

Community Amenity Contributions: Balancing Community Planning, Public Benefits and Housing Affordability

Ministry of Community, Sport and Cultural Development



March 2014



Acknowledgements

This guide was drafted in consultation with numerous local governments, the development and building sectors, and the legal and academic communities. The Ministry would like to thank everyone who contributed to the development of this guide.

Ministry of Community, Sport and Cultural Development

Contact the Ministry of Community, Sport and Cultural Development for answers to questions about the material contained in this guide or other aspects of community amenity contributions.

Ministry of Community, Sport and Cultural Development
Local Government Division
Intergovernmental Relations and Planning
PO Box 9841 Stn. Prov. Govt.
Victoria, B.C. V8W 9T2
Phone: 250 387-4037
Website: www.cscd.gov.bc.ca/lgd/contacts/department.htm

Disclaimer

The information contained in this guide is provided as general reference and, while all attempts have been made to ensure the accuracy of the material, the guide is not a substitute for provincial legislation, and it does not constitute legal advice.

Community Amenity Contributions: Balancing Community Planning, Public Benefits and Housing Affordability

Table of Contents

Guide Purpose and Summary	1
Summary of Recommended Practices for CACs	2
Part 1: Background on CACs and the Rezoning Process	3
Definitions	3
Legislative Context	4
Part 1 - Summary	5
Part 2: Staying on a Solid Legal Footing	6
Legal Risks	7
Imposing Unauthorized Fees, Charges and Taxes	7
Not Keeping an Open Mind	7
Subjecting Building and Subdivision Approvals to CACs	8
Part 2 - Summary	8
Part 3: Recommended Practices for CACs	9
Official Community Plans and Zoning Bylaws	9
Planning for CACs	9
Applying the Principles of Nexus and Proportionality	10
Being Transparent About CACs	11
Determining CAC Amounts	11
Affordable Housing	12
Using CACs for Capital Costs Only	12
Part 3 - Summary	13
Part 4: CACs and Housing Affordability	14
Progress on Housing Affordability Requires a Focus on Supply	14
Who Ultimately Pays for CACs?	14
Are CACs Likely to Reduce Developer Profit?	14
Are CACs Likely to Reduce Land Owner Profit?	15
Land Owner Incentive to Sell is an Important Consideration	16
Part 4 – Summary	16
Part 5: Choosing an Approach to Obtaining Amenities	17
Density Bonus Zoning	17
Setting Preferred CAC Targets for Properties Being Rezoned	17
Negotiating CACs Based on Property Value “Lift”	18
Choosing a Strategy for Obtaining Amenities	18
Part 5 – Summary	19
Summary	20

APPENDIX: Illustration of Policies for a Target Approach to CACs 22

A. General Policies on Target Contributions for Land Being Rezoned 22

B. City-Wide and Neighbourhood Amenities 23

C. Targets for Cost Sharing of City-Wide Amenities 23

D. Targets for Cost Sharing of McKay Valley Amenities 24

Guide Purpose and Summary

The purpose of this guide is to help local governments understand the risks, challenges and recommended practices related to obtaining community amenity contributions (CACs). The guide also describes the relationship between CACs and housing affordability, and encourages practices that do not inadvertently cause housing prices to increase. Density bonus zoning, authorized under *Local Government Act* (LGA) s. 904, is another approach used by local governments to obtain community amenities.



While CACs are the focus of this guide, most recommended principles and practices apply equally to CAC and density bonus approaches¹. Therefore, throughout the document and where helpful to the reader, the guide highlights key differences and commonalities between the two approaches. The guide also emphasizes the importance of density bonus zoning as a preferred approach for obtaining community amenities.²

The guide is intended primarily for local governments.³ The content of the guide may also benefit others involved in the land use planning and development process including developers, builders, real estate professionals and planning consultants.

The guide contains the following sections:

- **Part 1: Background on CACs and the Rezoning Process**
- **Part 2: Staying on a Solid Legal Footing** – helps local governments to understand the limits of their legal authority to impose fees and charges and obtain CACs.
- **Part 3: Recommended Practices for CACs** – outlines the challenges associated with obtaining CACs and recommends practices that align with good planning principles.
- **Part 4: CACs and Housing Affordability** – encourages local governments to consider who ultimately pays for amenity contributions and encourages approaches that are most supportive of housing affordability.
- **Part 5: Choosing an Approach to Obtaining Amenities** – addresses advantages and risks associated with typical approaches currently used, and provides advice on choosing a strategy.
- **Appendix: Illustration of Policies for a Target Approach to CACs** – provides an example of the “target approach” to CACs including provisions that could be customized for inclusion in official community plans (OCPs) or adopted as policies to guide negotiation of CACs.

A short version of this guide is available here:

http://www.cscd.gov.bc.ca/lgd/intergov_relations/library/CAC_Guide_Short.pdf

¹ Where a site specific rezoning includes a density bonus on condition of providing amenities, it is essentially a rezoning with CACs.

² Developers make contributions in various circumstances, such as housing agreements, phased development agreements, or heritage revitalization agreements. This guide only addresses contributions to the extent that they are related to zoning.

³ While the City of Vancouver is unique, in that it operates under the *Vancouver Charter*, the issues and guidance in this document are nevertheless applicable to the City.

Summary of Recommended Practices for CACs

Avoid Legal Risk – Negotiate, do not impose; avoid perception that zoning is for sale.

Plan Ahead – Identify potential amenities, ideally by neighbourhood.

Seek Modest Contributions – Avoid impacts on housing affordability.

Apply Development Cost Charge (DCC) Principles – e.g. link contributions to impacts of new development; try to ensure each developer pays a comparable, fair share.

Engage the Development Community – Be aware of how CACs could impact projects and their viability

Part 1: Background on CACs and the Rezoning Process

Local governments face many challenges in managing growth. They need to ensure that new development is acceptable to the community, respects the community plan and that infrastructure, amenities and services are in place to keep pace with growth. Provincial legislation allows local governments to ensure that developers install services as part of their development, both on the site itself and immediately adjacent.

Legislation also allows local governments to impose development cost charges (DCCs) for certain off-site services, namely, water, sewer, drainage and roads and park land.⁴ Increasingly, local governments are relying on the rezoning process to secure affordable housing, and contributions towards recreation facilities and other community amenities that cannot be funded through DCCs.

LGA section 904 allows zoning bylaws to include the option of additional (bonus) density subject to specific conditions, which can include providing amenities. This provision in the LGA has been in place since 1995.

