As such, the community groups that are party to the agreement can enforce its terms and ensure the developer's compliance. In return, the community groups are legally obligated to support the development's approval. "The CBA is both a process to work towards these mutually beneficial objectives, and a mechanism to enforce both sides' promises."<sup>11</sup>

The benefits that developers agree to provide through CBAs generally fall into four main categories, as described below.<sup>12</sup>

1. Housing - including providing affordable rental units, home ownership opportunities, and lending and homeownership assistance programs. Agreements define the levels and length of affordability for the units and often detail the amount of units that will be affordable to very low, low, and moderate income residents, as well as the proportion that will be built for families, individuals, and/or seniors.
2. Workforce - including commitments to use local suppliers and contractors, to fill a set percentage of new jobs with local residents, and to pay living wages. CBAs can also include funding for construction apprenticeship and job training programs, affirmative action provisions, and right-to-organize commitments. Job training and apprenticeship programs may be targeted for certain populations or for residents of certain areas.
3. Livability- including provision or funding for environmental clean-up or mitigation, open space, recreational facilities, and community services, such as child care or community centers. Some CBAs include guaranteed community input into selecting business tenants for the development, or a commitment to include certain types of businesses as tenants, such as grocery stores or banks.
4. Community-specific needs - including benefits that are specific to the community in which the development is located. Examples of such benefits included in recent CBAs from around the country are: debt relief for residents from a local hospital seeking to expand, transitional housing for residents displaced by a proposed development, a residential parking permit program, and mitigation of neighborhood noise and air pollution caused by a planned airport expansion.<sup>13</sup>

CBAs are particularly useful for addressing workforce benefits such as right-to-organize or card check neutrality agreements because local governments cannot legally require these commitments from private developers. Thus CBAs represent a unique

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<sup>11</sup> Gross, LeRoy, and Janis-Aparicio 2005, pg. 9

<sup>12</sup> Examples of benefits within each category from Gross, LeRoy, and Janis-Aparicio 2005.

<sup>13</sup> New Haven, CT CBA; Adams-La Brea CBA in Los Angeles; Staples Center CBA in Los Angeles; LAX CBA in Los Angeles. See Appendix A for more details.

opportunity for community groups, labor organizations, and developers to come to agreement about these issues on a project-by-project basis.

The CBA is one tool within the community benefits movement, which “is centered on...the simple proposition that the main purpose of economic development is to bring measurable, permanent improvements to the lives of affected residents, particularly those in low-income areas.” The long-term goals of the community benefits movement are twofold: 1) to increase the affected communities’ involvement in development decisions through creating a more open and inclusive development approval process; and 2) to push the public sector towards more actively securing community benefits from development through strategic land use planning and community standards policies regarding the benefits expected from development.<sup>14</sup>

For community groups, the goals of a community benefits agreement are: to increase residents’ access to developments’ benefits, to increase community members’ involvement in development issues that affect them and their communities, and to hold developers accountable to the communities in which they are building. As illustrated in Appendix A: A Summary of Community Benefits Agreements Nationwide, the CBA has become an increasingly popular tool for achieving these ends.

Community groups engage in community benefits campaigns with the aim of signing legally-enforceable CBAs with developers. However, in many cases, the campaigns and negotiations result in developers’ commitments to include community benefits in their projects but do not produce official CBAs by which community groups can hold developers accountable for producing these benefits. In these cases, developers usually make commitments in development agreements with the city. Therefore, community benefits campaigns, whether or not they result in CBAs, serve to increase direct benefits. In addition, the campaigns increase resident knowledge of development and planning issues and have increased community participation in local economic development decisions. The proliferation of community benefits campaigns has also contributed to shifting attitudes and changes in behavior among developers and city elected officials; developers in communities that have waged community benefits campaigns recognize the need to more actively solicit community input and elected officials have begun to recognize that placing requirements on private development is feasible and can decrease cities’ burden for providing services and mitigating developments’ impacts. Together, these results have served to improve equity of access to developments’ benefits and have promoted responsible development practices in urban areas.<sup>15</sup>

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<sup>14</sup> Gross, LeRoy, and Janis-Aparicio 2005, pg. 5.

<sup>15</sup> Responsible development refers to a policy framework that seeks to balance the needs of developers, local government, and community stakeholders. Responsible development seeks to ensure that the external costs of development are shared between local government agencies and developers, that equity

A brief description of Oakland’s two recent community benefits campaigns is displayed in Table 2 below. While neither resulted in formal CBAs, the organizing and negotiations the campaigns involved led to developer and cooperation agreements with the city that contain more community benefits than would have resulted otherwise.

**Table 2: Recent community benefits campaigns in Oakland secured substantial benefits at a high cost.**

<b>Project Description</b>	<b>Wood Street / Central Station</b>	<b>Oak - to - 9th</b>
Size of development	26 acres	64 acres
Maximum number of units	1,570 units <sup>a</sup>	3,100 units
Maximum commercial space	539,266 square feet <sup>b</sup>	200,000 square feet
<b>Community Benefits Campaign</b>		
Year completed	2005	2006
Length of campaign	18 months	3 years
Estimated cost to community groups <sup>16</sup>	\$1 million - value of pro bono legal assistance	\$945,000 + in organizing and assistance
	\$45,000 - organizing staff and resources	
	Additional in technical assistance	
Estimated cost to developer <sup>16</sup>	\$1.5 million - legal fees	\$1 million in legal fees and staff time
	\$17 million - increase in construction costs	
<b>Benefits Included in Developer Agreement</b>		
Affordable housing	12% of units - funded by city	465 units - funded by city but land sold to city at cost
		\$7.5 million contribution towards affordable housing
Workforce	no commitments made	Construction apprenticeship program with preference for local residents
		\$1.65 million job training program targeting immigrants and former prisoners
Livability	no commitments made in CBA	29.9 acres of open space preserved
Other	Community control of historic West Oakland Train Station revitalization	

<sup>a</sup> under the "Maximum Residential Scenario," which allows 13,000 square feet for commercial use.

<sup>b</sup> under the "Maximum Commercial Scenario," which allows 1,084 residential units.

and inclusion are built into planning and development processes, and that developments produce benefits for residents of the communities in which they is located.

<sup>16</sup> Cost estimates were compiled from confidential interviews with those who were involved in the CBA negotiations and as such, could not be independently verified. Other information was compiled from the following websites: Signature Properties, Holliday Development, Oak to 9<sup>th</sup> Coalition, Just Cause Oakland, and the City of Oakland.

As a result of the recent Wood Street and Oak to 9<sup>th</sup> campaigns, Oakland's elected officials are more aware of their responsibility and opportunities to ensure public benefit in private development projects, thus presenting a window of opportunity for adopting a citywide community benefits policy. These campaigns have also sparked conversations among Oakland stakeholders about how to ensure public benefits in future projects without requiring large investments in project-specific community benefits negotiations.

Those who were party to these negotiations felt the ramifications of the large investments that reaching an agreement required. Community groups do not have the resources to make similar investments in every future development in Oakland and developers are frustrated with the implications of these campaigns on their future projects. Without clear city policy around community benefits, developers do not know upfront which benefits the community and the City will expect from their projects. Therefore, all future projects are potentially subject to community benefits campaigns, representing unknown future costs that increase developers' uncertainty in already risky investment scenarios.

The following section explores these shared concerns around the current community benefits negotiations process as well as responses to potential citywide policies to increase community benefits. By recognizing and identifying these common concerns, we can develop options for citywide policy and can better understand and analyze the potential outcomes of these policies.

