

**Santa Clara Valley  
Urban Runoff  
Pollution Prevention Program**

**TECHNICAL MEMORANDUM**

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**TO:** Management Committee  
SCBWMI Land Use Subgroup

**FROM:** Linda Bulkeley

**DATE:** April 10, 2002

**APPROVED BY:** SCBWMI Land Use Subgroup (April 10, 2002)

**SUBJECT:** Economic and Tax Incentives in Watershed Management

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**INTRODUCTION**

A goal of the Santa Clara Basin Watershed Management Initiative (SCBWMI) is to balance the objectives of water supply management, habitat protection, flood management, and land use to protect and enhance water quality. The Land Use Subgroup's (LUS) mission is to identify and address land use planning interests and issues that need to be considered within the watershed plan. One of the consensus points reached by the LUS is that the existing tax structure creates economic incentives that conflict with watershed management goals (Consensus Point 11). Thus, the LUS created a task under Consensus Point 11 to compile studies of tax structure and economic incentives and to analyze the incentives. This study will analyze how local, State, and Federal tax and economic policies can encourage, discourage or conflict with environmental decision-making and thereby affect land use patterns, such as those found in the LUS Santa Clara Basin Model Development Principles (December 2000, See Attachment A). This memorandum first reviews the issue of economic and tax incentives and the problems and opportunities that they present from a watershed planning perspective. It then focuses in greater depth on those economic and tax incentives with a direct or indirect positive impact on land use patterns. The study then explores those tax and economic policies the SCBWMI may want to promote to encourage land use patterns that are beneficial to good watershed management.

**SETTING THE CONTEXT: ECONOMIC POLICIES AND TAX INCENTIVES THAT  
IMPACT LAND USE PLANNING DECISIONS**

Tax and economic policies that impact land use decisions are many and their scope is broad. Some of the policies are explicit and directly subsidize certain types of development in specific locations; whereas other policies are designed for other purposes and unintentionally impact land

use patterns. A brief summary of the various tax and economic policies and their impact on land use decisions that affect water quality are discussed below, beginning with local issues, such as market forces, local public finance structure (property taxes and sales taxes) and local government economic and land use development programs. Next transportation funding is discussed along with a brief look at Federal policies involving the tax code, mortgages, and flood insurance. Whereas this section will set the context and will be a summary of negative and positive issues, the next section in this memorandum will elaborate in greater detail only those policies with positive impacts.

## **Market Forces**

The economic value of land tends to be lower in the agricultural and open spaces surrounding metropolitan areas and generally tends to increase in value in proportion to its proximity to the urban center. There are significant exceptions, such as decayed, high crime inner city neighborhoods or wealthy neighborhoods situated in the foothills above a town. Despite these exceptions, land developers and home buyers are predisposed to build and buy in outlying geographic areas, in part because land prices are less expensive than in existing, developed areas of higher density. A telephone survey of 233 people from Alameda, Contra Costa and Santa Clara counties and the Central Valley, who had recently visited new subdivisions, found that 71% of home shoppers preferred single family detached housing and 26% would consider attached and detached homes for privacy, living space, and yards. (HBA News, 2000) Thirty percent of the survey respondents would be willing to commute 20 miles further to pay 10% less in housing costs, and 17% would be willing to drive 40 miles further to pay 20% less in housing costs according to the same survey (Ibid.) Although the survey was not conducted as a random sample of the population, but rather as a sample of those interested in subdivisions, it lends some evidence to support that the impact on land use patterns is a tendency towards sprawl away from a central core and infill development.

The underlying land use patterns of many Santa Clara cities are those of a suburban, bedroom community to San Francisco and/or San Jose established in reaction to market forces that favored development on less expensive land. The expansion into Morgan Hill, Gilroy, southern San Jose and their pending transformation from open space and agriculture to residential communities is an indication of the continuing pull of less expensive, outlying land. The impact of Santa Clara Valley-Silicon Valley's later success in establishing commercial and technological manufacturing centers will be discussed later in the Transportation section.

Another market force is the fiscal power of lenders. Land developers and property owners require financing to build or remodel. They must find lending institutions willing to risk capital on their projects. Unfortunately, lending institutions are inherently conservative. In order to be paid back their principal plus interest, lending institutions choose to invest in a secure return. Security comes from the knowledge that the proposed project has a known, predictable buying market, which will prevent the lender from being left with a vacant building. The return on standardized projects can be estimated, but the alternative designs being requested of projects for water quality purposes may not have a market. Risk averse lenders will not be forthcoming with financing for innovative projects.

A proposed parking lot for 3Com in Santa Clara offered an example of an environmentally beneficial, alternative design that had not yet been proven to guarantee a given financial return and therefore was refused financing as designed. In an effort to promote mass transportation, the City had allowed and promoted a reduced number of parking spaces at the 3Com parking lot as the site was close to mass transit amenities. However, 3Com's lenders refused to finance the project unless it met the standard parking ratio. (Riley, 2002). In order for the project to move forward, 3Com was forced to adopt a standard parking ratio.

## **Local Public Finance Structure**

Local governments encourage certain land use patterns in order to maximize property tax and sales tax revenues. The pursuit of revenue maximization can have negative results to a jurisdiction's land use patterns.

### **Property Tax**

Local governments encourage certain land use patterns in order to maximize property tax revenues. The incentive is to develop land uses that generate property tax revenue while limiting land uses with lower property tax value and/or high need for government expenditures, such as libraries, parks and other public services. Land uses that generate property tax revenue are commercial, industrial and high-end residential (properties with higher than average tax value). The result is a land use pattern that favors low density and more exclusive residential uses, commercial and industrial development, versus higher density, mixed land uses, and market rate or less expensive (affordable) residential uses.<sup>1</sup>

Zoning a specific land use for its revenue generation potential ("fiscal zoning") may conflict with environmentally sound development. In their quest for fiscal stability, cities over build commercial retail and other land uses, which tend to have higher levels of imperviousness, and under build housing and other land uses, resulting in spread out metropolitan regions held together by miles of impervious roadways. Open space, such as flood plains and wetlands, as well as agriculture are paved over and dense residential development is avoided because of their lower property tax values and absence of sales tax revenue. The Silicon Valley Network describes the Santa Clara Valley as having a predominance of jobs over housing in many areas which has resulted in the building of new housing on more rural, lower valued property in the southern regions of Santa Clara County (Joint Venture: Silicon Valley Network, 2001). If this generalization is correct, it may indicate that the region's local governments are consciously or unconsciously pursuing those land use patterns that maximize property tax revenues over watershed concerns.

The net effect of changes in the California public finance structure, beginning with Proposition 13 in 1978, was to reduce property tax revenues for local government and to increase the

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<sup>1</sup> Peter Calthorpe (*The Regional City: Planning for the End of Sprawl*, 2001), Myron Orfield (*Metro Politics*, 1998) and others writing about and working for regional government and planning efforts have focused on the interaction of the property tax and land use patterns in metropolitan settings. This literature includes theoretical and case study discussions on how to change the tax incentives that have created the current situation.

importance of the sales tax. These fiscal changes and their impact on land use patterns is discussed in greater detail below.

## **Sales Tax**

Perhaps even more than property tax revenue, local governments in California have become increasingly conscious of sales tax revenue and are acutely sensitive of this revenue's relation to land use decisions. Beginning in 1978, California's Proposition 13 restricted local government's ability to generate property tax revenues. Later citizen-led initiatives further limited property tax revenues and placed limitations on fees, assessments, and other locally generated revenues. The State's transfer of a significant portion of property tax earnings from local governments to the schools and other State responsibilities during the early 1990's recession left municipalities and counties financially strapped. Blocked from property taxes and other traditional sources of general revenue, local jurisdictions saw the development of land uses that generated sales tax revenues as a means to fiscal stability. (Chapman, 2000, p.11) The fact that in the year 2000 California cities received only 14 cents per property tax dollar vs. 86 cents per sales tax dollar (Johnson, 2000), suggests that cities would pay more attention to sales tax revenue. For the typical County, sales tax revenues are less significant and the property tax is a much larger percentage of their revenue base than it is for cities. Consequently, although counties are concerned with maximizing sales tax revenue, they have more vested in preserving their property tax revenues and/or having a percentage of the property tax returned to them.

The Public Policy Institute of California and others interested in the problem of fiscal stability in local California governments have written numerous reports on the "fiscalization of land use decisions," (i.e. the bias for land uses rich in sales taxes). In a survey of 471 California City Managers with a 70% response, results strongly indicated that "city governments do favor retail development over other land uses when developing vacant land or pursuing redevelopment.... Moreover, they [City Managers] rated the desire for sales tax revenues at the top of a list of motivations guiding development decisions..." (Public Policy Institute of California, 1999, p.1). In their 1999 study, Innes and Booher, point to the reliance on sales taxation in California as the single most important factor driving local land-use decisions in the state. The resulting competition for sales tax generating land uses has been particularly intense among local governments in California. The fact that business owners can frequently shop around for a location with the best economic incentive from local jurisdictions is evidence that this competition exists.