As an additional approach, local governments sometimes negotiate CACs from those seeking a change in zoning. A change in use or an increase in density generally boosts the value of land, and provides the possibility of a financial benefit to the land owner, developer or local government. Increasingly, local governments and residents see this as a reasonable opportunity to help fund community amenities.

In considering CACs, it is important that local governments understand the limits of their legislative authority, follow good planning principles, be fair, clear and consistent, and understand the financial and market impacts.

Housing affordability is a particular challenge for many B.C. communities. This guide describes how CACs, if not handled carefully, can potentially decrease the supply of new housing and lead to increases in housing prices. It is important that local governments recognize the relationship between CACs and housing affordability and make efforts to balance the opportunity to obtain public benefits, such as community amenities, with the goal of helping families to secure affordable housing.

Definitions

“Affordable housing” is housing that does not exceed 30% of household income. This is the general guideline for social and subsidized housing in B.C. and is commonly the percentage lenders use to determine what a family can afford to borrow when purchasing a home.

“Affordable market housing” is privately-owned housing that is owned or rented at prices set by the market and affordable to low-middle income earners.

“Community Amenities” contribute to the attractiveness of a project or a neighbourhood, and typically include aesthetic features, public spaces, and facilities to meet a range of social, cultural, recreational, and infrastructure needs of the community.

⁴ The City of Vancouver has comparable authority, under the *Vancouver Charter*, for “development cost levies”.

“Community Amenity Contributions (CACs)” are amenity contributions agreed to by the applicant/developer and local government as part of a rezoning process initiated by the applicant/developer. CACs can take several forms including community amenities, affordable housing and financial contributions towards infrastructure that cannot be obtained through DCCs, such as recreation facilities or a fire hall. The agreed-to contribution would be obtained by the local government if, and when, the local government decides to adopt the rezoning bylaw.

“Density Bonus Zoning”, as authorized under LGA s. 904, is intended to provide options for the developer to build either to the “base” density or to a higher level of density, if they provide certain amenities or affordable housing, or meet other specified conditions. The developer, by right, always has the option of developing at the base level of density, but usually has an incentive to consider higher densities.

Legislative Context

Provincial legislation enables local government to require services, collect fees and/or obtain land from new development to address certain impacts of new growth. The following sections of the LGA enable local governments to require new development to provide:

- DCCs for off-site services (s. 933);
- money towards acquiring school sites (s.937.3);
- on-site services related to subdivision (s.938);
- excess capacity or extended services (s.939);
- up to 5% of land being subdivided for park land, or cash-in-lieu (s.941); and,
- land for roadways (s.945).

Not all impacts of development are covered by these legislative provisions. Increasingly, local governments are taking the position that new development should not be a burden on local taxpayers and are supplementing the above requirements with CACs. For example, local governments commonly impose DCCs to pay for allowable items such as water and sewer mains then seek contributions towards facilities not covered by DCCs, such as expansion of a fire hall, recreation centre or library.

Whether new development is on “green field” sites or accommodated by the redevelopment of existing areas, it often brings resistance. Existing residents are often concerned about negative impacts of new development, such as the increased number of cars parked on streets or obstructed views. Community amenity contributions used, for example, to help fund upgraded parks, street art and community centres, have helped existing residents see tangible benefits from new development.

Local governments also report a trend in the demand for amenities that relate to a change in urban form. For example, where a single family neighbourhood transitions towards higher density, backyards are reduced in size or eliminated and residents’ expectations for quality outdoor public spaces and other amenities increases. In response, local governments may turn to CACs to help pay for these community amenities.

With some of the most expensive housing in North America occurring in British Columbia, local governments are also using CACs and density bonus zoning to help meet housing needs that the housing market is failing to deliver on its own.

Examples of affordable and special needs housing types that have been provided include price-controlled, limited equity market housing units; housing for people with special needs; and guaranteed or time-limited rental units with rent controlled mechanism⁵.

Part 1 - Summary

- Local governments face many challenges in managing growth.
- Legislation allows local governments to impose DCCs for certain off-site services, namely, water, sewer, drainage and roads and park land.
- LGA s. 904 allows zoning bylaws to include the option of additional (bonus) density subject to specific conditions, which can include providing amenities.
- As an additional approach local governments are increasingly negotiating CACs from applicants/developers seeking a change in zoning.
- It is important that local governments recognize the relationship between CACs and housing affordability and make efforts to balance the opportunity to obtain community amenities with the goal of helping families to secure affordable housing.

⁵ <http://wcel.org/density-bonus>

Part 2: Staying on a Solid Legal Footing

A common misperception is that local governments have authority to **require** CACs as a condition of rezoning. In fact, there is no authority to impose such conditions on a rezoning applicant; any contributions must either be at the initiative of the applicant/developer or emerge from rezoning negotiations between the applicant/developer and the local government.

Legal authority, generally speaking, for local governments is derived from statutes, such as the LGA or the *Community Charter*. The statutes also include conditions and limits on these powers. Court rulings over time have provided interpretations of this legal authority and direction on how it can be used.

In some cases the law is *mandatory*, i.e. requires local government to do something. In other cases, it is *discretionary*, i.e. it gives local government latitude to do something or not. The courts have acknowledged that zoning is a discretionary power, so councils/regional boards can choose whether or not to approve a rezoning.

The courts have also recognized that councils/regional boards can examine a wide range of considerations before exercising their discretion on whether to approve a rezoning request and adopt the proposed zoning bylaw. Most considerations fall into two categories.

Planning and servicing considerations: The council/regional board may consider how the proposal would fit with the policies contained in community and regional plans; what impact the proposed development would have on local utilities such as water, drainage and sewage infrastructure; and whether the capacity of roads, recreation and other facilities or services could accommodate the increased demand.

Public interest considerations: The council/regional board may consider whether the proposed development would have a positive or negative impact on the immediate neighbours and the broader community. This would include considering how the development would fit in aesthetically, whether the development would add or subtract from, for example, the supply of affordable housing or industrial land.

It is important for local governments to appreciate that in the case of zoning decisions, the council/regional board “discretion” is limited to either approving or not approving the zoning bylaw. Having discretion to approve or not approve a zoning bylaw does not give authority to unilaterally impose conditions.

If the council/regional board wishes applicants/developers to contribute amenities or provide affordable housing, it should either amend its zoning bylaw to include density bonus options, with specified contributions as a condition of higher density, or be prepared to negotiate such contributions when rezoning applications are put forward. It is critical that any discussions with rezoning applicants be negotiations, not the council/regional board imposing charges for rezoning.