## Data and Methodology

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Because the community benefits agreement has become a popular and effective tool for community groups to negotiate with developers when city policy is seen as too lenient, and because its efficacy is based on community groups' and developers' ability to negotiate and come to agreement, understanding the opinions of these stakeholders is vital to understanding the strengths and limitations of CBAs as a model for citywide policy. Therefore, I base the bulk of this study on analyzing interviews conducted with Oakland community development stakeholders, including:

- representatives of community groups and labor organizations,
- private developers,
- representatives of community development corporations,
- city staff members,
- attorneys specializing in community benefits agreements, and
- staff of intermediary organizations providing technical assistance to community groups around development issues.

For background and best practice research, I conducted additional interviews with representatives of organizations and agencies in other cities that have utilized CBAs, are exploring implementing citywide community benefits policies, or have designed and implemented policies to secure public benefit in private development. Appendix B: Data and Methodology further explains the methodology I utilized for conducting and analyzing these interviews.

## Themes

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Because there are no existing citywide policies that encourage or require community benefits agreements for private development projects, the interviews I conducted for this report serve to explore such policies' potential impacts on Oakland's communities and developers. In order to develop a policy that will address the needs and concerns of both groups of stakeholders, I focused the analysis of the interviews on themes and commonalities of opinion. These then become the basis for identifying and exploring potential policy options for Oakland.

I identify themes as concerns or questions that were expressed by more than one interviewee representing a community group and at least one developer. The concerns that were common within stakeholder groups but not shared between them I considered important concerns and interests rather than guiding themes. In the following section, I explore these concerns in the context of the policy options. With this approach, I intend to bridge the gap between Oakland's community groups and developers, thereby more effectively exploring the opportunities for implementing citywide community benefits policies and identifying their potential limitations.

In the following section's examination of the most common themes, I will offer a brief description of each, an explanation of community groups' and developers' interest in the issue, and its implications for future policy development. The themes are: paying the price of the community benefits negotiations process, balancing uncertainty and flexibility, defining community, creating a development-friendly environment, producing real benefits, and taking city initiative.

### **Paying the Price of the Community Benefits Negotiations Process**

*Just tell me the number upfront and I'll write a check.*

- A private developer's response to the unknown costs of providing community benefits through CBAs

In planning a development project, a developer's land bid is based on the expected costs of completing the development, including any requirements or exactions by the city, and the expected revenue it will generate. Typically, a developer will first bid on the land based on these estimates, then submit the project plan and work with city staff to ensure it meets all city zoning and development requirements. The project's permits and approval will then be decided administratively or by the Planning Commission.<sup>17</sup>

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<sup>17</sup> If the project requires a re-zoning decision, General Plan amendment, major variance on zoning or land use requirements, or is over 25,000 square feet, its permits and approval will be considered by the

Often community members do not learn about a planned development until late in this process, through public notices or hearings. Because this is the point in the process at which the developer seeks final approval by the city, community groups' ability to oppose and delay the project's approval provides them leverage to negotiate with developers over community benefits. This delay represents costs to the developer - in staff time, increasing construction costs, and delays in beginning his/her next project. In addition, in approaching negotiations with a community, developers are often confronted with multiple groups claiming to represent the community. The community benefits negotiations process requires developers to address all of the concerns these varied groups represent, which serves to further increase developers' costs.

A developer's interest, then, in negotiating a CBA is to gain community approval for a project and avoid further delays. If the time between project proposal and approval could be shortened, the cost of the process could be diminished, and more of developers' resources could be devoted to providing benefits. All developers expressed desire for more known costs upfront, so that community benefits requirements can be incorporated into a project's initial plans, allowing a better representation of its true costs. However, developers also expressed concern that the cost of providing required benefits be reasonable and not so onerous as to discourage future investment.

*Even though they have been necessary for starting the conversation about benefits, the project-by-project basis of CBAs is resource-intensive and has kept us from seeing the bigger picture.*

- an Oakland community group representative

Community groups also expressed concern over the resources necessary to successfully negotiate with developers. While most acknowledged that the experience is valuable for their base-building and leadership development goals, they argued that the time and resources a community benefits campaign requires detracts from their engagement in debates about citywide development policies that have larger scopes. Additionally, community groups can only devote such resources to a few large campaigns, allowing smaller developments to receive city approval without negotiating with community members or ensuring community benefits.

Given these concerns, any citywide policy regarding community benefits should serve to decrease the cost of negotiating an agreement. The high costs of community benefits campaigns are due in large part to their ad hoc nature, requiring lengthy negotiations to "reinvent the wheel" for every project. Therefore, a citywide policy could reduce this cost and allow more resources to be available for providing community benefits.

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Planning Commission and public hearings will be held. Otherwise, its approval will be decided administratively, and a public notice issued.

## Balancing Uncertainty and Flexibility

*Certainty is a big thing for developers – it's not so much what you require of them but that they know.*

- a City of Oakland staff member

A key strength of the CBA is that, due to its project-specific nature, it can address the specific issues and needs of a given community. However, if a policy were adopted citywide, the standardization and formalization of the community benefits agreements process would likely threaten this flexibility.

Yet, codifying a policy and setting expectations of community benefits would serve to address a main weakness of the CBA negotiations process – its resulting uncertainty of costs and outcomes. While the delay and uncertainty of project approval is the key leverage point for community groups to negotiate a CBA, it is inefficient for securing public benefits in development. More certainty upfront would allow developers to incorporate the true costs of benefits into their plans, to avert the necessary cost of the negotiations process, and to instead invest these resources in providing benefits. At the very least, some developers argue, in knowing the cost of providing benefits upfront, they can determine if the project is financially viable before applying for permit approval and investing resources in project planning and proposal.

*If the end result of an ad hoc, flexible process is so uncertain and the benefits are less than what everyone wants, then what is to be gained from flexibility?*

- an Oakland community group representative

Therefore, any policy addressing community benefits will have to address the tradeoff between certainty and flexibility. Many community advocates expressed that, while CBAs' theoretical flexibility is valuable, in practice Oakland's recent community benefits campaigns have not sufficiently resulted in meeting community-specific needs. In comparison to other cities', Oakland's agreements with developers have resulted in fewer benefits and limited developer resources devoted to funding those benefits, perhaps due in part to a lack of coalition cohesiveness and

the city's history of asking little from private developers. Furthermore, due to the time and resources necessary to successfully negotiate over community benefits, very few agreements have been achieved and thus very few community-specific needs have been addressed. Therefore, community advocates argued, the CBA process in Oakland has not taken advantage of the tool's flexibility, and so theoretical flexibility should not be chosen to the detriment of achieving more certain outcomes.

Developers and community groups all expressed the desire to achieve more certain outcomes through citywide community benefits policy. Developers would like increased certainty of costs and expectations. Community groups would like increased certainty that development projects approved by the city will provide benefits that are accessible to residents, without requiring such large time and resource investments in protracted negotiations processes for every project.

## Defining Community

Because CBAs are voluntary and determined project-by-project, any community group or resident with a concern about the specific impact of a development can enter the negotiations and have that concern heard and potentially addressed. Under a standardized, citywide policy, this would not necessarily be possible. However, the fact that any group or individual willing to devote the necessary time and resources can negotiate community benefits begs the question: who *is* the community? Who has the right to negotiate on the community's behalf? And, when the community's needs are vast and varied, whose are addressed in a community benefits agreement and whose are ignored? And, more importantly, who has the right to make this determination?

*The city can tell developers that they have to meet with the community, but how do they say who the community is? This is fraught with danger for the community.*

- an Oakland community group representative

All interview respondents posed a variation of one of the above questions. While most could not provide an answer that holds true for every community and every development, they agreed that defining the community poses obstacles for community groups and developers alike and that the issue needs to be addressed if the city is to proceed with adopting a citywide community benefits agreement policy.