One result of these land use preferences is the popularity of "big box" developments and automobile dealerships. These developments are favored for their potential to generate greater sales tax revenue for the cities. Super K-Marts, Wal-Mart, Home Depots, Costco, and other "big box" developments can be characterized from a watershed perspective as large impervious surfaces surrounded by parking lots with a semi-regional draw of customers. The large, continuous impervious surfaces of typical automobile dealerships and "big box" developments are often at odds with planning designs advocated for watershed management purposes, such as neighborhood mixed use development with a pedestrian or alternative transportation component.

Not only do local governments prefer and compete for retail development, there is evidence that California's current local government finance system contributed to the sprawling nature of that retail development over the last twenty years. Robert Wassmer (2001) in his study on urban sprawl<sup>2</sup> concludes that the quest for local sales-tax revenue is statistically linked to retail activities on the urban fringes far from the central urban core. His conclusions are based on a review of economists' and planning analysts' research on urban retail and its location, as well as his own statistical analysis of 54 metropolitan areas in the western United States for the years 1977, 1987, and 1997. Because a metropolitan area can only support a given amount of retail activity, local government efforts to foster retail growth will not generate more retail stores, but may change where the retail stores will locate. Although an outer suburban government may succeed in persuading a store to relocate to its jurisdiction from the inner urban core, overall demand for retail services and sales tax generation for the entire metropolitan area will not increase. This competition across municipal boundaries can lead to contentious feelings and a lack of cooperation among municipal leaders within watershed boundaries. His statistical studies showed that for percentage increases in reliance on sales tax, retail sales in the urban fringes also rose.

If there is more retail development in the urban fringes than population and other factors merit, individuals will need to drive their cars to do shopping. And urban sprawl tends to follow close on the heels of retail sprawl (Johnson, 2000). Unlike central urban cores, the urban fringes are less likely to have transit systems necessitating more people in automobiles to reach the shopping. As will be described in greater detail under the transportation section, automobiles and their roadways are problematic to watershed health.

The San Jose metropolitan area<sup>3</sup> shows a large percentage of its retail sales occurring in the central metropolitan area relative to other western state metropolitan regions and an increase in these sales between 1977 and 1997. (Wassmer, 2001, p. 26) Central San Jose's favorable retail sales statistics suggest that San Jose may not fit Wassmer's paradigm. Factors such as San Jose's redevelopment and other urban containment policies may begin to explain the location of some retail stores in San Jose.

### **Local Government Economic and Land Use Development Programs**

Tax increment financing (redevelopment districts), tax exempt bonds, reduced developer fees and/or reduced future taxes are designed to encourage development which may or may not be environmentally beneficial.

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<sup>2</sup> Wassmer does not define typical suburban retail development, such as strip-malls or big box stores, as retail sprawl. Sprawl is retail activity outside of central places that is greater than economic factors justify (population, population growth, income, demographics, and land prices).

<sup>3</sup> Wassmer's study employed U.S. Census Bureau terminology of metropolitan area, urbanized area and central places in order to do an inter-state comparison of the western United States. San Jose is the name given to the metropolitan area (roughly urbanized Santa Clara County) and the urbanized area (determined by population level and surrounding population density). Central places, defined as dominant employment and residential centers within an urbanized area, for the San Jose Metropolitan Area are Gilroy, Palo Alto, San Jose, Santa Clara, and Sunnyvale.

Local government use of tax increment financing for redevelopment areas continues to rise. Tax increment financing directly influences land use decisions in the redevelopment area. Ideally, the desired goal of redevelopment areas (to bring economic development to blighted areas) could encompass watershed management goals, such as more infill development. No research has been found yet on the extent to which actual redevelopment projects have coincided with watershed management goals.

Economic development zones, Brownfield's, public-private development projects and other policy and program vehicles that direct tax and economic incentives to specific locations or land development projects also have the potential to be a positive incentive for environmentally sound development. For example, a private developer might receive tax reductions, waived developer permitting fees for building housing in a downtown commercial area and the local government would cover some of the costs of infrastructure which might include innovative narrower streets with a small artificial wetland park.

### **Transportation Funding**

If not spent strategically, transportation funding will reinforce a decentralized, car dependent transportation system that supports low density residential land uses separate from job centers and commercial or industrial areas.

#### **Santa Clara Valley Transportation and the Watershed**

The existing automobile-based transportation system is detrimental to watershed health due to the large amounts of impervious surface on roads and highways and the predominance of the single driver automobile. In addition to impervious roadways, automobiles generate petroleum waste, copper, lead, chromium and other heavy metals to stormwater runoff. In the Santa Clara Valley, housing and jobs are not close to one another and jobs dominate in the housing/jobs equation. Also the existing housing is frequently unaffordable for the average household. Consequently, a significant number of people commute long distances from homes in either southern Santa Clara Valley or outlying communities to their work.<sup>4</sup> Two-income households often find their jobs in different communities making it difficult for both parties to live near work. Demand for more and larger highways and roads to relieve the congestion becomes a constant pressure.

#### **Impact of Transportation Funding**

The condition of the transportation system may act as an economic incentive or disincentive to private development. Likewise the existence, type, and the condition of a transit system may influence the type of land use development that does or does not occur near it. In essence,

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<sup>4</sup> The ratio of jobs to households has increased steadily since 1970. Since 1992, the Silicon Valley region has created more than 200,000 jobs, and only 38,000 housing units. Generally, cities in north Santa Clara (Palo Alto, Santa Clara, Sunnyvale, Mountain View, Milpitas, Cupertino) and south San Mateo County (Menlo Park, San Carlos) have more jobs than employed residents, and the surrounding cities have more employed residents than jobs. This is especially true in San Jose and the southern portion of Silicon Valley. (Joint Ventures: Silicon Valley Network, Our Environmental Challenges section of web page report.)

spending by local and other government levels to maintain, improve, or expand the conditions of transportation systems may influence land use decisions made by private developers. In addition to private developers, State and Federal transportation spending may influence decision-making by local government on land use issues. In the Bay area, local government receives 30% of transportation funding from State and Federal sources. (Metropolitan Transportation Commission, 2000, p.1).

The current funding structure is not inherently opposed to measures that are beneficial to watershed health. For example, in the Bay Area, the largest amounts of Federal funds are spent on transit maintenance and operations, rather than road infrastructure. (Metropolitan Transportation Commission, 2000, p.2) The great majority of transportation programs are funded with revenues that can only be allocated after approval from a voter approved measure, with detailed plans for spending the money, or a multi-year, regional planning process, (e.g., Transportation Development Act, Regional Improvement Program, Santa Clara County Permanent and Measure A ½cent Sales Tax). In Santa Clara Valley for these types of projects, the Metropolitan Transportation Commission, Santa Clara County Board of Supervisors, and the Santa Clara Valley Transportation Authority determine who receives the monies and how the monies will be spent within the confines of the authorizing legislation. Federal revenues eligible for non-transit spending, such as the Surface Transportation Program and Congestion Mitigation and Air Quality Improvement Program, are also allocated through the Metropolitan Transportation Commission. Caltrans is also responsible for allocating a significant amount of funding. The regional planning process and voter-approved measures are both subject to influence and could be used to further watershed management objectives when making funding choices.

## **Federal Programs**

### **Federal Tax Code**

Federal tax credits, deductions and other incentives often support current land use patterns. Some argue that the Federal Tax Code's deduction for mortgage interest and property taxes reinforces current land use trends, such as single-family homes and low density- sprawling residential areas with high property tax values. (Hayden, 2001, p. 3) Criticisms of lower density must be balanced against concerns that increased density results in higher levels of impervious surface and a greater amount and number of stormwater contamination sources. Other critics suggest that the casualty loss deduction, which allows homeowners to deduct damages from natural disaster events from their income tax, may indirectly support building in flood zones (Beatley and Manning, 1997, p. 219). State tax credit for energy efficiency improvements is an example of a tax credit with a positive environmental impact.

### **Federal Housing Administration Mortgages**

Generally, Federal Housing Administration (FHA) mortgages are much easier to obtain for single-family homes than alternative, higher density land use, such as mixed-use developments. In her historic overview of suburbs, Dolores Hayden of Yale University states, "It was the FHA's mortgage insurance for private subdivisions that proved to have the greatest long-term

effect on American urbanization patterns.” (Hayden, 2001, p.1). Some have written that FHA’s policies favor single-family homes.