While some people may view the difference between requiring a contribution and negotiating one as semantics, it is nevertheless critical from a legal perspective. The courts can be expected to see this difference as important in determining whether a zoning bylaw was done legally or illegally. The Appendix illustrates an example of how to establish guidelines for CACs while remaining open to negotiation.

Legal Risks

There are three specific legal risks that local governments should avoid when dealing with CACs: imposing unauthorized fees, charges and taxes; not keeping an open mind; and using building and subdivision approvals to obtain amenities.

Imposing Unauthorized Fees, Charges and Taxes

The LGA s. 931 includes a number of restrictions on fees, charges and taxes that can be imposed on development applications. One provision of particular importance to rezoning applications is subsection (6).

- (6) “A local government, the City of Vancouver or an approving officer must not*
- (a) impose a fee, charge or tax, or*
 - (b) require a work or service be provided*
 - (c) unless authorized by this Act, by another Act or by a bylaw made under the authority of this Act or another Act.”*

When dealing with rezonings, local governments can put themselves at legal risk by creating fees, charges or taxes that are not expressly provided for in legislation.

Practices to **avoid** include:

- Imposing any charge, including CACs, for which there is no legal authority;
- Presenting an applicant/developer with a list of “required” contributions that will be expected if the rezoning is to proceed; and/or,
- Adopting a general policy or a policy in a community or neighbourhood plan that could be construed as imposing charges for rezoning and implying that these are not negotiable.

Not Keeping an Open Mind

When exercising their legislative discretion to adopt zoning bylaws, council/regional board members must keep an open mind and cannot bind themselves, or pre-determine how they will vote on the proposed rezoning bylaw. Elected officials are free to consider a range of factors but they need to be open to rejecting the rezoning bylaw if, for example, they are swayed by arguments put forward at the public hearing. Guaranteeing that a rezoning bylaw will pass before it is voted on means that the council/regional board is no longer open-minded, and this should never be done. In practical terms, this means that the council/regional board should not use bylaws, internal policies or other means that could be construed to indicate that it is not open to persuasion regarding whether a rezoning bylaw should pass.

It is worth differentiating between the above-mentioned commitment to pass a rezoning bylaw and entering into an agreement with an applicant/developer that deals with the timing of the transfer of affordable housing or amenity contributions. While committing to pass a bylaw prior to voting is problematic, an agreement that sets out how and when specified amenities would transfer to the local government afterwards, **if** a rezoning is passed, is allowed because it does not interfere with the council/regional board discretion to pass the rezoning bylaw.

To stay clear of legal difficulties, any such agreements should be written so that any contributions being offered by the developer would transfer only if and when the council/regional board adopts the zoning amendment, but not in any way suggest that the council/regional board is committed to adopting the rezoning bylaw. To be transparent, the council/regional board should also ensure that the public is aware that certain amenities or housing are being offered by the applicant/developer.

Practices to **avoid** include:

- Adopting a policy that could be seen as committing the council/regional board to rejecting rezoning proposals unless the applicant/developer provides contributions; and/or,
- Guaranteeing an applicant/developer, either verbally or in writing, that a zoning amendment will pass if they make certain contributions.

Subjecting Building and Subdivision Approvals to CACs

In some cases, the legislation gives certain development approval decisions to an unelected official. Examples include the building inspector and the subdivision approving officer. The legislation does not allow these “technical” decisions to be made or influenced by elected officials, so it would be inappropriate for a council/regional board to try and use these approval processes to extract contributions from the applicant/developer.

Practices to **avoid** include:

- Requesting or directing the building inspector or subdivision approving officer to levy charges or require contributions that the council/regional board has no authority itself to impose.

It should be noted that it may be practical for agreed upon CACs to **transfer** at the time of subdivision approval or issuance of a building permit, and this is permitted. In such cases, the contributions are not being imposed by the building inspector or subdivision approving officer as they were already agreed to by the applicant/developer and the council/regional board, and the technical approval is simply a convenient time for the transfer to be made.

Local governments should consult their lawyer for any legal advice on these or other legal issues.

Part 2 – Summary

Practices to Avoid:

- Imposing any charge, including CACs, for which there is no legal authority.
- Presenting an applicant/developer with a list of “required” contributions for rezoning to proceed.
- Adopting policies that could be:
 - construed as imposing charges for rezoning and implying these are not negotiable; or,
 - seen as committing the council/regional board to rejecting rezoning proposals unless the applicant/developer provides contributions.
- Guaranteeing an applicant/developer, either verbally or in writing, that a requested zoning amendment will pass if they make certain contributions.
- Requesting or directing the building inspector or subdivision approving officer to levy charges or require contributions that the council/regional board has no authority itself to impose.

Part 3: Recommended Practices for CACs

Local governments currently using or considering obtaining CACs should consider the challenges that CACs bring.

Official Community Plans and Zoning Bylaws

Zoning bylaws were invented a century ago, as a means to regulate land uses and structures, particularly those that posed a threat to public health and safety. With the development of official community plans (OCPs), zoning became the primary tool for implementing the plan.

As OCPs are long term visions, they are usually general in nature. They typically do not detail uses or specific densities. This flexibility is acceptable because legally a plan is a policy document that guides decisions of the council/regional board. Zoning, on the other hand, specifies what people can/cannot do on their property, and therefore needs to be clear and specific. These differences set the stage for a certain amount of negotiation when rezonings are proposed, and the council/regional board needs to consider how the general, long term vision expressed in their community plan should be translated into specific allowable uses, densities, siting, sizes and dimensions in the zoning bylaw.

Councils/regional boards can expect careful scrutiny from the public when considering proposed rezonings. The public is looking for confidence that the community plan they were consulted on is being followed, both in law and in spirit. Understandably, public confidence in the council/regional board and the OCP would be eroded if they believed that the plan would be amended whenever an opportunity arose to increase local government revenue. While site-specific OCP amendments to accommodate unanticipated developments are legally permissible, it is recommended that local governments anticipate land use changes with periodic comprehensive reviews of the plan rather than undertake frequent OCP amendments.

To maintain public confidence in the planning process, it is critical that councils/regional boards see zoning as a regulatory tool, and a means to implement the OCP. It is vital that councils/regional boards **NOT** focus on rezoning as a revenue source and lose sight of long term planning. Councils/regional boards must avoid the perception that they are no longer planning but simply “selling zoning”.