Developers expressed the desire to collaborate and solicit input from community groups, but acknowledged that they do not know upfront who to approach. They have been frustrated by attempts to satisfy one sector of the community only to be opposed and delayed by another that is unhappy with the benefits provided. Community groups also expressed frustration at the factions that develop within the community during negotiations and developers' resulting ability to divide community groups and limit their effectiveness.

*The community benefits movement confronts this obstacle by defining the issues, not the community.*

- an Oakland community group representative

Among those interviewed, there was broad concern that a policy requiring CBAs would entail the city designating a group to represent the community in negotiations with developers. This body likely would not truly represent community interests and thus would be able to co-opt the community participation process without addressing the community's true concerns about development projects.

Furthermore, such a body would hinder community groups' ability to negotiate independently with developers. Therefore, defining the community through policy may not be feasible without leading to outcomes that are far more harmful to meeting community needs than the weaknesses of the current process. Given this potential, a community benefits policy may be more effective by addressing outcomes – the tangible benefits that result from development – rather than process – the more intangible effect of defining, organizing, and mobilizing the community.

## Creating a Development-Friendly Environment

While interviewees disagreed about the extent and method by which Oakland should require public benefits in private development, many recognized that requiring too much could slow the city's pace of development. On the other hand, all recognized that the city's unique geographic draw makes it attractive to developers despite the benefits the city may require. Stakeholders expressed the desire to ensure that Oakland remain attractive to developers by fostering a development-friendly environment that continues to offer a profit incentive to developers for investing in the city.

*If community benefits become too onerous or substantial in comparison to costs in the surrounding area, developers will go elsewhere.*

- a City of Oakland staff member

However, there was consensus among the community groups interviewed that this pro-growth environment should not be cultivated without a long-term growth strategy that thoughtfully lays out the goals and vision of development in Oakland and requires future projects to meet these goals. This approach is in contrast to what many now see as a haphazard process that approves projects without regard to their compliance with the long-term development objectives of given communities. In addition, community groups want to ensure that there is meaningful community input into formulating this strategy. Oaklanders want growth, they say, but they want to have input into planning this growth. Both developers and community groups interviewed agreed that the more community input into this long-term strategy, the fewer contentious, protracted, project-by-project community benefits campaigns will be necessary. Thus, in the long-term, this strategy could reduce costs and uncertainty for developers, making the city an even more attractive place to develop.

Designing a citywide community benefits policy must therefore involve balancing requirements on developers to provide benefits with ensuring that enough incentive remains to invest in development projects in Oakland. Community engagement with the city's long-term planning processes can assist in determining this balance.

## Producing Real Benefits

While the Wood Street and Oak to 9<sup>th</sup> campaigns greatly increased the benefits included in those development projects, many interviewees expressed that the tangible benefits were only a part of the campaigns' positive results. In fact, because the city is funding many of the benefits committed to in the developer agreements, the actual monetary value of the public benefits secured from the developers themselves is minimal.

On the other hand, the process of engaging in negotiations has benefited Oakland as a whole, interviewees expressed. Through the organizing and negotiations processes, many community groups and residents have developed leadership skills and have become informed and involved with development issues. In addition, the campaigns

have affected the public dialogue regarding development and community benefits. Previously, the expectation that private development produce measurable public benefit was not common among Oakland's elected officials, community groups, or developers. These campaigns and negotiations have stimulated conversations about the need for community benefits in development projects, as illustrated through these issues' inclusion in recent Mayoral and City Council candidate debates and platforms. In addition, developers are more proactively seeking out community input, and community groups are more actively participating in development issues. Finally, these negotiations have helped build and solidify relationships between private developers and community groups, thus leading to collaboration on future projects.

*We want to know our contributions are going towards a specific benefit.*  
- a private developer

While community benefits campaigns have produced both tangible and intangible benefits, many see their victories as partly symbolic- their positive effects are felt more in the ongoing debate over community benefits and future development policy than in the measurable benefits that developers provided. However, interviewees agreed that any future policy addressing community benefits must produce measurable benefits, rather than symbolic victories for community groups or shifts in the political debate. Developers want to make positive contributions to the community and want to know that what is required of them will have real positive impacts and community groups want a policy that produces tangible outcomes in their neighborhoods

**Taking City Initiative**

*If the city is allowing a project to move forward, they are making a policy decision that it's good for the city. It's necessary, then, for them to consider how the project will impact the city.*  
- an Oakland community group representative

During the 1990s, there was minimal development in Oakland, and much of the development that did occur was publicly subsidized. City policy regarding development throughout this period and beyond focused on attracting and removing barriers to building new developments. This meant that the city had no impact fees or exactions for private development projects in place when Oakland's development boom began in 1999. Aside from the 2002 Jobs/Housing Linkage Fee Ordinance, the City of Oakland has done little to change policy in response to changing development conditions. Unlike most other cities around the Bay Area and many throughout

California, Oakland does not exact impact fees and affordable housing requirements from private developments.<sup>18</sup>

Broad consensus existed among interview respondents that the city's lack of initiative in this regard, as well as its lack of a clear long-term development strategy, is costly for developers and community groups alike. Without citywide guidelines regarding the public benefits expected in development projects, community groups must assume the responsibility to negotiate over benefits, and community groups and developers must accept the high costs and uncertainty this entails. An investment by the city in articulating a clear long-term development vision and strategy, with input from community stakeholders and developers, would help to create a more known and predictable development environment and thus reduce future costs and uncertainty.

*Wood St. is a good example of how much it costs everyone to not have a policy – from the developer's cost to fight the CBA to the city's cost in the end of providing the affordable housing.*

- an Oakland community group representative

Interviewees also expressed frustration with the city's lack of initiative in requiring public benefits from individual projects. Many observed that Oakland's elected officials have been hesitant to place requirements on unsubsidized developments, preferring to let the market determine the benefits produced by a given project without public intervention. However, as discussed above, even private developments depend on non-market forces, such as public infrastructure investment. In addition, elected officials play an active role in shaping these developments.

Oakland's elected officials make decisions regarding the size, design, and use of developments through their deliberations over a projects' permits and approvals. These decisions can increase the value of developments by allowing more profitable land uses, denser building design, and variances to zoning requirements that allow larger projects involving more units. By making these decisions and allowing a project to proceed, elected officials are taking action based on a determination that the project is good for the city, often considering the public benefits in will provide. In this capacity as the body responsible for public goods provision, the city should attach requirements to their decisions in order to ensure that this holds true – that the developments they approve do in fact contribute to the public good. Interviewees agreed that this is a feasible and justifiable use of the city's police and regulatory powers.

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<sup>18</sup> Over 135 jurisdictions nationwide (Rusk 2005), including over 117 cities and counties in California and most Bay Area cities, have an inclusionary housing policy in place. (Greenbelt Alliance, *Inclusionary Housing Initiative*)

## Policy Alternatives

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This section will explore five citywide policy options for legislating community benefits in Oakland's private developments. These alternatives emerged from the interview themes as well as an examination of other localities' attempts to address this issue. For each policy alternative, I will offer a brief description of how it could be designed, describe at what point in the development approval process it may be implemented and whether it will increase the length of this process, provide examples of similar policies in place or under consideration by other localities, and analyze how the policy potentially meets four main goals of Oakland stakeholders. I will also present the main concerns that arose in interviews regarding the policy and its implementation, as well as provide key elements for addressing these concerns.

The criteria of potential outcomes by which I rate policy options are:

- increasing community benefits in development,
- increasing community participation in development decisions and improving the identification of community needs,
- decreasing uncertainty for developers, and
- reducing the cost of the negotiations that take place between community groups and developers regarding community benefits.