...while Fannie Mae, the principal underwriter accepts mortgages for mixed use projects, its policy is to require lower debt-to-equity ratio than would be the case for mortgages used solely for housing. Furthermore, it is Fannie Mae’s practice to restrict the commercial portion of a building to less than 20% of the total floor area or less than 20% rental income. Such ratios preclude the kind of small-scale mixed use development that one would be likely to find in traditional, pedestrian-oriented communities... (Beatley & Manning, 1997, p.9)

### **National Flood Insurance Program**

Federal and Local government administration of the National Flood Insurance Program has a direct relationship to new and existing development in the floodplain. The National Flood Insurance Program (NFIP) is an agreement between local communities and the Federal government whereby the Federal government makes flood insurance available to community residents, if the city or county government adopts and enforces a floodplain management ordinance to reduce future flood risks in specific flood hazard zones. Although the program is voluntary, those areas located in particularly high-risk floodplain zones (known as Special Flood Hazard Areas or SFHA) that are not covered by the NFIP are denied access to benefits from Federal programs related to acquisition or construction in that area. For example, a builder could not borrow Department of Veterans Affairs guaranteed loans, Federal Housing Administration insured loans and Rural Housing Services secured loans for development in a SFHA without participation in the NFIP. Also, access to emergency flood relief funds is limited.

Critics have argued that NFIP encourages an individual’s poor choice to live in a hazardous and environmentally questionable area. They argue that the consequences of floods are mitigated by claims payments and that the insured household does not pay the true actuarial cost for premiums, which a private insurer would charge. (Beatley & Manning, 1997, p.218) Theoretically, according to these critics, an individual’s home could be repeatedly destroyed and rebuilt with claims receipts from the NFIP. Such a scenario would certainly be at odds with watershed management priorities to keep a more natural flood zone where infiltration is maximized, vegetation traps pollution, and wildlife is protected.

However, preliminary research indicates that repetitive claims by Santa Clara Valley residents who participate in the NFIP are almost non-existent (email correspondence with FEMA, 2001). Nationally in 1999, only two percent of properties insured through the NFIP had sustained flood damage on multiple occasions. (FEMA website <http://www.fema.gov/nfip/reform.htm>, 1999, p.1) And although California has a large population, the greatest number of claims and payments are made in other states like Florida, Louisiana, and Texas.

Development and construction can occur in flood plains that are not covered under NFIP, but without NFIP, there may be less incentive for a local agency to regulate for flood prevention. Given the increased costs of a structure to a property owner and the builder who must meet higher engineering standards, it appears most accurate to think of NFIP as a regulatory incentive

to slow the number of buildings and other improvements located in the flood plain.

## **CREATING A POSITIVE LAND USE IMPACT WITH ECONOMIC AND TAX POLICIES**

This memorandum has shown the positive, negative or neutral relationship between economic and tax policies to land use patterns and will now focus on those policies that can either directly or indirectly contribute to the establishment of environmentally sound land use patterns. The first set of proposals will look at tax and economic policy opportunities that could be implemented by government agencies as an incentive to promote good development decisions and beneficial land use patterns. The second set of proposals will be concerned with state legislative reforms or more general policy reforms that could change the conditions and incentives indirectly creating undesirable land use patterns. The fourth and final section of this memorandum will recommend which proposals presented below with positive impacts might be best pursued by SCBWMI.

### **Tax and Economic Policy Opportunities**

In addition to acting as a disincentive, e.g., sales tax and sprawl, many tax and economic policies do or could act as an incentive for the development of beneficial land use patterns. This section of the memorandum will review those types of policies available for implementation at the local government level to influence private sector decision-making regarding land use or at the federal/state government level to influence local government actions.

#### **Local Government Policy “Tools” for Influencing Private Land Use Decisions**

##### **Fee and Other Tax Incentives**

Cities and counties have employed reduced development fees, fast track permit approvals, and tax rebates, tax caps, or tax deferrals to encourage development or to continue a desired land use. When growth control was needed, they required benefit assessment districts and increased development fees in order for new development, in virgin areas outside the central urban core and surrounding suburban ring, to bear the cost of new infrastructure and government services. Some cities and counties have also established redevelopment districts and economic development zones to entice construction and business activity to a desired geographic location. Smart growth advocates, Association of Bay Area Governments (ABAG) and others interested in protecting the environment through planning advocate employing these “tools” as tax incentives or disincentives for influencing private land use decisions (O’Neill [Urban Land Institute], 1999, p.13, and ABAG, 1998). The tax incentives would encourage developers to build desired projects with appropriate site design characteristics in an environmentally sound location, e.g., a multi-use building with low imperviousness design characteristics located well outside the flood plain in the city center next to a transit center.

For example, Atlanta, Georgia has used a tax allocation district and enterprise zones as incentive

strategies. The West Side Tax Allocation District offsets the high cost of land and property taxes in a downtown area. The city has agreed to freeze at the 1998 level property tax receipts from businesses within the tax allocation district. Every additional dollar created by businesses in that area after Dec. 31, 1998, is available to be reinvested in the neighborhood, mainly for public infrastructure improvements. Historically, the principal incentive that the city of Atlanta has used has been its enterprise zone designation. Currently, 75 districts within the city have been designated as enterprise zones. Businesses that locate within the areas are entitled to a lucrative tax abatement program. For most property types, it's a 10-year abatement, 100 percent for the first five years, then basically increasing 20 percent per year thereafter. Several years ago, much of downtown Atlanta also was designated a federal empowerment zone. That program provides federal job tax credits, as well as grants and low-interest loans to businesses relocating within the empowerment zone (Cook, 1999).

### Direct Expenditures

In addition to indirectly encouraging or discouraging development activity through tax incentives, proactive municipalities have embarked on public-private ventures to encourage risk adverse developers to build innovative projects on more costly land with an unknown market or to try more innovative green building designs. Generally speaking, public-private ventures involve the expenditure of tax revenues, bonds or some other public revenues on a private project, such as a sports stadium. For example, local governments have shared some of the infrastructure or other public improvement costs. A local government may combine the tax adjustments of a brownfield, redevelopment or economic zone with government grants and loans to projects inside the zone to encourage private ventures.

Cities have employed the EPA's Clean Water Act section 319 grants to build innovative public improvements. For example, the City of Marion, Massachusetts used this grant and other funding sources to build an artificial wetlands system behind residential housing to manage polluted runoff to nearby beaches. The wetlands, which were designed to store 1 inch of storm-water runoff with an average detention time of 14 days, reduced fecal coliform bacteria. (GAO, 2001, pp. 69-70)

The Chiron Corporation Research and Development Park located in Emeryville is an example of an infill project encouraged by government support through brownfield redevelopment efforts. Chiron is located on a former oil research facility. An American Can Factory property in an existing Baltimore neighborhood was transformed from a defunct, former industrial site to an area of restaurants and retail establishments through brownfield incentives and clearing regulatory hurdles. (O'Neill, 1999, p.17).

On a smaller scale, local jurisdictions could encourage individual homeowners and small businesses to remodel existing properties along more environmental lines through small grants and technical assistance. Many cities and counties already provide similar assistance as part of property rehabilitation or abatement control in a Community Services or Building Department. Further research on the applicability of Federal HUD grants, (used in these other pre-existing programs), for watershed friendly rehabilitation or remodel projects would be useful.

## Review and Criticisms

Literature reviewing the use of local government tax incentives and more direct expenditures to influence land use development to make good environmental decisions is very limited. Studies of redevelopment, economic development and brownfield zones monitor these programs' attempts to develop or restore economic vitality (e.g., employment levels), eliminate blight, or clean up a specific contaminated geographic area. These studies do not evaluate these programs and their relationship to land use decisions and watershed protection goals. Economist Wassmer's study on urban sprawl evaluated the effectiveness of three types of urban-growth boundaries. His research found that those boundaries, which attempt to focus development to a particular area, rather than stopping its growth past a set boundary, were most successful in reducing retail sprawl.<sup>5</sup> This finding suggests that redevelopment districts and other bounded zones are a good policy to pursue.

Criticisms of these "tools," focus on the negative, indirect impacts. The tax increment financing used in redevelopment districts decreases the revenue stream local governments need to provide basic government services. The county, the general fund, and other agencies that normally would receive a portion of an area's property tax, do not receive any, because all property taxes stay with the redevelopment agency. Tax increment financing diverts funds used to pay off the bonds that might otherwise be available to city, county or the state treasury to pay for fire, police, code enforcement, and other services. Also the redevelopment district may indirectly impact other geographic areas by redirecting land development away from them and to the district. Depending on which area outside of the district is impacted, this transfer of activity may or may not be advantageous from an environmental standpoint. If the transfer of activity to the redevelopment district is from a similar, nearby, urban neighborhood, the redevelopment district may be criticized for not having met the goal of increasing the level of infill Citywide. The redevelopment district benefits, while the nearby neighborhood has lost businesses and continues to experience a decline of its residential buildings.