Planning for CACs

Detailed information on the capacity of infrastructure such as roads, water systems, fire services or recreation facilities to accommodate additional development enables a local government to assess the impact of future development. This information enables local governments to establish DCC, subdivision servicing and other servicing-related bylaws to address infrastructure requirements as provided for in legislation. This “planning ahead” approach offers a good model for considering potential CACs. Planning ahead can help ensure that potential contributions are earmarked for the highest priorities. Such an approach comprises:

- understanding future growth projections, how the OCP vision and policies accommodate growth, and how new development will impact the community;
- working with the community and stakeholders, including developers, to identify the amenities that will help address the impacts of growth; and,
- estimating and allocating the costs required to pay for the amenities; and could also include, establishing preferred target amounts for CACs.

In most cases, this planning is best undertaken at the neighbourhood level. Some local governments include neighbourhood “service deficiencies” or other “community needs” lists in an OCP. It is recommended that local governments incorporate into the OCP a discussion of amenities, including reasons for acquiring the amenities and how the costs should be shared between new development and the existing population.

Community amenity contributions should not be used to fund annual operating, long term repair and/or future replacement costs. Any planning for potential CACs should take into account the full life cycle costs – including the annual operational costs and long-term repair and replacement costs – of amenities that result from the contributions. Local governments should be prepared to assume these costs and only acquire those amenities that they can afford to operate and maintain within their annual budgets⁶.

Where the impacts of new development have been clearly identified, applicants/developers are more likely to consider the contributions that address these impacts as reasonable. Certainty and transparency in relation to potential CACs are important. Uncertain and arbitrary CAC amounts make it difficult for applicants/developers to assess the financial risk associated with a project, which makes it difficult for them to demonstrate to potential financial backers that a project is viable and worth risking their funds.

The principles and practices described in this section – such as planning ahead, planning at a neighbourhood scale and clearly identifying the impacts of new development – apply equally to the development of a density bonus zoning bylaw and the amenities identified in it.

Applying the Principles of Nexus and Proportionality

Applying the principles of “nexus” and “proportionality” will help ensure that applicants/developers see CACs as fair and reasonable and also help community members to accept new development.

Amenities adhere to the principle of “nexus” when there is a direct, demonstrable link between CACs and the impacts of the new development. For example, where neighbourhood recreation services are already overcrowded, both the applicant/developer and existing residents are far more likely to support CACs targeted for the expansion of those recreation facilities, rather than for an undetermined project or in another neighbourhood.

The principle of “proportionality” is adhered to when a CAC from an applicant/developer is proportional to the impact that their development generates and consistent with the CACs made by other applicants/developers. Asking an applicant/developer to contribute the lion’s share of the costs of a community centre, when the residents of their project would generate minimal usage or where other applicants/developers have not contributed, goes against this principle.

It should be noted that nexus and proportionality are intended to apply in general, and it is acknowledged that there is also a need to consider the unique circumstances of particular neighbourhoods and particular developments.

New development also provides an opportunity to address needs beyond the immediate neighbourhood, including affordable housing, heritage conservation and other public facilities located elsewhere and serving the whole community.

⁶ www.assetmanagementbc.ca

When it comes to considering CACs for amenities that are not located near the site being developed, it is particularly important to apply the principle of proportionality and demonstrate the link with the new development. For example, a contribution to a recreation facility located across town may be legitimate, but it should be based on a reasonable estimate of the usage by the residents of the new development. This ensures that the public and the applicant/developer can appreciate that the CAC is proportional to the impact of the new development.

The principles of nexus and proportionality are also important to consider when developing density bonus provisions in a zoning bylaw.

Being Transparent About CACs

Some local governments use reserve funds to assure residents and applicants/developers that CACs from new development will be used in specific neighbourhoods and/or for specific projects.

Accepting cash that is not tied to a specific project or capital plan for a group of projects is a poor practice, and can suggest that the council/regional board is not in touch with neighbourhood or community needs. This type of practice is also more likely to be seen by the applicant/developer as unnecessary, arbitrary and simply a tax on development.

Maintaining public records of all types of CACs (e.g. financial, physical structures, and land) can also help applicants/developers to anticipate financial impacts and incorporate these costs into their assessment of whether a project is viable. This information can also speed up the rezoning process, because it gives applicants/developers a starting point for considering what amenities they should include in their rezoning proposal. This practice can also help to ensure that residents are aware of the tangible benefits received as a result of accepting new development in their neighbourhood.

Being transparent about CACs not only helps the public to have a more complete picture of what the council/regional board is considering when it deals with rezoning requests, it also helps reduce concerns that secretive discussions are being held to secure council/regional board support.

Determining CAC Amounts

Local governments are encouraged to borrow the principles and practices that apply to DCCs and use them to develop (tables of/schedules of) estimated CAC amounts. These well-established DCC practices will help citizens and applicants/developers appreciate the rationale for CACs, and see them as fair and the process transparent.

The Ministry's *Development Cost Charge Best Practices Guide* provides numerous examples of how to determine the appropriate cost sharing for many types of infrastructure. These best practices have been endorsed by the Ministry, UBCM, and the development industry. The guide is available online at:

http://www.cscd.gov.bc.ca/lgd/intergov_relations/library/DCC_Best_Practice_Guide_2005.pdf

Some impacts of development are indirect, or difficult to measure, but are nevertheless real concerns for the people affected. For example, densification of a neighbourhood through the construction of higher buildings may result in more cars parked on the street, increased shade or the loss of previously unobstructed views.

Providing amenities to offset these impacts increases the chance that new development will be seen as improving the quality of life in a neighbourhood, not detracting from it. Installing street art, changing bus stops to bus shelters, or replacing a seasonal outdoor pool with a larger indoor facility, are examples. In some cases, these “quality of life” amenities also improve the marketability of the new development. The policies in the Appendix illustrate one option for capturing and funding such enhancements, e.g. a “neighbourhood enhancement project”.

Determining the appropriate level of CACs for “quality of life” amenities is more challenging than for infrastructure covered by DCCs, where benefits and usage can be relatively easily measured. In some cases, there will be no formulas or best practices to assist in this determination. Local governments will be required to make informed judgements (i.e. using the principles in this guide) about which amenities are desirable, which are reasonable given the economics of the new development, and how the costs should be shared between applicants/developers and the local government.

Affordable Housing

Zoning bylaws can be effective tools for securing more affordable housing. However, before seeking financial contributions from applicants/developers towards affordable housing, local governments are strongly encouraged to adopt zoning measures that, in and of themselves, will increase affordable housing.