The projected outcomes of each policy alternative with regard to the stated criteria are represented as follows, with multiple ratings signifying that an outcome varies depending on the policy's design and implementation:

(+) the policy results in an improvement

(0) the policy leads to no change

(-) the policy results in a decline

(?) the policy's outcomes are as yet undetermined or will depend upon details of its design and implementation

The options are not mutually exclusive policies and thus can be adopted together in order to meet multiple criteria. Table 3 on page 40 follows the discussion of the policy options and summarizes each one's projected outcomes with regard the stated criteria.

### Menu Point System

#### *Description:*

The city develops a menu of housing, workforce, and livability benefits that can be included in developments, with each option on the menu corresponding to a number of points. City project approval requires developments to meet a minimum threshold of

points in each category, with larger developments subject to higher minimum requirements than smaller developments. The menu can be uniform throughout the city or neighborhood-specific, developed through a community planning process.

While determining whether a project proposal adequately satisfies its point requirements can happen during the permit approval process, making this determination and enforcing the commitments made in the proposal will require staff time and resources. This could potentially increase the length of the approval process.

While such a policy has yet to be implemented for private development projects, examples of using a point system model to increase community benefits in publicly funded projects exist. As mentioned above, the West Oakland Redevelopment Area Implementation Plan calls for developing a menu and point system of benefits and assessing each project proposal according to the points it earns.

Community benefits advocates in Milwaukee, Wisconsin are pushing for a policy to establish a point system within the Request for Proposals process for development projects on city-owned land.<sup>19</sup> The city of Morgan Hill, California has a competitive permitting process for developments in which approval is determined by a point system, awarding more points to projects that incorporate affordable housing units.<sup>20</sup>

Similarly, in the early 1990s, task forces and advisory committees in Oakland proposed the “Oakland Equity Policy for Minority, Community, and Public Equity Participation,” including a detailed menu and point system by which the city could assess projects’ impacts on communities and contributions to achieving Oakland’s equity goals. While the policy was not ultimately adopted, it proposed that projects applying for subsidies from the city be required to meet a minimum threshold of points in order to receive public resources. These examples, while not offering an opportunity to evaluate such a policy’s effects, do present models for designing a comprehensive point system to ensure approved projects provide minimum community benefits.

### *Analysis:*

The expected outcomes of this policy depend heavily on the details of its design.

**Increase benefits:** (+ / ?) By requiring developments to meet a minimum threshold of points, this policy can increase the benefits in private developments. However, to achieve this outcome, the points must correspond to the benefits’ value, as well as their cost, so that every point represents an equal value to the community and the developer. Otherwise, developers could choose benefits based on cost alone and avoid meeting the needs of the community.

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<sup>19</sup> Goldstein, John. Personal interview. February 27, 2007.

<sup>20</sup> Calavita and Rawson 2004, p.15.

**Decrease uncertainty:** (+ / ?) By providing developers with clear expectations regarding the amount of benefits their projects must include, this policy could decrease the uncertainty they face. However, if the menu is developed without community input, developers could meet the city's requirements and still face community opposition and delay in gaining approval for their projects.

**Increase community participation and improve identification of community needs:** (?) This policy allows communities to access information about proposed projects' benefits early in the development process, thus possibly allowing for more effective community participation. However, the extent to which this policy increases community participation and identifies community needs depends upon the community input solicited in developing the menu and point system.

**Reduce cost of negotiations:** (0 / ?) If designed with community participation, this policy could preclude the need for negotiating over community benefits, thus reducing costs. However, if the menu does not effectively represent community needs, community groups may use their leverage to delay project approval and attempt to negotiate directly with developers, thus representing no reduction in the present cost of negotiations.

***Concerns:***

In addition to concerns regarding this policy's outcomes if community input is not sufficiently incorporated into its design, interviewees were also concerned with its general efficacy. First, they expressed doubt that a menu could adequately reflect every community's needs. Second, many were concerned that the policy would inadvertently contain loopholes due to the difficulty of assigning points based on a benefit's value to the community, thus allowing developers to avoid those benefits that communities truly desire. In addition, without a strong enforcement mechanism, developers could promise benefits to achieve permit approval without ultimately providing them.

Under this plan, because the city will approve projects based on the points they accrue on the benefits menu, community groups may be left with little leverage to negotiate independent agreements with developers when the menu does not adequately address their needs, thus decreasing community input into development approval decisions. Lastly, allowing developers to choose specific benefits from the menu struck many interviewees as allocating too much discretion to the developer, giving the power to determine community benefits to the stakeholder who is least accountable to community needs.

***Key elements of policy:***

- community participation in developing menu and points
- neighborhood-specific menus
- points that represent equal units of value to community and costs to developers

## Incentives for Negotiating a Community Benefits Agreement

### *Description:*

The city provides incentives to developers for voluntarily negotiating a community benefits agreement with community groups. These incentives may include: fast track approval, density bonuses, and variances on zoning or other requirements.

Under this option, CBAs will most likely be negotiated either at the point in the process in which they are negotiated currently – immediately before project approval – or earlier if the incentives offered are substantial. The bonuses offered for those developers who successfully negotiate a CBA would be applied after the agreement is signed and before final project approval, through the established permitting approval process. However, the policy will require an additional step to review CBAs to ensure that they address community needs and thus are adequate for triggering the incentives.

While no jurisdictions have yet instituted an incentive policy around community benefits agreements, many localities use incentives to encourage specific benefits in developments.<sup>21</sup> Most jurisdictions that require affordable units in market-rate housing developments provide incentives to developers, such as density bonuses, fast track processing, reduced fees, and design flexibility, to offset the cost of building the units.<sup>22</sup>

### *Analysis:*

**Increase benefits:** (+ / 0) Similar to providing incentives for the including affordable units, this policy is expected to increase the benefits included in private development. However, as guiding language to encourage CBAs rather than a requirement of benefits, it cannot guarantee an increase in community benefits.

**Decrease uncertainty:** (+ / 0) Developers believe this policy could result in reduced uncertainty if the incentive provided by the city is a fast-tracked approval process. With shorter wait times before breaking ground, developers face more known costs in completing projects.<sup>23</sup> However, the negotiations process to reach agreement on CBAs will still represent unknown costs to developers, therefore resulting in no change in the uncertainty they face.

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<sup>21</sup> Recent examples of these incentives for project-specific agreements include: Virginia Beach, Virginia granted a density bonus to a private developer in return for including workforce housing in his project (Fernandes April 12, 2007); San Francisco's Board of Supervisors put a development project on the fast track for approval in exchange for a commitment to build permanently rent controlled units (Buchanan April 11, 2007); and private developers in Austin, Texas offered to contribute \$1 million for affordable housing in return for a zoning change, fast-tracked reviews, and waived fees (Novak April 11, 2007).

<sup>22</sup> City of Oakland, Inclusionary Housing Ordinance Report. June 13, 2006.

<sup>23</sup> Under uncertainty, it is easier for developers to predict the costs and benefits that occur sooner rather than later. Therefore "conditions of uncertainty ... are exacerbated by wide time frames between decisions and expected costs/benefits of the decisions...." (Elder and Lind 1987, pg. 31)

**Increase community participation and improve identification of community**

**needs:** (+ / 0) If the incentives this policy offers are substantial enough to encourage developers to negotiate CBAs, it could increase community participation and improve the identification of community needs for specific projects. However, if the use of CBAs does not increase, there will be no change in community participation in development decisions.

**Reduce cost of negotiations:** (0) While it may provide enough incentive for developers to negotiate a CBA in a shorter amount of time, there is no guarantee that this policy will alter the negotiations process or its resulting costs.