Similar criticisms are made of other tax and fee reductions, public-private ventures and so on. Developer fees often offset the budget cost of city/county planners and inspectors involved with the land use process. Public private partnerships can result in increased cost to local government for contributing to a shared development project or an infrastructure improvement. Most likely in most California cities, the private developer would otherwise have met the financial burden of the infrastructure. And, unless a local government has revenue in reserves, increased costs will generally translate into a higher tax burden to the local, tax-paying resident. (Tax is being defined broadly to include assessments, service or user charges, and so on.) Finally, a local government may be accused of favoritism and political cronyism when it engages in public-private ventures that reduce fees and taxes for some, but not for all development activities.

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<sup>5</sup> "'Closed-region urban containment' growth boundaries [are] a metropolitan-wide boundary that preserves the open space outside it and consciously shift demand for regional development to within it. For every year that a 'closed-region urban containment' growth boundary was in place, for instance, retail sales in urban fringes declined by \$37.54 million. After 20 years in place, this results (on average) in nearly 20 percent fewer retail sales on the urban fringe." (Wassmer, 2001, p. 6)

## Federal and State Revenue Incentives for Local Government

A commonly proposed tax incentive, designed to influence local government's land use decisions is for the state or Federal government to condition its allocation of revenue to cities and counties based upon their performance of a desired set of local government actions.

The allocation of Federal funds could be conditioned on how well local and state governments demonstrate that the funds will be used to support a comprehensive, sustainable development plan across city departments and State agency lines. Besides Federal grant programs directly related to land use development, such as transportation, some have suggested that unrelated Federal grant programs should rate those applicants higher who have a comprehensive sustainable development plan (Beatley and Manning summarizing Calthorpe and other's research, 1997, p. 222). For example, the amount from the annual Community Development Block Grant would be influenced by a communities' protection of flood zones, infill development, and so on.

### Ideas from Maryland and Georgia

Maryland and Georgia have been noted for their management of land development through the use of mandates requiring local and regional planning to be consistent with state goals combined with tax revenue incentives. For example, Georgia mandated that all counties set aside a given percentage of undeveloped land for open space. The Governor then threatened to withhold funds to areas that did not comply with the mandate. Maryland's "Smart Growth Act" set a goal to reduce the rate of growth of urban sprawl in the state by 30% by 2012 (GAO, 2001, p.66), requested local governments and builders to not create new projects on virgin land and then backed up the request by only funding infrastructure, housing, and economic development in already developed areas and those areas designated by local jurisdictions as future growth zones. Projects in other areas are denied state transportation and other subsidies (Ehrenhalt, 2000, p. 2). Wisconsin provides grants to local governments to write local land use and transportation plans.

### National Flood Insurance Program

As mentioned above, the National Flood Insurance Program (NFIP) gives the local and Federal governments the opportunity to more heavily regulate building and design in the flood plain and at the same time motivate compliance from property owners with the economic incentive of flood insurance. Cities and counties may choose their level of participation in NFIP programs. Some NFIP program provisions go further in encouraging beneficial land use patterns from a watershed perspective than the basic NFIP. One such program is the Community Rating System (CRS). Under the CRS, resident's premiums are tied to an array of nationally recommended efforts implemented by their city or county. The more credit points a local government earns for performing activities, such as mapping or flood preparedness, the greater the premium reduction for local government residents. Premium reductions are greater for those properties in Special Flood Hazard Areas defined by the NFIP's Flood Insurance Rate Map. Some of the recommended activities are directly related to good watershed management priorities. They include 1) stormwater management efforts to reduce the impact of increased runoff that results from new development in a watershed, as well as efforts to reduce erosion and the entry of

sediment and pollutants into receiving streams, and 2) higher regulatory standards which protect natural and beneficial floodplain functions and encourage low density zoning. (FEMA, CRS Credit for Higher Regulatory Standards, January 1999 and CRS Credit for Stormwater Management, January 1999). Local governments who choose to participate in the CRS and implement these additional, specific activities will increase the possibility of a healthy watershed.

### **Transportation Funding Incentives**

Given transportation's strong link to land use and its significance to the Santa Clara Valley, a focused look at incentives in this area is merited. The interplay between State and Federal government incentives to local government and the resulting economic incentives to the private sector based on government action is described as follows.

As mentioned before, whenever possible, transportation funding from the State of California and Federal governments could be used as an incentive to support better land use decisions. The objectives to support would include reducing low density land use patterns, increasing housing so as to reduce the imbalance between jobs and housing, and thereby decreasing the number and length of single occupant car commutes that are presently required to link housing to far away job centers. Likewise, local governments need to take advantage of grants, which fund transit, promote telecommuting and other alternatives.

Ideally from a watershed perspective spending on the following projects should be high: transit, maintenance of existing infrastructure rather than building new roads into agricultural or open space ("green fields"), transportation design that supports transit oriented development, and other alternatives that encourage pedestrian, bicycles and other non-auto forms of transportation. To a large degree, Santa Clara Valley communities have begun identifying beneficial locations and design locations in their transit plans that support watershed friendly objectives and have begun guiding funding to them through the lengthy regional, planning process. The State and Federal government can use funding as an incentive for local governments to develop certain land uses and local government can spend transportation monies in a manner that acts as an economic incentive to desired private development, e.g., well maintained roads in the inner city to promote infill.

The Mineta Transportation Institute, San Jose State University suggests that the State of California offer the following economic and tax incentives (Schreiber, Church, et. al., 2001, pp. 37-40):

Provide funding priority for transportation or other infrastructure for communities that meet or exceed fair-share housing requirements (particularly higher-density infill housing), " (Schreiber, Church, et.al. p. 37)

Provide financial incentives for private development in priority investment areas that match land use objectives beneficial for watershed management goals. Possible incentives could include tax write-offs for investments in desired areas,

tax-increment financing for infrastructure and development projects consistent with these objectives.

Develop criteria for designating smart growth priority investment areas. State-funded and state-authorized infrastructure funding would go to these areas. State funds could not be used to pay for infrastructure that facilitates development outside of the priority investment areas, but could be used for conservation purposes. The State of Maryland has developed an investment program that should be reviewed for its applicability to California.

Increase the funding available for alternative transportation projects, and enact provisions that tie regional investments in transportation projects to improvement in land use planning, in order to ensure a better job/housing balance.

Participate in the Inter-Regional Partnership (IRP) program. This year's state budget [2001] includes \$5 million to be distributed through a competitive grant program to implement planning strategies that address solutions to the job-housing balance problem in the areas of the state that are suffering significant traffic congestion as a result of increasing distances between employment and housing. The Department of Housing and Community Development (HCD) is administering this program. Caltrans, which does meet and coordinate with HCD, could propose involvement through technical assistance and/or financial support.

Increase the level of effort of the Community Based Transportation Planning grant program. The program offers planning grants for transportation-related projects that promote livable community objectives and integrate land use/transportation planning concepts.

### **Policy Reforms to Eliminate Indirect Negative Incentives on Land Use Patterns**

As discussed earlier, many tax policies indirectly impact land use patterns. The architects of Proposition 13 and the early 1990's property tax shift who created the current local public finance system in California did not anticipate the fiscalization of land use and other negative consequences. The following is a brief review of legislative reforms of the California local tax system. Some attention will also be given to other state's efforts to change the incentives of the property tax system.

#### **Restore Integrity to California's Local Public Finance System**

A central goal of many proposals is to adjust the local tax structure so as to transfer the incentives for intercity competition and narrow-minded pursuit of revenues to an interest in regional concerns, such as the health of a watershed. The down side to many of these proposals is that they would require legislative changes to the existing structure and would need to overcome political resistance to reallocation of revenues.