As a first step, local governments should adopt an “affordability by design” approach to writing their zoning bylaws. This means creating zones that allow for design features that can reduce the costs of producing housing units and/or encourage additional units. Simple measures include reducing or eliminating setbacks and parking requirements to allow land to be used more efficiently. Other measures include defining density to exclude exterior walls, or utility areas and other shared spaces. Adopting zoning provisions that allow more secondary units to be built, e.g. suites and laneway houses, is also consistent with this approach.

Density bonus zoning can also be effective in promoting affordable housing. The zoning bylaw can specify design features or affordability outcomes that would be required to allow the additional units. For example, it could allow additional units if a certain percentage of the housing being built would be smaller than a certain size.

Part 4 explains how strategies that increase the supply of housing, or provide incentives such as fast-tracking development approvals, have a positive effect on affordability, while strategies that rely on developers making financial contributions have more risk and may reduce supply and contribute to higher housing prices.

Using CACs for Capital Costs Only

It is important to consider capital versus operating costs. It is reasonable to expect new development to contribute to the capital costs of infrastructure and amenities necessary to support that growth. Once the new residents and businesses move into that development, they will contribute to the operating costs of the infrastructure and facilities, through user fees, utility charges and property taxes. If CACs also go towards operating costs, then these new residents may end up paying twice; indirectly, where market prices have increased due to CACs, and then again with other residents and users. Therefore, operating costs of services and facilities are more appropriately recovered through user fees and property taxes.

Some local governments have gone as far as to adopt policies indicating that CACs for facilities are only to be sought where the local government has identified room in the budget for the anticipated annual operational costs plus any projected repair and replacement costs.

As noted earlier, it is recommended that local governments consider the principles and practices identified in this section in the development and implementation of density bonus provisions in their zoning bylaws.

Part 3 - Summary

Certainty, fairness and transparency in relation to CACs are important, therefore it is recommended that:

- An analysis of what amenities are needed to address future growth and how those could be provided should be incorporated into the OCP or other appropriate plans.
- Councils/regional boards NOT focus on rezoning as a revenue source.
- Local governments apply the following principles to CACs:
 - nexus;
 - proportionality; and,
 - other DCC principles and practices to develop targets for CAC contributions.
- Local governments should adopt zoning measures that, in and of themselves, will increase affordable housing.
- Community amenity contributions should be:
 - limited to capital costs;
 - earmarked for specific projects; and,
 - kept in reserve funds and used only for the intended projects.
- Local governments should consider and apply, where relevant, the same principles and practices to the development and implementation of density bonus provisions in a zoning bylaw.
- Public records of all developer contributions be maintained.

Part 4: CACs and Housing Affordability

Local government plans, regulations and policies can have a significant impact on housing prices because they affect the supply of developable land, as well as, the cost of developing that land. Understanding potential impacts allows local governments to make informed choices, including how and when to try and secure CACs.

Progress on Housing Affordability Requires a Focus on Supply

Fundamentally, actions that expand the supply of housing units will help keep housing costs down, while actions that restrict supply will contribute to higher prices. In other words, if there is a lot of housing available then buyers are in a relatively strong position and prices go down, but where the demand is greater than the supply, there is more competition and prices go up.

Local governments make a major contribution to ensuring a diverse and ample housing supply by adopting regional and community plans that identify housing needs and designate adequate locations to accommodate anticipated demands. As outlined earlier, a variety of zoning measures can also help increase supply, as can incentives such as fast-tracking development approvals.

Local government processes and requirements also affect the actual cost of producing housing. Since CACs increase the cost of a project, it is important to consider who ultimately pays for these additional costs, and how they may affect housing supply and, ultimately, housing prices. This issue is of particular concern in areas where land is in short supply.

Who Ultimately Pays for CACs?

It is commonly assumed that when a developer agrees to provide CACs, the cost is borne by the developer or they deduct the amount from what they would have paid for the land. In other words, CACs reduce the developer's return on their investment or the land owner's profit, but do not affect the cost of housing. This assumption is worth a closer look.

Are CACs Likely to Reduce Developer Profit?

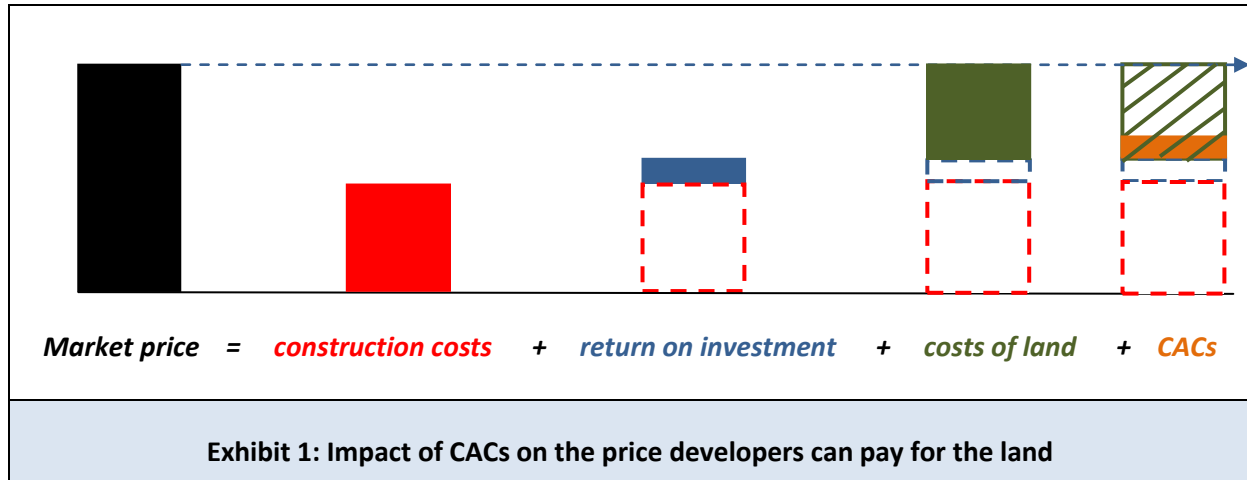
A common assumption is that, if a local government obtains CACs from a developer, it simply reduces the return on investment made by the developer. Real estate market economists and historical evidence indicate that this is unlikely. The cost of development has increased significantly over time, with increases in the cost of land, materials, labour, DCCs, etc. There is no evidence to show that such cost increases have reduced developer profits. In fact, developer profit margins have remained remarkably stable over time.