***Concerns:***

Many interviewees expressed concern that this policy could lead to developers negotiating CBAs with groups that do not adequately represent community interests, thus producing fewer benefits but still triggering the city’s reward for reaching an agreement. In response, some interviewees suggested that this policy include a community oversight body to review community benefits agreements and ensure that they are adequate for triggering the city’s incentives and bonuses. The Oakland Equity Policy took this approach, requiring an oversight body to ensure compliance with the point system as well as to update the menu and points as needed.

In addition, some respondents believe that this approach is not sufficiently clear regarding the benefits the city should expect from developments. Community benefits policy should set clear expectations and requirements of developers rather than offer encouragement and enticements, they argued. By focusing on process rather than outcomes, this policy fails to meet the need for community benefits from development.

***Key elements:***

- oversight body for community benefits agreements
- attention to who is representing the community
- attention to outcomes and benefits provided in CBAs

**Community Impact Reports**

***Description:***

Along with a project’s permit application, the city requires a community impact report (CIR), a publicly available, standardized form analyzing the current conditions of the community in which the proposed development is located and reporting on the project’s expected social and economic impacts. The report includes the positive and negative impacts of the development, as well as any plans for mitigating negative impacts. To ensure balanced reporting, the city is ultimately responsible for producing the report, with potential assistance from developer-funded consultants.

In requiring a CIR, this policy will establish a new step in the development approval process. The CIR will be submitted with the permit application, after the project's plans are complete and its impacts can thus be assessed. The city will offer opportunities for public input and challenges to the findings of the CIR, and finally will approve the report. This process will resemble the environmental review process and may entail an increase in the amount of time necessary to determine a project's final approval.

Adopting a CIR policy will require an initial investment by the city to establish a template for calculating and reporting developments' impacts. Reports for individual projects will entail filling in the template with data specific to the project and neighborhood in which it is located. This will likely represent a cost to the city ranging from \$5,000 to \$20,000 per project, depending on its specific characteristics and whether original research is necessary to determine its social and economic impacts.<sup>24</sup>

The California Environmental Quality Act (CEQA) requires developments meeting certain criteria to submit an Environmental Impact Report (EIR). While this differs from a CIR policy by requiring mitigation of negative impacts, lessons can be learned from the use of EIRs over the last several decades. Though little comprehensive research has been conducted about the ultimate impact and efficacy of CEQA, the EIR requirement has indeed increased the information and analysis available about development's environmental impacts.<sup>25</sup> Additionally, the EIR requirement has contributed to an accepted imperative that localities balance community needs and values regarding environmental quality with development goals.<sup>26</sup> Community impact reports could achieve similar success in regards to developments' social and economic impacts.

While no citywide CIR policies have yet been enacted, the City of San Jose currently has pending legislation similar to a CIR policy. The proposal would require a cost/benefit analysis of any project in the city that receives over \$1 million in public subsidies. In addition, the City of Los Angeles mandates community impact reports of all "superstores," requiring an analysis of the stores' impacts on their surrounding communities to assist the City Council's permit approval decisions. Proponents of this ordinance predict that it will result in fewer superstores and more benefits included in these stores' development plans.

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<sup>24</sup> Greenwich, Howard. Personal Interview. April 18, 2007.

<sup>25</sup> "There are no quantitative data regarding the usefulness of information uncovered in EIRs to decisionmakers....[H]owever, nearly 90 percent of a sample of California planning directors and senior planners believed CEQA to have been either 'very successful' or 'successful' in ensuring a thorough analysis and evaluation of environmental impacts." (Landis, et. al. 1995, pg. 176)

<sup>26</sup> Barbour and Teitz, 2005. pg. vi.

### *Analysis:*

**Increase benefits:** (+ / ?) A community impact report policy would not require mitigating negative impacts or including proactive benefits. However, with more information about a development's impacts, community groups could more effectively negotiate CBAs, thus perhaps increasing benefits.

**Decrease uncertainty** (0) By not altering how projects are approved or what benefits are required of them, this policy would not change developers' uncertainty in negotiating a CBA or proposing a development project.

**Increase community participation and improve identification of community needs:** (+) Through CIRs and community groups' increased access to information about future developments, community participation in the development approval process of may increase. By requiring an analysis of a development's impacts and a report of the mitigation actions needed to address the negative impacts, a CIR could also improve the identification of community needs.

**Reduce cost of negotiations** (+) A CIR will provide more standardized information early in the development approval process and will therefore reduce the time spent making and challenging predictions about a development's impacts. This will shorten the negotiations process and reduce its costs.

### *Concerns:*

Some developers thought that a CIR would be helpful in conveying their projects' positive impacts. In addition, they said, a CIR's standard metric for analyzing and measuring developments' impacts would be helpful by encouraging equal scrutiny of all developments rather than targeting the largest or most publicized projects for requirements to which others are not subject. On the other hand, some developers thought that this policy would only set the stage for the city to establish more onerous requirements of developments. Community groups responded favorably to this policy option, due to its resulting increased access to information early in the approval process and the ability CIRs would provide to compare projects and their impacts.

Many interviewees expected this policy would lead to a more thoughtful and less haphazard development approval process. Many stressed that producing CIRs should be the city's responsibility, with possible funding from developers, to ensure they contain an impartial reporting of impacts and to encourage elected officials to feel more responsibility for responding to the reports' findings. Finally, interviewees argued that the city should ensure that CIRs inform project approval and shape the requirements placed on developments.

### *Key elements:*

- standard metric to measure and report impacts
- the city is responsible for producing the report and making it publicly available
- the city must use the CIR to make approval, mitigation, and benefits decisions

## Community Standards Policies

### *Description:*

The city adopts standard requirements and regulations for all large developments, establishing minimum housing, workforce, and livability benefits, in order to ensure that development meets the community's basic needs. These policies set clear minimum expectations of all projects, thus representing known costs to developers and known outcomes to communities.

These policies will establish requirements prior to a project's proposal, thus not requiring additional steps in the development process. Instead, city staff will review a project's compliance with the requirements during the current permitting process.

Sixty-one cities and counties in the Bay Area, and over 135 jurisdictions throughout the country have adopted an inclusionary housing ordinance, a community standards policy that requires residential developers to make a certain proportion of the units they build affordable to very low, low, and moderate income households.<sup>27</sup> A majority of the California jurisdictions with an inclusionary housing ordinance found the programs have stimulated the production of affordable housing units that would not have been built otherwise.<sup>28</sup>

Seventeen Bay Area cities and counties have adopted jobs-housing linkage fees requiring commercial developments to pay a per-square foot fee to fund affordable housing.<sup>29</sup> Oakland's 2002 ordinance has yet to produce affordable housing funds, as no new commercial or warehouse developments subject to the fee have yet been built.

Workforce community standards policies are also common throughout the Bay Area. Nine Bay Area governments apply a living wage policy to any business or development receiving public funds. Eleven have adopted a first source or local hiring policy requiring development projects receiving public support, contracts, or conditional use permits, or in some cases any developments above a certain size, to fill a certain percentage of new employment opportunities with local residents.<sup>30</sup>

In addition, numerous cities and counties have parks and open space, public art, transportation, traffic, and child care impact fees to address the impacts of new developments on community livability and on localities' ability to provide services.

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<sup>27</sup> Greenbelt Alliance, *Inclusionary Housing Initiative* ; Rusk 2005.

<sup>28</sup> Calavita and Rawson 2004, p. 13.

<sup>29</sup> David Paul Rosen & Associates 2001.

<sup>30</sup> Dundon and Greenwich 2005, p. 24-27.