## Reduce Reliance on the Sales Tax

There were 27 bills before the California legislature in the year 2000 to change the current local finance system through sales tax restructuring and other means (Silva and Lewis, 2000, p.15). These specific bills and proposals from various State commissions, task forces, and the two major local government lobbying organizations (League of California Cities and California State Association of Counties) sought to reduce reliance on the sales tax by replacing it with other revenues and/or eliminating competition by changing the basis of allocation. If enacted into law, these proposals might begin to free local governments to make land use decisions on the basis of watershed management objectives or at least make it a higher priority. At this point in time, the California legislature has yet to adopt a specific bill to reallocate sales tax revenue.<sup>6</sup>

Under the proposals, local governments would receive the two proposed alternative revenues, (property taxes and vehicle license fees), regardless of whether or not the big box, auto dealership, or other retail development were within their jurisdiction. These revenues are less conducive to aggressive competition among cities for specific, retail development projects. Under the current allocation system, the State Board of Equalization collects all sales tax receipts and a portion is returned to local government according to where the sales occurred (referred to as the situs sales tax system). Some reformers are suggesting that allocation be done on a per capita basis, rather than location of sale. The details of the proposals vary over the following issues:

- Amount (percentage) of the sales tax to be replaced by other revenues;
- Which businesses would be subject to the reforms and when reforms would be implemented. For example, would all existing businesses that generate sales tax be subject to the reforms or only businesses in new developments;
- Which revenue(s) would replace the sales tax; and
- How reforms would be distributed between city, county and State governments. Most of the proposals would shift property taxes taken by the State in the early 1990's back to the city and/or county. These monies are generally referred to as Education Revenue Augmentation Fund or ERAF funds. The distribution of property and sales taxes between city and county varies.

Table 1 developed by J. Fred Silva and Paul G. Lewis of the Public Policy Institute of California demonstrates how each of the five major proposals would revise tax incentives in land use decisions through decreased reliance on the sales tax and increases in other revenues (Silva and Lewis, 2000, p.14).

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<sup>6</sup> SB 1982 and other specific bills of the 1999/00 State legislative session dealing with local finance reform and the state-local fiscal relationship were merged with or set aside in deference to AB 1396 supported by conference committee. In September 2000, the Governor signed into law AB 1396 a one-time appropriation of \$212 million to counties, cities, and independent recreation, park and library special districts. The Legislature states in the Act their intention to continue to reform the relationship between the state and local agencies in future sessions. Current bills, such as AB 680, continue to focus on sales tax allocation and an even greater number of bills look at property tax reallocation, specifically making amends for the loss of property tax revenue to the Educational Revenue Augmentation Fund (ERAF is spent on the school system). Table 1 continues to summarize the intentions of the various bills.

**Table 1 Comparing Elements of Fiscal Reform**

<b>Proposer</b>	<b>Decrease reliance on sales tax</b>	<b>Increase local government share of the property tax</b>
Speaker's Commission on State/Local Finance	Swap ½ local sales tax for an equal amount of property tax. Local rate drops .5%, state rate increases .5%. Property tax shifted from schools would be backfilled with the state general fund.	Reduce the ERAF property tax shift by \$1 billion over 10 years @ no less than \$100 million/year.
Controller Connell SMART Task Force	Convert the situs based locally levied sales tax to a per capita allocation for all future growth and 10% of the existing base. Within each county include a system for bringing low per capita sales tax cities up to the county average.	Cap the ERAF shift by reducing shift by \$450 million.
Commission on Local Government for 21 <sup>st</sup> Century	Revise the current situs based sales tax to reduce the negative effects and increase property tax allocations.	
League of California Cities	Swap .5% of the sales tax on future development for an 11% increase in the share of the property tax arising from the new development.	Increase allocation of property tax to cities, counties and special districts.
California State Association of Counties	Convert the situs sales tax system to a per capita system including a pool in each county to equalize the per capita allocation in the county.	Return property tax shifted to schools, to local governments on the basis of the original shift.

A pilot project to reallocate local sales tax revenue partially on a per capita basis is currently under consideration in the State Legislature. Steinberg's AB 680 would reallocate sales tax revenue growth within the greater Sacramento region (Counties of El Dorado, Placer, Sacramento, Sutter, Yolo, and Yuba) on the basis of one-third to the jurisdiction where the tax was generated, one-third on a per capita basis, and one-third as above unless a community does not meet certain affordable housing and homeless shelter requirements. Their amount will go to a yet-to-be-established Sacramento Regional Smart Growth Fund Allocation Program and the Sacramento Regional Open Space and Recreation Conservancy. These two programs would fund regionally beneficial projects, defined as regional transportation projects, transit-oriented development, infill development, development providing balance between jobs and housing, mixed-use development, and others. This ambitious legislation was introduced on February 2001, approved by the Assembly, and as of February 2002 was referred to two Senate Committees. (AB 680 Steinberg, Bill Analysis and Status, 2002).

A less ambitious State legislative reform of the sales tax system was approved in the fall of 1999. The State legislation prohibits a city, county, or redevelopment agency from providing financial assistance to an auto dealership or big box retailer that is relocating from one community to another community within the same market area. (AB 178) However, the retailer can relocate to the neighboring community if the communities share the sales tax revenue from the retailer, and the communities hold a public hearing. The California Business Properties Association, California State Association of Counties, and California Redevelopment Association supported this legislation. (State Assembly Republican Caucus, [http://republican.assembly.ca.gov/members/36/Press Release2428.html](http://republican.assembly.ca.gov/members/36/Press%20Release2428.html)) In the summer of 2001, Costco moved one of its stores

from Martinez to Concord. Due to this legislation, Martinez continues to receive a portion of the sales tax even though the business is now located in another city.

## **Change the Incentives in the Property Tax System and Land Valuation**

### Minneapolis-St.Paul: Case Study

One of the most radical attempts to discourage intra-regional competition and encourage a regional mindset is in Minneapolis-St. Paul where a portion of the property tax is transferred among cities in the region. Each city contributes to a regional pool 40 percent of the growth of its commercial industrial tax base acquired after a certain date. The annual pooled amount is about 20% of the region's tax base. The money is then distributed on the basis of inverse net commercial tax capacity. From an equity standpoint, the down side of this system is that a community with a lot of industry and commerce and a poor residential population is required to give away locally derived revenue that might end up in a wealthy, bedroom community with less industrial/commercial land uses. (Orfield, 1998, p. 87)

Even if other regions do not desire this model, there are some useful lessons to be noted. According to Myron Orfield, the property tax transfer system, in place since the early 1970's, did not prevent the Twin Cities' continued low-density growth, housing/job imbalances and other conditions symptomatic of fiscal zoning.<sup>7</sup> He thinks the property tax transfers alone were inadequate and should have been accompanied by a regional body with authority to shape regional planning. And he points to Portland's successes, such as holding firm on an urban limit line, as being due to a stronger regional organization than the Twin Cities' Metropolitan Council. A second helpful observation is that political efforts at fiscal reform brought together groups which have historically not worked together, such as environmental groups advocating for an end to urban sprawl or other environmental planning measures and affordable housing advocates or other groups concerned with social equity issues. Those concerned with environmental issues may be able to learn something from affordable housing advocates. Research on housing advocates attempts to use incentives to bring affordable housing to the inner city may yield ideas and direction to watershed management efforts at impacting land use decisions.

### Theoretical Reforms

The theoretical concept of giving economic value to open space, if better developed, may eventually make it easier for cash strapped jurisdictions to say no to developer's plans for new development in current open space areas (also referred to as green fields). Policy analysts have found a means to quantify fish and other wildlife's interest in the allocation of water rights and perhaps a means will be created to better quantify open space as a land use.

Other suggested reforms designed to shape local government land use decisions by changing the property tax incentive structure include providing cities and counties with a larger share of the property tax from new housing development in targeted areas." (Schreiber, Church, et.al., p.37) During 2001 the State legislature considered a number of bills that proposed conditioning return

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<sup>7</sup> "In 1990, of the 25 largest metropolitan areas in the county, the Twin Cities, with 1,956 persons per square mile, had the third-lowest population density." (Orfield, 1998, p. 72)

of property taxes (Education Revenue Augmentation Fund monies or ERAF) to cities and counties, on certain actions, such as the development of affordable in-fill housing. (Torlackson's S.B. 423)

**Conclusions**

Economic policies and tax incentive that impact land use planning decisions are listed in column 1 of Table 2. Column 2 then describes both the positive and negative impacts to land use patterns from a watershed perspective. Finally, the last two columns summarize the proposals described in this section of the memorandum that should encourage environmentally sound land use patterns, as well as describes their specific benefit to good watershed management.