To the extent that developer profits vary, they are primarily affected by the business cycle. Developers make more money when markets are vibrant, mainly because they sell more units in a good market. They make less money when markets are slow, but again, this is mainly because they sell fewer units in those conditions. The reality is that developers and their financial backers only pursue projects if they feel that they can achieve their expected return on investment, which for a typical project is around 15 percent.

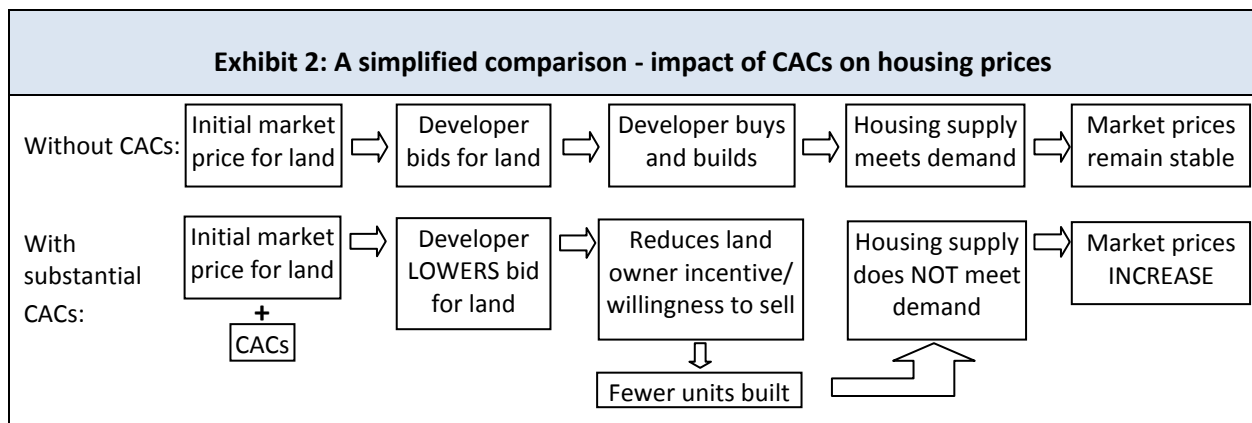
It is more logical to assume that if CACs reduce a developer's expected return by a significant amount, they would either decide not to undertake a project, or would not be able to find investors for the project. The concern with this outcome is that fewer projects/new housing will be built in the community, which in turn will put upwards pressure on housing prices.

Are CACs Likely to Reduce Land Owner Profit?

Developers know that they cannot simply raise their asking prices when faced with additional costs; that the selling price is set by the market. They also know that the costs of labour, materials, DCCs, return on investment, etc. are also fixed. Therefore a developer faced with increased costs, such as CACs, will try and find savings in the cost of land, offering less than they would have otherwise (see Exhibit 1).



Where there is a healthy supply of land available for development, it is more likely that the developer will find an owner willing to accept the lower price. However, where the supply of developable land is limited, as in B.C.'s growing urban areas, land owners are in a strong bargaining position and are less likely to accept a significantly lower price. Faced with significantly lower bids, the more likely result is that fewer land owners will be willing to sell. As with the above, the concern is that fewer projects will proceed, new housing units will not satisfy demands and this will put upwards pressure on housing prices (see Exhibit 2).



The above diagrams show that while CACs cannot directly increase the price of housing for a particular development, if they are widely used, CACs can push up prices in the overall market.

The amount of the CAC requested is paramount. If the value of CACs adds a relatively small amount to the cost of a project, the CACs may push the price of land down slightly and/or the developer might take slightly less profit, but the CAC amount is unlikely to prevent the project from

proceeding. Alternatively, when the value of CACs is **significant**, it is more likely that the project would not proceed, and that the result will be upwards pressure on housing prices.

Land Owner Incentive to Sell is an Important Consideration

Developers often do not own the land they want to develop. They often have to purchase the property, and in many cases have to assemble a number of independently-owned parcels. Their ability to proceed with projects depends on whether land owners see it in their best interests to sell their property, and this will vary from person to person.

Consider two contrasting scenarios:

- A. A vacant, low density commercial site, where the owners are known to be motivated to sell or redevelop. CACs may not present an obstacle to the owner redeveloping the site themselves or selling the land to a developer.
- B. An established residential area, with homeowners who are reluctant to sell and relocate their families, but where the community plan calls for higher density. A developer trying to assemble land in these circumstances would likely have to pay a premium to convince owners to sell. The developer would be less able to provide CACs, without jeopardizing the viability of the proposed development.

This suggests that an “across the board” approach to CACs is more likely to be problematic, at least in some parts of the community, and local governments should be flexible in their approach and in any policies they establish related to contributions.

Some local governments have developed information on CACs for land owners and developers to increase awareness that CACs are likely to affect land values and to help them understand the rationale behind their CAC policies.

Part 4 – Summary

- Strategies that facilitate an increase in the supply of housing have a positive effect on affordability.
- Since CACs increase the cost of a project, it is important to consider who ultimately pays for these additional costs, and how they may affect housing supply and, ultimately, housing prices. This issue is of particular concern in areas where land is in short supply.
- The potential impact of CACs on housing affordability is higher where CACs are a significant portion of the cost of the development.
- The impact of CACs is variable, suggesting a flexible approach is needed.

Part 5: Choosing an Approach to Obtaining Amenities

There are currently three typical strategies used to seek amenities. These are:

1. Including density bonus provisions in a zoning bylaw (using the authority in LGA, s.904);
2. Setting preferred CAC amounts for properties being rezoned, typically on a per unit or an area basis; and,
3. Seeking CACs based on the expected increase (“lift”) in the value of the land that would result from the rezoning, typically as a percentage of the lift.

Each strategy has some advantages but also some risks, particularly related to housing affordability.

Density Bonus Zoning

Density bonus zoning is intended to provide options for the developer, to build either to the “base” density or to a higher level of density, if the developer provides certain amenities or affordable housing, or meets other specified conditions. The developer, by right, always has the option of developing at the base level of density, but usually has an incentive to consider higher densities. A density bonus is intended to be an option for the developer. It should be a “win/win” for both the developer, whose profit should increase with the sale of additional units, and the local government, who may obtain more affordable housing or amenities plus higher property tax revenues for the additional units or floor area built.