### *Analysis:*

**Increase benefits:** (+) As proven by the success of inclusionary housing policies,<sup>31</sup> placing standard requirements on developments ensures that they directly or indirectly produce more community benefits.

**Decrease uncertainty** (+) Community standards policies both reduce developers' uncertainty, allowing them to more accurately project the costs of their developments, and reduce community groups' uncertainty of outcomes by ensuring that all developments provide minimum benefits. While these policies do not preclude community groups from attempting to independently negotiate community benefits, they address the primary benefits included in most CBAs, thus removing these issues from future negotiations. As a result, CBAs will cover fewer benefits, most likely involve shorter negotiations, and thus represent a decrease in uncertainty for developers and community groups alike.

**Increase community participation and improve identification of community needs:** (0) Community standards policies do not increase and may in fact decrease community participation in development decisions. However, few interviewees were concerned about this, given the current lack of opportunity for meaningful community participation in these decisions. They agreed that the city should set a baseline of benefits required from developments, adding that if the city adopts strong standards, perhaps less community participation will be necessary.

**Reduce cost of negotiations:** (+) As explained above, these policies will likely reduce the cost of negotiations between developers and community groups.

### *Concerns:*

Many interviewees expressed concern over these policies' enforcement mechanisms to ensure that developments meet the standards. While a strong enforcement mechanism should be included in the policy, it is likely that community groups would be involved in ensuring that developments meet the policies' requirements. Developers expressed concern that these standards could become so onerous as to deter development in the city. Thus, these policies should be considered and adopted after comprehensive studies of their potential effects.

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<sup>31</sup> Through the use of inclusionary zoning ordinances, as of 2001 San Diego had raised \$33 million through such fees, San Francisco had raised \$40 million, and Sacramento \$26 million (Rosen 2001, pg 15). Over 34,000 affordable housing units had been built throughout California through inclusionary housing ordinances (Greenbelt Alliance, *Inclusionary Housing Initiative*). Montgomery County, Maryland, with the country's first and most comprehensive inclusionary housing policy, has produced over 11,000 affordable units since the policy's enactment in 1973 (Rusk 2005).

Community standards policies that require developers to pay a fee to offset the development's indirect costs to the local government are regulated by state law that requires the locality to complete a nexus study demonstrating the connection between the development and the government's increased cost, as well as determining a fee that is proportionate to the development's impact. This requirement must be kept in mind when exploring potential community standards policies.

***Key elements:***

- enforcement mechanism
- produce necessary nexus studies
- study policies' potential effects on future development

**Attaching Requirements to Discretionary Decisions**

***Description:***

A majority of Oakland's large developments require a discretionary decision by the city, such as a re-zoning decision, a General Plan amendment, a major variance, or a major conditional use permit.<sup>32</sup> For some of these developments that are located on sites zoned for industrial use, the developer requests the city change the area's zoning or the city's General Plan in order to allow residential or mixed-use development on the site. Map 2 below illustrates the prevalence of city discretionary decisions involved in active major projects. These developments depend on the Planning Commission and/or City Council approving such requests.

By allowing land in core urban cities to be re-zoned from industrial to residential use, city governments dramatically increase the land's profit potential for its developer. In Oakland, average rents for industrial and residential space are \$0.43 and \$1.56 per square foot, respectively.<sup>33</sup> In making an industrial to residential re-zoning decision, then, the city increases the landlord's average asking rental rates by over 350 percent. In a study performed for the City of Los Angeles Community Redevelopment Agency, it

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<sup>32</sup> The City of Oakland defines a 'major project' as one that includes over 50 residential units or is over 50,000 square feet in size. Most major projects involve a minor variance permit, involving design or setback issues. Major variances are issued less frequently and only under conditions of "unique circumstances or hardship." Conditional use permits (CUPs) are triggered by a project requesting exceptions to zoning restrictions or land use requirements. For larger projects, a Major Conditional Use Permit is required for these exceptions. (City of Oakland, Planning and Zoning Division website) Per communication with City of Oakland Planning and Zoning Division staff, most major projects involve at least one of these special permits or determinations.

<sup>33</sup> Average asking rents per square foot for industrial land in NAI BT Commercial 2007. Average asking rents per square foot for residential land calculated with average asking rent for apartments in Oakland, \$1298 (Marcus & Millichap 2007) and average square footage of apartments in Alameda County, 830 ft<sup>2</sup> (Realfacts.com 2004).

was estimated that a parcel of land in Los Angeles that is re-zoned from industrial to residential immediately increases its profit as a percentage of development cost from 18 to 54 percent.<sup>34</sup>

Under this policy, Oakland will consider the value added to the land by its discretionary decisions regarding zoning, major variances, and major conditional use permits to be subsidies given to the developer. The city will attach requirements regarding community benefits to these subsidies, depending on the estimated amount of the value added. Requirements can vary depending on the size of the subsidy, either with a minimum threshold of requirements attached to any major discretionary decision, or a separate minimum set of benefits required for each type of discretionary decisions. The city can allow the developer the option of paying in lieu fees rather than including the benefits in the development, in effect applying a charge for altering its development and land use regulations.

This policy does not require additional steps in the development approval process. Instead, city staff will review a project's compliance with the policy's requirements during the current review process for zoning and design compliance.

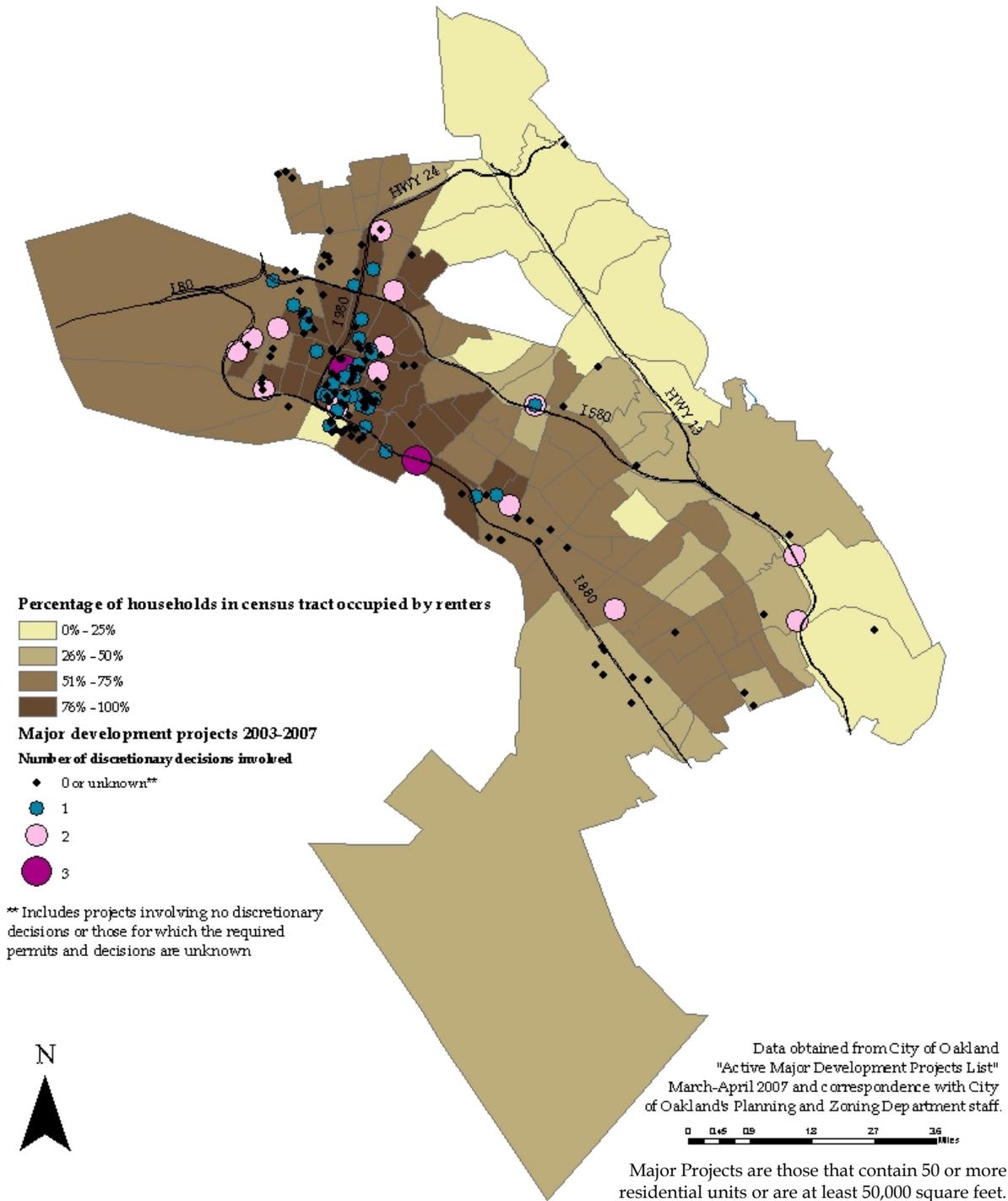
This policy option specifically addresses the challenge urban governments face in maintaining an industrial job base. By attaching requirements to the act of converting industrial land to residential use, localities can protect some industrial land from conversion and ensure that any that is converted provides community benefits. To achieve these ends, the Community Redevelopment Agency of the City of Los Angeles (CRA) is currently considering a policy that would require developments seeking a discretionary decision to either pay a fee to the city or provide a certain threshold of community benefits. The CRA is considering developing a menu of benefits from which developers could choose to meet the minimum thresholds.