**Table 2 Summary of Economic Policies/Tax Incentives**

Economic Policy/Tax Incentive	Relationship to Land Use Pattern (Watershed Perspective)		Potential Direct Incentives	Potential Direct or Indirect Benefits
	Positive	Negative		
<b>Market Forces</b> <ul style="list-style-type: none"> <li>Value of Land</li> </ul>		Tends to increase cost of land near urban center; preventing infill development.	Create an economic value to open space.  Increase tax incentives for continued agricultural use.	Discourage land use development in outlying areas.  Maintain pervious surfaces.
<ul style="list-style-type: none"> <li>Fiscal Lender Priorities</li> </ul>		Wary of funding innovative, watershed friendly designs or in locations with unknown markets.	Private-Public ventures.  Redevelopment, economic, brownfield other zones which employ property tax abatements, reductions and other tax benefits.	Public revenue can offset some of the funding cost of innovative design and treatment controls.  Reduced taxes encourage lenders and developers to provide infill development.
<b>Local Public Finance Structure</b> <ul style="list-style-type: none"> <li>Property Taxes</li> </ul>	Tendency to commercial and industrial development is not inherently a disadvantage, depends on amounts of pervious surface and location in the watershed.	Favors land use pattern of low density and more exclusive residential uses, commercial and industrial developments vs. higher density, market rate or less expensive residential and mixed land uses.	Increase tax incentives for continued agricultural use; develop tax incentives for open space.  Property tax allocation to all municipalities in a region, rather than one municipality (Minneapolis -St. Paul Case Study)	Local governments would be less inclined to choose specific land uses for their property tax value, might give a higher priority to environmental concerns when making land use decisions.

Economic Policy/Tax Incentive	Relationship to Land Use Pattern (Watershed Perspective)		Potential Direct Incentives	Potential Direct or Indirect Benefits
	Positive	Negative		
<ul style="list-style-type: none"> <li>Sales Taxes</li> </ul>	Support for more retail development (i.e. higher sales tax base) is not inherently disadvantageous, depends on location in the watershed and amount of pervious surface.	Tendency for local governments pursuing sales tax to make land use decisions that favor big box/auto dealerships and retail sprawl.	Legislative reform, e.g., reallocation of sales tax on a non-situs basis (such as per capita) and replacement of sales tax with another general revenue, Contracts between neighboring cities to share sales tax receipts from a large, retail store with customers from the neighboring cities.	Local governments would be less inclined to compete for sales tax and would begin to think of land use decisions from a regional watershed perspective.
<b>Tax Incentive Programs and Fiscal expenditures aimed at private developers or property owners.</b>	If aligned with watershed management priorities, tax incentive programs can encourage infill development and innovative green designs, reduce sprawl, etc.	Neutral or damaging if not done from a watershed perspective.	<p>Redevelopment, economic and other tax allocation or abatement zones, Public-private ventures, Reduced developer fees, Technical assistance and small grants (Homeowner Outreach Program).</p> <p>Benefit Assessment Districts (developers bear cost of infrastructure, other public amenities), increased developer fees.</p>	<p>Encourage development in desirable locations, (infill), innovative treatment controls and site designs.</p> <p>Discourage land use development in undesirable locations (e.g., open space, flood plains), slow sprawl.</p>
<b>State Tax Incentive Programs and Fiscal expenditures aimed at local governments.</b>	If aligned with watershed management priorities, tax incentive and State spending programs can encourage good land use decisions by local governments.	Neutral or damaging if not done from a watershed perspective.	Target State transportation and other spending where land development or types of development are desirable, Withhold funding in areas where development or types of development are undesirable, Fund regional land use planning.	Local governments would give environmental concerns (specifically from a watershed perspective) a higher priority when making land use decisions.
<b>Transportation Funding</b>	Neutral or can reinforce positive land use decisions, if aligned with watershed management	If not targeted, will reinforce decentralized, car dependent transportation system that supports low	Target Federal and State spending, as well as locally controlled funding sources (e.g. ½cent sales tax) to existing developments or other desirable locations. to	Encourage infill housing to reduce the jobs-housing imbalance, Encourage location and types of development by providing infrastructure.

Economic Policy/Tax Incentive	Relationship to Land Use Pattern (Watershed Perspective)		Potential Direct Incentives	Potential Direct or Indirect Benefits
	Positive	Negative		
<b>Transportation Funding (cont.)</b>	management priorities.	supports low density residential land uses separate from job centers and commercial areas, encourages house-job imbalance.	desirable locations, to integrate land use/transportation planning objectives (e.g., commercial/residential areas centered around a transit center).  Increase funding of alternative transportation projects.	Discourage miles of sprawling impervious surfaces (e.g., highways).
<b>Federal Tax Incentives and Fiscal Expenditures</b>  • National Flood Insurance Program	Cities must adopt a floodplain management ordinance, which reduces the impact of development on flood plains, e.g., impervious surfaces.	Critics believe this program encourages development in the flood plain by providing below market flood insurance and paying repetitive claims for the same property.	National Flood Insurance Program, particularly the Community Rating System, provides flood insurance at reduced costs.	Property owners must meet building regulations designed to lessen the impact of development on flood plains.
• Federal Housing Administration Mortgages	Requires further research.  Impact of an individual homeowner purchase will depend on amounts of pervious surface involved and location in the watershed.	May encourage single-family housing and other land use patterns reliant on miles of impervious roadways/parking lots and encourage new development in open spaces while discouraging mixed use development.	Develop incentives, such as lower debt to equity ratios or favorable interest rates, to encourage alternatives to single family housing or homes located near transit centers, etc.	More homeowners would make purchases that support infill development and a favorable transportation system.
• Federal Tax Code	Requires further research. Outcome depends on amounts of pervious surface involved and property's location in the watershed.	Mortgage interest and property tax deductions, tax credits support single-family homes, low density-high property tax land development.	Develop or strengthen existing credits and deductions that encourage alternatives to single family housing and low-density residential development.	More homeowners would make purchases that support infill development.

## **RECOMMENDATIONS FOR SCBWMI**

Next steps for Santa Clara Basin Watershed Management Initiative to consider can be divided into three categories: 1) programmatic responses which, if chosen, could probably be acted upon locally without legislative changes at the State or Federal level; 2) ideas/issues to lobby for at the State level, either in the form of future State programs or legislation to remedy current systems and processes; and 3) areas that would require additional study and research.

### **General Proposals Requiring No State or Federal Legislative Changes**

Proposals that can be implemented at the individual city or county level are discussed below and summarized in Table 3.

#### **Expand Participation in the NFIP**

The Cities of Milpitas, Palo Alto, San Jose, and Sunnyvale currently participate in the Community Rating System of the National Flood Insurance Program (NFIP). They should consider adding, if they have not already done so, to their current set of activities those directly related to good watershed management, specifically stormwater management efforts and higher regulatory standards for the protection of natural and beneficial floodplain functions as well as low-density zoning. Theoretically this action should result in these jurisdictions earning more credit points and their citizens receiving a flood insurance premium deduction. Rate reductions can go up to as high as 45% for properties in Special Flood Hazard Area (FEMA, 2001, p.1).

All other Santa Clara local governments are active in the National Flood Insurance Program, but not in the Community Rating System. The Santa Clara Valley Water District (District) performs activities which would allow every city to qualify for a 5% discount and program enhancements are being planned to increase that discount. The District is planning on working with cities to make clear the advantages of the Community Rating System. Even if cities do not join the Community Rating System, they should consider ensuring that their floodplain management ordinance and related regulations support good watershed management principles to the greatest extent possible. SCBWMI could research and possibly support incentives that would encourage more eligible cities to participate in the program and strengthen the program's ability to control activities in the flood plain.

#### **Continue or Expand Use of Local Fee/Tax Incentives and More Direct Economic Support**

Similar to other local governments in California, many Santa Clara municipalities and the County have learned the art of utilizing a variety of fees, taxes and economic policies to influence land development decisions by the private sector. San Jose's Redevelopment efforts have been successful in building up its downtown and Mountain View has also succeeded in transforming its downtown to an area of much higher density. Sustainable development, smart growth, new urbanism, and all other titles in the literature given to those activities which seek to achieve environmental protection in an urban/suburban setting basically involve using existing

tools to achieve a new end. Local governments, the building community and interested citizens can identify where projects should and should not be built, what types of projects or designs could be built, and then the local government can apply methods, such as reduced developer fees and the equivalent of a redevelopment or an economic development zone, to entice development and to facilitate project completion. When the objective is to stop sprawl or preserve open space, governments can require that the cost of new infrastructure be borne fully by the new development.

SCBWMI might also consider establishing or expanding existing technical assistance outreach and small grant programs to encourage small remodel projects at the individual homeowner and business level. Property Conservation and similar programs seek to rehabilitate houses. These programs or new ones, employing the same methodology, might expand their focus on the establishment of micro detention basins, green driveways or relocation of roof drain spouts.

Please see Table 3 for a summary of how these proposals could benefit the watershed and which types of cities could consider their implementation.