Density bonus zoning has the advantage over CACs of being highly predictable, as both developers and neighbours will know what range of density can be expected. Density bonus zoning works best when the density bonus is a modest increase, so that it does not change the character of a neighbourhood. “Pre-zoning” land with a density bonus saves time for the local government and the developer, as it eliminates the need for rezoning and any negotiations over contributions.

Offering large bonus densities would likely undermine public confidence in the OCP and the stability that the public expects from such plans. Local governments should also avoid setting an unreasonably low base density, as this offers no practical option but to build the “bonus”. Taking away the choice effectively makes the contribution a requirement, and is not what the legislation intended.

Local governments can sometimes find it challenging to gauge whether developers are likely to take advantage of the density bonus and provide the amenity contribution conditions in a density bonus bylaw. Some local governments consult with the development community and/or engage people with expertise in real estate market and financial analysis to help shape proposed density bonus zoning bylaws and monitor changes in local market conditions that may suggest adjustments are needed to their bylaws.

Setting Preferred CAC Targets for Properties Being Rezoned

Some local governments pre-determine target CACs that they intend to seek from applicants/developers when land is rezoned. Such targets should be designed to apply to typical developments and serve as a starting point for negotiations. As explained in Part 1, CACs cannot be presented as fixed charges.

Target contributions have the advantage of being relatively predictable, and yet still provide the developer some room to negotiate if they consider that their development should receive particular consideration. The target contributions also provide consistency and a sense of fairness, offering a degree of assurance that all developers will be contributing comparable amounts.

The Appendix illustrates how pre-determined target contributions can be implemented, and includes examples of policies.

Setting targets for contributions shares many of the same challenges as density bonus zoning, e.g. in terms of determining a reasonable target contribution, so consulting the development community and/or engaging people with expertise in real estate market and financial analysis is recommended.

Negotiating CACs Based on Property Value “Lift”

Some local governments use the property value “lift” approach to securing CACs. This involves estimating the land value prior to rezoning, estimating the value after rezoning, and using this information as the basis for determining a financial target to negotiate as CACs.

Negotiating CACs based on a “lift” approach is inconsistent with the principles set out in this Guide, and is the approach most likely to reduce the supply of developable land and housing, thereby contributing to higher housing costs. The CAC principles set out in this Guide, including ‘planning ahead’, nexus and proportionality, support an approach that clearly identifies community needs and the impacts associated with new development, and links the CAC not to the “lift” in land value, but rather to the cost of providing a package of amenities that makes sense given the development being proposed.

Other issues to consider with the “lift” approach are that:

- the negotiations are often more complex and time-consuming, relative to the other approaches; and,
- the value of the CAC is often highly unpredictable, compared with the other approaches.

Choosing a Strategy for Obtaining Amenities

Overall, it is recommended that local governments make density bonus zoning their starting point when seeking amenities and affordable housing. Allowing modest levels of density bonus, tied to modest contributions, strikes a good balance between ensuring new development contributes to a community while minimizing the risk that these contributions hurt housing affordability.

Where “pre-zoning” land with a density bonus may not be practical, local governments are encouraged to set targets for CACs, and be open to negotiation at time of rezoning. Again, the target contributions should be modest to minimize the impact on housing affordability.

Negotiating CACs based on a “lift” approach is inconsistent with the principles set out in this Guide. These principles support an approach that clearly identifies community needs and the impacts associated with new development, and links the CAC not to the “lift” in land value, but rather to the cost of providing a package of amenities that makes sense given the development being proposed.

Part 5 – Summary

- Make density bonus zoning the starting point when seeking amenities.
- If not density bonus zoning, then set targets for CACs and be open to negotiation at time of rezoning.
- Negotiating CACs based on a “lift” approach is inconsistent with the principles set out in this Guide. The CAC principles set out in this Guide, including ‘planning ahead’, nexus and proportionality, support an approach that clearly identifies community needs and the impacts associated with new development, and links the CAC not to the “lift” in land value, but rather to the cost of providing a package of amenities that makes sense given the development being proposed.

Summary

The purpose of this guide has been to help local governments understand the risks, challenges and recommended practices related to obtaining CACs. The guide has also described the relationship between CACs and housing affordability, and encourages practices that do not risk inadvertently causing housing prices to increase. While the focus of this guide has been on CACs, most of the recommended principles and practices apply equally to CAC and density bonus approaches.

The guide outlines the following recommended practices for local governments to consider in their approach to CACs:

1. Avoid Legal Risk and Maintain Public Confidence

- Negotiate, do not impose CACs. A common misperception is that local governments have authority to **impose** CACs as a condition of rezoning. In fact, the *Local Government Act* [s. 931(6)] prohibits this. CACs must be negotiated.
- Avoid the perception that zoning is for sale. Elected officials must remain “open-minded” during the rezoning process, and must not *commit* to approving a rezoning subject to CACs. Zoning should not be considered a revenue stream. The perception of “selling zoning” undermines public confidence in the local government and the community plan.

2. Plan Ahead

- Identify potential amenities that could be partly funded through CACs when preparing or updating the community plan, ideally identifying the priorities at the neighbourhood level.

3. Seek Modest Contributions and Follow an Approach that Balances Community Amenities and Housing Affordability

- The potential impact of CACs on housing affordability is higher where CACs are a significant portion of the cost of the development.
- Since CACs increase the cost of a project, it is important to consider who ultimately pays for these additional costs, and how they may affect housing supply and housing prices. This issue is of particular concern in areas where land is in short supply.
- Strategies that facilitate an increase in the supply of housing have a positive effect on affordability.
- The impact of CACs will be different in different areas or circumstances, so a flexible approach is best.

4. Apply Development Cost Charge (DCC) Principles to CACs

- Ensure a direct, demonstrable link (‘nexus’) between CACs and the impacts of new development.
- Ensure CACs are proportional to the impact of the development and consistent with the CACs made by other applicants/developers.
- Be transparent about the amount of CACs and how they will be used.
- Borrow the principles and practices that apply to DCCs to develop (tables of/schedules of) estimated CAC amounts.
- CACs should only be used for capital costs. Local governments should be sure that they have the budget capacity to deal with operational and repair costs over time.

5. Engage the Development Community

- Be aware of how CACs could impact projects and their viability, to avoid contributing to higher housing prices.