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<sup>34</sup> Keyser Marston Associates, Inc. 2007, p. 3.

## Map 2: Many of Oakland's Major Development Projects Involve at Least One Discretionary City Decision\*

\*A city subsidy, sale of city land, major variance, major conditional use permit, re-zoning determination, or General Plan amendment.



### *Analysis:*

**Increase benefits:** (+) This policy would increase benefits in a majority of the city's major projects, but would have no effect on developments that do not request major discretionary decisions from the city.

**Decrease uncertainty:** (+) This policy would provide developers that seek discretionary decisions with clear expectations representing known costs, thus decreasing the uncertainty these developers currently face. Community groups' uncertainty of outcomes regarding benefits would also decrease.

**Increase community participation and improve identification of community needs** (0) Similar to community standards policies, this option would not increase community participation in development decisions but community participation would be less essential for securing benefits and identifying community needs. On the other hand, community groups want more meaningful involvement in rezoning decisions, which this policy does not provide.

**Reduce cost of negotiations:** (+) Again, as is the case with community standards policies, this policy would reduce the need for community benefits negotiations, thus reducing the costs of this process for community groups and developers alike.

### *Concerns:*

Interviewees responded favorably to this policy. Some expect it will encourage the city to pay more attention to their discretionary decisions and their impacts on communities. In addition, they argued, in approving a development and its requested permits, elected officials are deciding that the development will benefit the city and they therefore should attach requirements to ensure that residents have access to this benefit.

If this policy includes a menu of benefits from which developers are required to choose in return for city discretionary decisions, the concerns described above regarding loopholes and accountability apply. Therefore, this policy should be designed as minimum standard requirements that address the three categories of community benefits, rather than as a menu allowing developers to decide which benefits a community deserves in return for an indirect subsidy from the city.

### *Key elements:*

- requirements attached to discretionary decisions regarding large projects
- requirements are in proportion to the value added by city decisions and cover all three categories of benefits
- developers given the option of paying in lieu fee

**Table 3: Outcomes Matrix**

	Increase benefits	Decrease developers' uncertainty	Increase community participation	Reduce cost of negotiations
	+ / ?	+ / ?	?	0 / ?
<b>Menu / Point System</b>	Will require minimum threshold of benefits / points should correspond to benefits' value and cost.	Developers know upfront the costs of requirements / points should represent community needs.	Allows developers, not community, to determine benefits / community should be involved in developing menu.	If menu reflects community needs, fewer CBAs will be negotiated.
	+ / 0	+ / 0	+ / 0	0
<b>Incentives for Community Benefits Agreement</b>	In encouraging but not requiring CBAs, may increase benefits, but not guaranteed.	If incentive is fast-tracked approval, will reduce developers' uncertainty. CBA still represents unknown costs.	May increase use of CBAs, but only if incentive offered is substantial.	Does not change length or cost of CBA negotiations process.
	+ / ?	0	+	+
<b>Community Impact Report</b>	Improved information about developments' impacts may encourage more CBAs, thus increasing benefits, but not guaranteed.	Does not change uncertainty of development approval or developers' uncertainty in CBA process.	By increasing public information available, community groups learn about impacts of development and may become more involved.	By requiring comprehensive reporting of impacts, CBA process is shorter and less costly.
	+	+	0	+
<b>Community Standards Policies</b>	Will increase overall benefits by placing requirements on all developments.	Requirements will be known upfront, thus reducing uncertainty.	Will not involve or increase community input or participation.	By removing benefits from the negotiations table, CBA process will be less costly.
	+	+	0	+
<b>Attaching Requirements to Discretionary Decisions</b>	Will increase benefits in projects requesting discretionary decisions.	Will reduce uncertainty for developments requesting these decisions.	Will not involve or increase community input or participation.	By removing benefits from the negotiations table, CBA process will be less costly.

## Recommendations

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Based on the above projections of the policy alternatives' outcomes, as well as the common themes identified through interviewing stakeholders, I recommend the City of Oakland take the following action:

1. To increase the public benefit in private development and to ensure that the added value that the city confers on private development through its discretionary decisions results in benefits for the city's residents:

*The city should require minimum community benefits in developments that receive zoning changes, General Plan amendments, major variances, or major conditional use permits. This policy should require a standard minimum set of benefits for each type of discretionary decision the developer requests or require the developer to pay an in-lieu fee to fund these benefits.*

2. To decrease developers' uncertainty regarding future requirements of their projects and to decrease community members' uncertainty regarding the benefits of future developments:

*The city should adopt community standards policies, starting with an inclusionary housing ordinance, to address developments' impacts on affordable housing demand. The city should also consider adopting impact fees for developments, to offset projects' costs to the city.*

3. To increase community participation in development decisions, increase residents' access to information regarding development impacts, and ensure that development decisions are informed by standardized measurements of the projects' costs, benefits, and impacts:

*The city should adopt a community impact report policy requiring development proposals to include a standardized reporting of community conditions and the projects' expected impacts. City staff should produce the report and elected officials should use it in making permit approval decisions and crafting development agreements.*

4. To build on the positive outcomes, lessons learned, and relationships built through previous community benefits campaigns in Oakland, and to continue to provide a valuable forum for community groups and developers to come to agreement about developments' outcomes and impacts on communities:

*The city should encourage the use of community benefits agreements on a project-by-project basis when specific community needs are not addressed through the policies described above.*

Together these recommendations will decrease some of developers' uncertainty in proposing projects in Oakland, increase the benefits in developments to which the community has access, and provide incentive for developers to continue to invest in Oakland. In addition, by passing meaningful standards regarding community benefits in private development, the city will preclude some of the need for future community benefits campaigns and reduce these campaigns' costs for community groups and developers.