**TABLE 3 Recommended Economic and Tax Incentive Policies**

<b>RECOMMENDATION</b>	<b>BENEFIT to WATERSHED</b>	<b>APPLICABILITY</b>
<b>Community Rating System (NFIP)</b> – expand creditable activities to include stormwater management efforts and higher regulatory standards for protection of natural and beneficial floodplain functions as well as low-density zoning. Property owners may receive deduction in NFIP insurance premium as a reward for being held to a higher standard.	Control type and amount of development in the floodplain.	<ul style="list-style-type: none"> <li>• Current participants (Milpitas, Palo Alto, San Jose, Sunnyvale)</li> <li>• Cities that have land within the 100-year flood plain</li> </ul>
<b>Redevelopment District</b> – determine where there is a geographic overlap between redevelopment and appropriate development. When feasible, encourage site and building designs favorable to watershed protection through tax increment financing.	<p>Increase infill</p> <p>Possibly improve job-housing imbalance or establish innovative transit- housing combination development.</p> <p>Support alternative site designs.</p>	Municipalities/County with areas that could be defined as blighted
<b>Development Mitigation Program and/or Benefit Assessment Districts</b> – any development in sensitive environmental areas would be required to mitigate at the site or elsewhere. Development in outlying areas would be required to cover the costs of new infrastructure, parks, etc. (public improvements) according to agency specifications. Either by directly paying for the construction of the public improvements or paying into an area-wide assessment district.	Slow or mitigate growth in undesirable locations.	Cities, County with open space and sensitive areas defined regionally for watershed protection purposes.

RECOMMENDATION	BENEFIT to WATERSHED	APPLICABILITY
<p><b>Flexible developer fees and land development processing</b> – when appropriate, streamline the land development process to encourage positive behavior by the building and developer community. As with other recommendations, agencies will need to identify in advance those geographic locations and building/site designs which are to be encouraged.</p>	<p>Possibly increase infill projects. Support alternative/green site designs.</p>	<p>All agencies.</p>
<p><b>Homeowner Outreach Program</b> – Provide technical assistance and small grants to homeowners and small businesses on how to remodel their buildings to decrease polluted stormwater runoff. May want to research first whether Federal HUD/other grant programs could fit.</p>	<p>Increase use of good site and building designs – roof spout outfalls, pervious pavement driveways, etc.</p>	<p>Municipalities currently operating property improvement/communi-ty development outreach programs.  Fiscally-strong municipalities who wish to establish such programs.</p>

### Support Legislative Reforms at State and Federal Level

#### **Rethink Transportation Objectives and Expenditures**

As described above, changing the transportation system so as to not accommodate and encourage sprawl is of particular importance to Santa Clara Valley. The great distances between housing and jobs and the resulting long commute for large numbers of people in cars must continue to be addressed. San Jose has developed an excellent transportation program that works to resolve these issues as has Palo Alto, and others. Working through the Metropolitan Transportation Commission, Santa Clara Valley Transportation Authority and the County Board of Supervisors, local agencies and other interested parties would need to obtain new funding and ensure that existing funding goes to transportation projects which directly or indirectly reinforce watershed management goals. Voter-approved measures could also be used to shape the transportation system. The following are ideas worthy of pursuit.

Inter-Regional Partnership (IRP) Program - Under this State Program, grants are available to fund regional plans that seek to resolve the job-housing imbalance problem. This revenue is only available to regions, like Santa Clara Valley, with significant traffic congestion due to increasing distances between employment and housing. Further information is needed to determine how well this Program is currently being funded and what experience Santa Clara Valley cities or County have had with these grants.

Priority Investment Areas are targeted areas or zones where a local government would provide tax and other incentives to encourage development. Eligible

projects would include construction or improvements for desirable transportation or transit infrastructure.

Whenever feasible, funding should continue to be sought that supports increased transit projects and other alternatives to fossil fuel burning automobiles.

### **Increase Local Government Fiscal Stability**

Land use decision-making would improve statewide if local public finances were restructured to reduce the incentive to pursue retail development. The potential for sprawling retail development may be limited to southern San Jose and Santa Clara County, but is probably less possible in other, older, more built out areas of Santa Clara Valley. The SCBWMI should consider supporting State legislative efforts to restructure local public finances, which reduce reliance on the sales tax and thereby strengthen a regional approach to land use decision-making. No specific proposal is recommended, because no one proposal would be equally beneficial to all SCBWMI members. For example, cities and counties place significantly different value on the sales and property taxes and therefore support different legislative measures. SCBWMI members may choose to reach a consensus for a combined lobbying effort. Or they may decide to wait and evaluate Assemblyman Darrell Steinberg's efforts (AB 680) to establish a pilot project in the Sacramento region of sales tax allocation by population, as well as at the point of purchase.

### **Lobby for Stronger Incentives at the State Level**

City and County lobbyists could include the following objectives in their State legislative agenda:

- Strengthen and establish State incentive programs like Maryland and Georgia that encourage regional planning and support environmental concerns during the land development process.
- Reprioritize State transportation funding to reward municipalities with higher-density infill housing and to minimize spending in regions designated for conservation and open spaces, such as flood plains and stream buffer regions.

### **NFIP Improvements**

Although the likelihood of a property owner in the Santa Clara Valley being reimbursed for several different floods to his/her one property is minimal, SCBWMI agencies may want to add to their legislative agenda support for federal legislation that would bolster NFIP's ability to remove structures in flood plains. Recently proposed, but not adopted, legislation would have given the NFIP the ability to exclude highly repetitive loss properties from insurance coverage and to purchase or demolish properties that have suffered repeated flood damage (McKensie, 2001).

## **Future Research**

The SCBWMI may want to look in greater detail at underlying tax and economic policies that impact land development patterns. The study has only made passing references to research on the following topics:

- FHA mortgage loans
- Federal tax code
- Public policy efforts to increase economic value of open space and agricultural land.
- Tax caps or rebates for maintaining land as an open space or agricultural use.

Another research area would be to track the success of other agencies attempts to use fiscal tools to improve land use decisions, such as the State and cities of Maryland and Atlanta, Georgia. As more regions across the State and country gain more experience employing economic and financial incentives to encourage environmentally beneficial land use development, there will be more programmatic experiences and documented case studies to learn from.

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## **Attachment A**

### ***Santa Clara Basin Model Development Principles***

## **Santa Clara Basin Model Development Principles**

### **I. Requirements to Implement Erosion and Sediment Controls During Construction**

1. Specify comprehensive erosion and sediment control policies, including more stringent control policies for developments in sensitive areas (near riparian areas, hillside developments) to protect natural resources. Specify more stringent erosion and sediment control policies for, or discourage altogether, wet season construction.
2. Incorporate erosion control policies for off-road vehicle and trail use.
3. Limit clearing and grading of native vegetation at a site to the minimum amount needed to build lots, allow access, and provide fire protection. Minimize removal of vegetation and trees, and minimize earth movement.
4. Implement erosion and sediment controls prior to the start of and as part of grading and clearing.
5. Require adequate training of contractors, engineers, and designers in erosion and sediment controls. Reference specific technical manual(s) for guidance (e.g., Regional Board's Field Guide, ABAG's Erosion and Sediment Control Manual).
6. Require appropriate sites to meet NPDES General Permit conditions prior to obtaining municipal approvals.
7. Allow for flexibility in the erosion and sediment control plans to allow for updates in response to ever-changing field conditions.
8. Allow adequate authority and funding for routine municipal site inspections.
9. Incorporate enforcement measures, such as performance bonds, to ensure compliance with erosion and sediment control regulations/policies.

### **II. Policies to Limit the Overall and Directly-Connected Imperviousness of a Site and for Incorporating Post-Construction BMPs Into Development Projects**

#### **A. New Residential and Commercial Campus/Institutional Subdivisions.**

10. Incorporate cluster development zoning policies with criteria to support water quality protection: (a) significant impervious surface reduction from reduced roadway network compared to conventional zoning, (b) minimum site size (approximately 5 acres); minimum open space requirement of approximately 50% of total site. (c) consolidation of open space, such that at least 75% is in a contiguous unit for habitat value; (d) maintenance of approximately half of the open space in undisturbed, natural vegetated areas (i.e., wetlands, meadows), with the other half as a community green space (e.g. playgrounds, constructed stormwater basins, turf grass); (e) formation of private legal entity to maintain open space in perpetuity (e.g. homeowners' association); and (f) dedication of open space to a public open space district.

11. Ensure that site designs require a definition of the development envelope, including the identification of protected areas, such as existing trees, steep slopes, erosive soils, riparian areas, or wetlands; setbacks, easements, and important site features.
12. Allow for a minimization of lot sizes, setbacks, and frontage distances to allow for open space and to protect sensitive areas.
13. Minimize impervious surface in recreational open space by using permeable pavement and other BMPs.
14. Advocate reliable methods for management of open space (e.g., community associations, and land trust or local government management via conservation easements). Address management decisions including maintenance, liability, and emergency vehicle access issues for open space areas. Clearly specify how community open space will be managed and designate a sustainable legal entity responsible for managing both natural and recreational open space.
15. Protect native vegetation, including heritage trees. Promote tree canopy coverage.