6. Choosing an Approach to Obtaining Amenities - As a starting point to operationalize an approach for obtaining community amenities, it is recommended that local governments consider the following strategies (in order):

- **Adopt an “affordability by design” approach to writing zoning bylaws** – i.e. zones that allow for design features that reduce the costs of producing housing units and/or encourage additional units, e.g. reducing/eliminating setbacks and parking requirements.
- **Use density bonus zoning** – modest levels of density bonus, tied to modest contributions, ensures new development contributes to needed infrastructure while minimizing impact on housing affordability.
- **Set targets for CACs** – and be open to negotiation at time of rezoning. These targets should be modest to minimize impact on housing affordability.
- **Negotiating CACs based on a “lift” approach is inconsistent with the principles set out in this Guide**, and is the approach most likely to reduce the supply of developable land and housing, thereby contributing to higher housing costs. The CAC principles set out in this Guide, including ‘planning ahead’, nexus and proportionality, support an approach that clearly identifies community needs and the impacts associated with new development, and links the CAC not to the “lift” in land value, but rather to the cost of providing a package of amenities that makes sense given the development being proposed.

APPENDIX: Illustration of Policies for a Target Approach to CACs

The following policies illustrate how a local government can adopt an approach to CACs that is consistent with the recommendations in this guide. The model is a hybrid of practices in place in a number of B.C. local governments.

Local governments are encouraged to consider the following as a starting point, and customize the policies to address local circumstances.

A. General Policies on Target Contributions for Land Being Rezoned

1. Council supports the view that residents expect new development to pay its own way and make a positive contribution to the community.
2. To the extent that infrastructure and amenities are required to meet the needs of new residents and businesses, the capital costs of these improvements should be borne by the new development, and not be a burden on existing taxpayers.
3. Council encourages applicants for rezoning to consider proposing CACs towards needed infrastructure and amenities as a way of ensuring that their development is seen as making a positive contribution to the neighbourhood and the community at large.
4. Council will only accept CACs where it considers that future budgets will be able to support the estimated costs of maintaining and repairing the infrastructure and amenities.
5. Where new infrastructure and amenities benefit both existing and new residents and businesses, an estimate has been made of the proportion of these costs that would be attributable to new development. Where practical, Council used methods similar to those used to determine cost sharing of infrastructure paid for by development cost charges (DCCs).
6. In addition to requiring expansion of facilities such as fire halls and recreation centres, new development can impact neighbourhoods in other ways, such as increasing traffic and increasing on-street parking. To help offset these impacts, a “neighbourhood enhancement project” is included for each neighbourhood. Neighbourhood consultations were held to prioritize potential projects. Council intention is that new development pay 100% of the cost of these enhancements.
7. Applicants for rezoning are encouraged to consider contributions in line with those indicated below, for neighbourhood and for city-wide infrastructure and amenities. Council acknowledges that market conditions, site specific conditions, and other factors will affect the ability of specific projects to contribute towards infrastructure and amenities. For this reason, the policy contains “recommended targets” only.
8. Non-profit organizations serving the community will not normally be expected to make CACs.
9. The project costs, cost sharing and target contribution figures below are estimates and are provided for information only. They will be adjusted periodically to reflect inflation, actual CACs collected, or other new information. The most current information can be obtained from the Planning Department and on the municipal website.

B. City-Wide and Neighbourhood Amenities

The following facilities were identified in the 2013 Facilities Study as requiring upgrading or expansion due to new development.

1. City-wide
 - a) *Transit Exchange Expansion Project*
 - b) *Old Market Heritage Preservation Project*
 - c) *Commuter Path Expansion Project*
2. McKay Valley
 - a) *Fire Hall #4 Expansion Project*
 - b) *Valley Recreation Centre Expansion*
 - c) *McKay Pathway Lighting Project*
 - d) *McKay Valley Neighbourhood Enhancement Project (traffic calming, landscaping and park facilities upgrade)*
3. Henderson
 - a) *Fire hall #4 Expansion*
 - b) *Valley Recreation Centre Expansion Project*
 - c) *Henderson Community Hall Replacement*
 - d) *Henderson Neighbourhood Enhancement Project*
4. Boundary
 - a) *Fire Hall #1 Expansion Project*
 - b) *Mountain View Recreation Centre Expansion Project*
 - c) *Boundary Neighbourhood Enhancement Project*
5. Northwest
 - a) *Fire Hall #3 Expansion Project*
 - b) *Northwest Neighbourhood Enhancement Project*

C. Targets for Cost Sharing of City-Wide Amenities

The following outlines the city-wide facilities that will require upgrading due to projected growth in the community, and cost sharing expectations of Council. All applicants for rezoning should consider CACs in line with the recommended targets. Council acknowledges that special circumstances may exist with regard to certain development that warrant lesser CACs, and encourages applicants to provide any information on such circumstances. Some special cases have been identified, under "Exceptions".

City-Wide Amenity	Capital Cost	% of cost attributable to new dev't	Target from rezonings	Recommended contributions from rezoning applicants
Transit Exchange Expansion	\$1.5 M	10%	\$150,000	\$X per housing unit \$X per sq ft commercial or use
Old Market Heritage Preservation Project	\$800,000	10%	\$80,000	\$X per housing unit \$X per sq ft commercial or office use
Commuter Bike Path Expansion	\$680,000	10%	\$68,000	\$X per housing unit \$X per sq ft commercial or office use
<u>Exceptions</u> • Purpose built rental housing may be exempted. • Single family dwellings under 1200 sq ft and accessory dwelling units under 600 sq ft may be exempted from up to 50% of recommended targets.				

D. Targets for Cost Sharing of McKay Valley Amenities

The following outlines the facilities that will require upgrading due to projected growth in the McKay Valley neighbourhood, and cost sharing targets of Council. All applicants for rezoning should consider making CACs in line with the recommended targets. Council acknowledges that special circumstances may exist with regard to certain development that warrant lesser CACs, and encourages applicants to provide any information on such circumstances. Some special cases have been identified, under "Exceptions".

McKay Valley Amenity	Capital Cost	% of cost attributable to new dev't	Target from rezonings	Recommended contributions from rezoning applicants
Fire Hall #4 Expansion	\$3.0 M	50%	\$1.5 M	\$X per housing unit \$X per sq ft commercial or office use
Valley Rec Centre Expansion	\$5 M	40%	\$2 M	\$X per housing unit \$X per sq ft commercial or office use
McKay Pathway Lighting	\$200,000	80%	\$160,000	\$X per housing unit \$X per sq ft commercial or office
McKay Valley Neighbourhood Enhancement	\$1.2 M	100%	\$1.2 M	\$X per housing unit \$X per sq ft commercial or office