Based on the concerns expressed by interviewees regarding the danger of legislating and codifying the process of community/ developer negotiations, I recommend the above strategies in place of a citywide policy to encourage or require community benefits agreements. Due to the potential for misusing the community benefits negotiations process and producing agreements that do not truly reflect community needs, the CBA is best left as a tool for community groups to utilize when city policy does not adequately address their needs. In adopting the policies described above, some of these needs will be addressed through ensuring certain outcomes, without requiring the city to tread in the dangerous terrain of defining the community and choosing appropriate representatives. However, given the positive outcomes of community benefits negotiations, as well as their potential to address community needs that city policy cannot legislate and to build relationships between community groups and developers, the city should recognize the value of CBAs as a tool for responsible development and encourage their use in future projects.

In addition to the above recommendations, I suggest the city explore strategies for implementing a long-term community planning process to set standards, goals, and priorities for Oakland's future development. This process should include participation by residents of all of Oakland's neighborhoods and should result in a guide for developers looking to invest in Oakland and for elected officials approving future projects. A guiding document such as this, created with community input and used to shape future development decisions, will ensure that future projects address community needs, thus making community benefits agreements a less essential tool for ensuring public benefit in development projects.

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Appendix A: A Summary of Community Benefits Agreements Nationwide<sup>35</sup>

CBA Name Location (year signed)	Housing	Workforce						Livability / Environmental	Other	
	Affordable Housing	Living Wage Jobs	First Source Hiring	Workforce Development	Minority Business Program	Service Worker Retention	Responsible Contracting Agreement	Environmental Mitigations	Child Care	Health Care Outreach
Coyote Valley Project San Jose, CA (In progress)	X							Open space mitigation for the Coyote Valley greenbelt and hillsides; Creation of a comprehensive transit system and a community design promoting walkability and alternative forms of transportation; Discourage development along freeway.	X	
Oak to 9th Oakland, CA (2006)	X		X	X				The project will include 30 acres of parks and trails, a 170-ship marina, and restored wetlands accessible by the public. The Coalition won good monitoring of the toxic cleanup by the state Department of Toxic Substance Control (DTSC).		

<sup>35</sup> Adapted from: Partnership for Working Families. *Community Benefits Victories and Environmental Mitigations*. June 2006.

	Housing	Workforce						Livability / Environmental	Other	
CBA Name Location (year signed)	Affordable Housing	Living Wage Jobs	First Source Hiring	Workforce Development	Minority Business Program	Service Worker Retention	Responsible Contracting Agreement	Environmental Mitigations	Child Care	Health Care Outreach
Cherokee Gates Redevelopment Denver, CO (2006)	X	X	X		X	X	X	Recognized community participation in Voluntary Clean Up Program (VCUP) through Voluntary Clean Up Advisory Board; Increased site and neighborhood testing; Improved state standards with regard to TCE action levels; 1st specially zoned TOD in region.		
Ballpark Village San Diego, CA (2005)	X	X	X	X			X	Leadership in Environmental Efficiency and Design (LEED) certification for first residential high-rise site in the nation; Hazardous substance remediation; Environmentally-friendly construction and design practices such as use of bio-diesel fuel requirement, truck idling, construction traffic management, dust mitigation measures, and public complaint process; Pollution Prevention and Integrated Pest Management Plan.		

	Housing	Workforce						Livability / Environmental	Other	
CBA Name Location (year signed)	Affordable Housing	Living Wage Jobs	First Source Hiring	Workforce Development	Minority Business Program	Service Worker Retention	Responsible Contracting Agreement	Environmental Mitigations	Child Care	Health Care Outreach
Park East Redevelopment Compact Milwaukee, WI (2005)	X	X	X	X	X			Environmental mitigations; Green space and green design; Community Advisory Committee; Bike trails linking to neighboring trails; Buffer area along river; Access to public transit routes; Urban gardening.		
LAX Los Angeles, CA (2004)		X	X	X	X			Aircraft Noise Mitigation Program; Limitation on nighttime departures; Air Quality Study; Health Study; Additional environmental review aside from CEQA; Community-based studies; Electrification of passenger gates, cargo operation areas, hangars; Best available emission control devices for all diesel equipment; GSE Incentive Program; Emission reduction for on-road vehicles; Limits on diesel idling; Provision for alternative fuels; Cleaner burning jet fuels; Green building principles; Community response program.		

	Housing	Workforce						Livability / Environmental	Other	
CBA Name Location (year signed)	Affordable Housing	Living Wage Jobs	First Source Hiring	Workforce Development	Minority Business Program	Service Worker Retention	Responsible Contracting Agreement	Environmental Mitigations	Child Care	Health Care Outreach
Marlton Square Los Angeles, CA (2002)		X	X			X	X	Community services facility.		
North Hollywood Mixed-Use Redevelopment Project Los Angeles, CA (2002)		X	X	X (Also Day Laborer Center)		X	X		X	
Staples Center Los Angeles, CA (2001)	X (Also affordable housing for relocated families)	X	X	X		X	X	Accessible park space, open space, and recreational facilities; Address of parking, traffic, and public safety issues; Coalition Advisory Committee to address on-going environmental concerns; Green building principles.		X (Health Insurance Trust Fund)

	Housing	Workforce						Livability / Environmental	Other	
CBA Name Location (year signed)	Affordable Housing	Living Wage Jobs	First Source Hiring	Workforce Development	Minority Business Program	Service Worker Retention	Responsible Contracting Agreement	Environmental Mitigations	Child Care	Health Care Outreach
Sunquest Industrial Park Project Los Angeles, CA (2001)		X	X					Traffic management; Limits on truck idling; Community design review; Incorporate landscaping element; Truck routing; Avoidance of heat islands and vehicular gas inhalation; Neighborhood Improvement Fund; Public Art Fund; Youth center facilities; Security.		
Hollywood & Vine Mixed-Use Development Project Los Angeles, CA (1997)	X	X	X	X						X

## Appendix B: Data and Methodology

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I began this study with a search of development policies utilized by localities to ensure public benefits in development projects, a review of development policies in use in Oakland, an examination of Oakland's recently waged community benefits campaigns, and best practice research around citywide community benefits policies.

I focused the bulk of this study on interviews with stakeholders in Oakland development policy, including: representatives of community groups and labor organizations, private developers, representatives of community development corporations, city staff, attorneys specializing in CBAs, and staff of intermediary organizations that provide technical assistance to community groups around development issues. I conducted additional interviews with representatives of organizations and agencies in other cities that have utilized CBAs, are exploring implementing citywide community benefits policies, or have designed and implemented policies to address securing public benefit in private development.

I conducted interviews over a two-month period and identified interviewees by their involvement in community benefits campaigns or through referrals from those who have been involved in development issues in Oakland. Interviews were confidential and included open-ended questions within a semi-structured framework to elicit answers to a core set of questions while allowing free-flowing conversation and thoughts. The questions and discussions focused on:

- The costs and benefits of recent community benefits campaigns in Oakland
- The goals of CBAs - as a model - for accountable development and their efficacy - in practice - in achieving those goals
- The long-term effect of community benefits campaigns on Oakland's development environment
- Oakland's current development policy
- The opportunities for community involvement and participation in the development approval process
- Policy options for addressing the weaknesses in the community benefits negotiations process and for expanding on its strengths.

I then developed matrices to analyze the answers to these questions and to identify common themes, focusing on understanding and identifying the points of agreement or diversity of opinions on the given questions.

The author conducted this study as part of the program of professional education at the Goldman School of Public Policy, University of California at Berkeley. This paper is submitted in partial fulfillment of the course requirements for the Master of Public Policy degree. The judgments and conclusions are solely those of the author and are not necessarily endorsed by the Goldman School of Public Policy, by the University of California, or by any other agency.