#### **B. Residential Subdivision Site Design.**

16. Advocate open space development that incorporates smaller lot sizes to minimize total impervious area, reduce total construction costs, conserve natural areas, provide community recreational space, and promote watershed protection.
17. Relax side yard setbacks and allow narrower frontages to reduce total road length in the community and overall site imperviousness. Relax front setback requirements to minimize driveway lengths and reduce overall lot imperviousness.
18. Promote more flexible design standards for residential subdivision sidewalks. Where practical, consider locating sidewalks on only one side of the street and providing common walkways linking pedestrian areas.
19. Reduce overall lot imperviousness by promoting alternative driveway surfaces and shared driveways that connect two or more homes together.
20. Implement maximum impervious surface coverage limits.

#### **C. Commercial/Industrial/Campus/Institutional Site Design.**

21. Cover maintenance yard, service, cafeteria use, and disposal areas.
22. Policies should promote inclusion of turf playfields/courtyards as appropriate that will also serve as infiltration areas. Play areas or impervious areas should slope to turf playfields/courtyards. Promote multi-use area or playgrounds that to double as overflow parking for large events. Use removable bollard for access to overflow areas.
23. Promote use of benign roof materials.
24. Promote reduced building footprint, including multi-stories that incorporate parking areas within the structure.
25. Industrial areas should include an inlet with sump for spills; covered storage.

#### **D. Streets.**

26. Promote neo-traditional design, or headwaters street designs. Design residential streets for the minimum required pavement width needed to support travel lanes; on-street parking; and emergency, maintenance, and service vehicle access. These widths should be based on traffic volume.

27. Reduce the total length of residential streets by examining alternative street layouts to determine the best option for increasing the number of homes per unit length and for reducing vehicle trip miles.
28. Minimize the number of residential street cul-de-sacs and incorporate landscaped areas to reduce their impervious cover. The radius of cul-de-sacs should be the minimum required to accommodate emergency and maintenance vehicles. Consider alternative turnarounds.
29. Promote safe, integrated bikeways and pathways.
30. Promote native street trees.

#### **E. Parking.**

31. The required parking ratio governing a particular land use or activity should be enforced as both a maximum and a minimum in order to curb excess parking space construction. Existing parking ratios should be reviewed for conformance taking into account local and national experience to see if lower ratios are warranted and feasible.
32. Parking codes should be revised to lower parking requirements where mass transit is available or enforceable shared parking arrangements are made.
33. Reduce the overall imperviousness associated with parking lots by providing compact car spaces, minimizing stall dimensions, incorporating efficient parking lanes, and using pervious materials in spillover parking areas. Promote use of hybrid parking lot/parking groves in parking lots, and/or landscaped parking reserves.
34. Provide meaningful incentives to encourage structured and shared parking to make it more economically viable.
35. Wherever possible, provide stormwater treatment for parking lot runoff using bioretention areas, filter strips, and/or other practices that can be integrated into required landscaping areas and traffic islands. Promote use of vegetated swales, biofilters, infiltration islands. Promote pervious overflow in parking stalls, and notched curbs to direct runoff to swales, infiltration areas.

### **III. Requirements for Drainage Design**

36. Promote limiting runoff to pre-development levels and/or finding solutions to flooding and local drainage problems in the development vicinity (e.g., detention/retention). Drainage policies, standard specifications and details for drainage should allow for infiltration of storm water and breakup of directly-connected impervious areas before sending water to the storm drain system.
37. Direct rooftop runoff to pervious areas such as yards, open channels, or vegetated areas and avoid routing rooftop runoff to the roadway and the stormwater conveyance system.
38. Drainage master plans should incorporate protection of streams from hydrologic impacts from development. Avoid altering natural drainage systems, so that flooding and water quality degradation do not result.
39. CEQA checklists should be modified, as necessary, to address stormwater and hydrologic impacts.
40. Wherever possible, residential street right-of-way widths should reflect the minimum required to accommodate the travel way, the sidewalk, and vegetated open channels.

Utilities and storm drains should be located within the pavement section of the right-of-way wherever feasible.

41. Where density, topography, soils, and slope permit, vegetated open channels should be used in the street right-of-way to convey and treat stormwater runoff.

#### **IV. Other Policies Intended to Reduce Stormwater Pollution**

42. Reduce the use of herbicides and pesticides on city-owned properties to the extent possible.
43. Prohibit litter, oil, pesticides/herbicides, or other illicit discharges or connections to the storm drain system. Control pollutants to the storm drain systems by any user.
44. Incorporate policies to reduce wastes from commercial, industrial sites, and municipal maintenance activities. Ensure proper use, storage, and disposal of toxic chemicals.
45. Include policies to promote public information and participation in all areas of storm water management, and for watershed protection.
46. Require general pollution prevention controls at construction sites.
47. Obtain appropriate legal authority for inspections, monitoring activities needed to ensure compliance and obtain adequate enforcement authority.
48. Policies and funding to help city implement Storm Water Management Plan.

#### **V. Wetlands and Riparian Protection and Restoration, and Open Space Policies**

49. Distinguish between and preserve natural open space and urban (park, recreation) open space. A fixed portion of any community open space should be managed as protected natural open space in a consolidated manner.
50. Create a variable width, naturally vegetated buffer system along all perennial streams that also encompasses critical environmental features such as the 100-year floodplain, steep slopes and freshwater wetlands.
51. The riparian stream buffer should be preserved or restored with native vegetation that can be maintained throughout the delineation, plan review, construction, and occupancy stages of development.
52. Conserve trees and other vegetation at each site by planting additional vegetation, clustering tree areas, and promoting the use of native plants. Wherever practical, manage community open space, street rights-of-way, parking lot islands, and other landscaped areas to promote natural vegetation.
53. Incentives and flexibility in the form of density compensation, buffer averaging, property tax reduction, stormwater credits, and by-right open space development should be encouraged to promote conservation of stream buffers, forests, meadows, and other areas of environmental value. In addition, off-site mitigation consistent with locally adopted watershed plans should be encouraged.
54. New stormwater outfalls should not discharge unmanaged stormwater into jurisdictional wetlands, sole-source aquifers, or sensitive areas.

## **VI. Policies to Limit Auto Use and Promote Alternative Modes of Transportation**

55. Promote regional and local linking of mass transit opportunities to allow for easy, convenient connections.
56. Reduce the amount or length of vehicle trips necessary. Promote street design to minimize trip length. Promote telecommuting. Promote delivery services.
57. Promote employment and industrial areas in areas with more truck routes, better access to air, truck, rail, and water freight routes.
58. Participate in Regional Transportation Planning Process, and develop local policies to support the regional transportation planning efforts. Examine and reduce overall social, economic, energy and environmental effects of transportation decisions in the transportation plan.
59. Promote mixed land use development and strong regional centers with strong pedestrian amenities, to ease congestion and increase mass transit use. Arrange mass transit together with higher density land uses. Promote parking limitations, pedestrian amenities, and land use considerations in areas with compact, densely developed urban areas near mass transit. Advocate increased density near transit and activity centers.
60. Promote well-connected network of streets/pathways to benefit transit, pedestrian, and bike travel. Promote more compact urban form and land use patterns, and increased availability for transit, safe biking and walking. Promote connection of urban centers with several corridors and access points that allow for auto, transit, bike, and pedestrian movement.
61. Minimize the impact of travel on rural and environmental land uses by promoting greenbelts.

## **VII. Policies to Promote Regional/Watershed-Based Planning and Zoning**

62. Local jurisdictions should work with multiple jurisdictions that share their watershed and on a regional level to: (1) identify the watersheds shared by participating jurisdictions; (2) identify, assess, and prioritize the natural, social, and other resources into the watershed, (3) prioritize areas for growth, protection and conservation based on prioritized resources, and (4) develop plans and regulations to guide growth and protect resources.
63. Adopt a watershed-based or ecosystem-based planning approach to land use planning and policy decisions. Articulate the basic strategy in the General Plan. The General Plan should look at development projects in the context of the entire watershed. Link land use planning with transportation planning to maintain livability, protect the watershed.
64. Begin to pursue basic watershed-based planning strategy in collaboration with neighboring local governments located in the watershed.
65. Promote watershed-based zoning, such as overlay districts, performance zoning, incentive zoning, imperviousness overlay zoning, and/or planned unit development zoning to introduce flexibility into the zoning structure.
66. Update CEQA checklist to consider site impacts in terms of an overall watershed plan (once available).

67. Consolidate open space planning within the watershed. Plan early with other watershed communities where and when open space development is desired and needed.
68. Have a mechanism to prepare a specific area plan in conjunction with flood control planning, to address in part the need to incorporate urban drainage.

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