



Assessing Value Capture Risks



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Disclaimer: The contents of this presentation do not have the force and effect of law and are not meant to bind the public in any way. This presentation is intended only to provide information and clarity to the public regarding existing requirements under the law or agency policies. Value capture techniques and policies are often implemented outside of Federal funding or regulatory requirements.

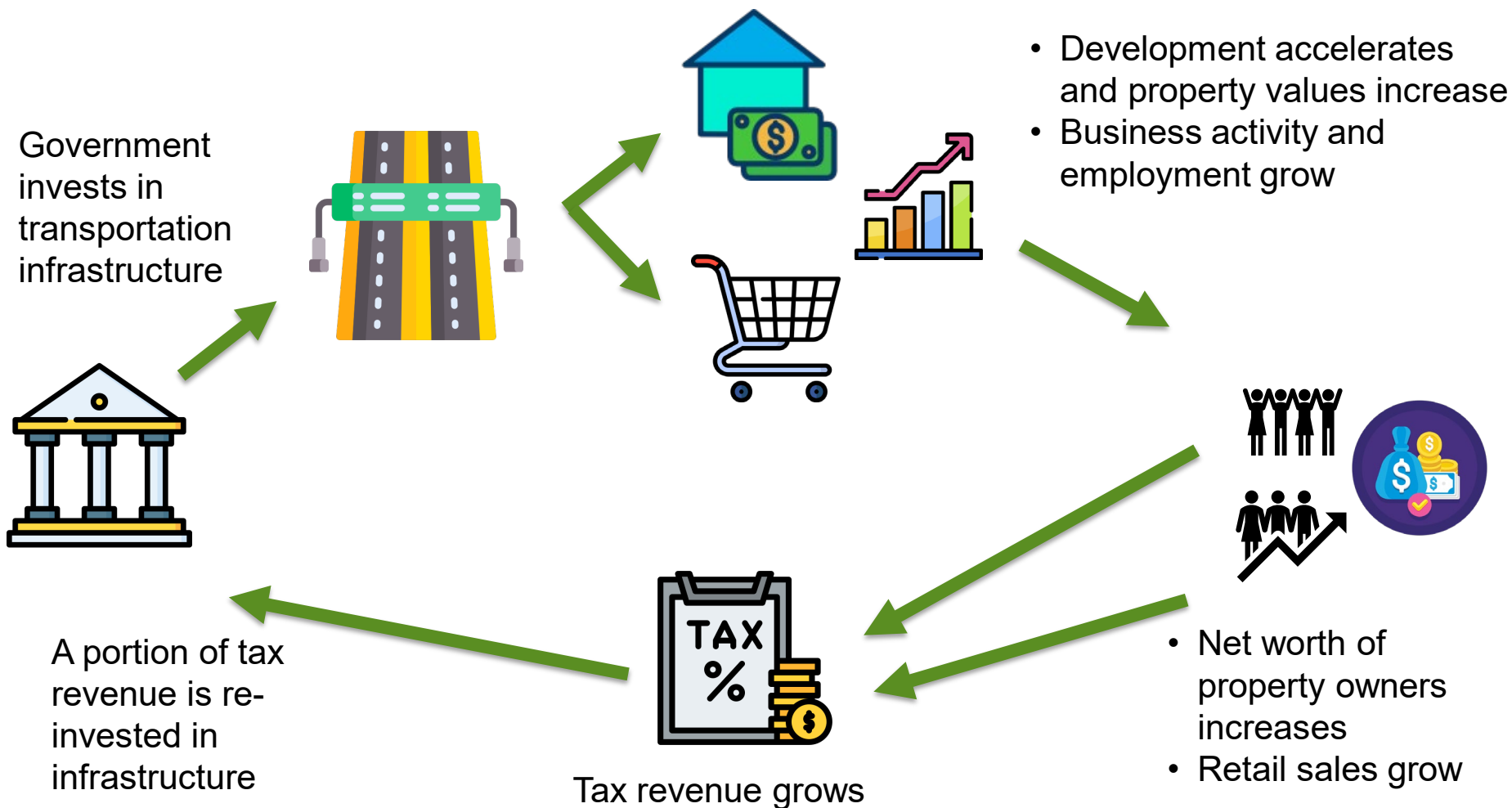
Presentation Outline

- ① Introduction
- ② External Market Risks
- ③ Legal and Political Risks
- ④ Economic and Fiscal Risks
- ⑤ Policy and Institutional Risks
- ⑥ VC Technique-Specific Risks
- ⑦ Building Resiliency and Developing Risk-Adjusted VC Strategy

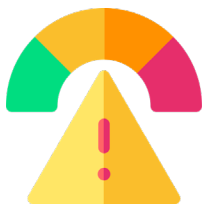
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Value Capture in Transportation



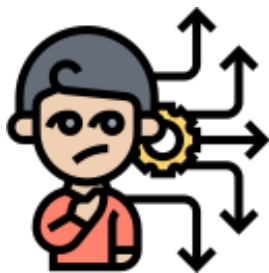
Introduction



Risk is defined as the possibility of deviation in the actual project outcome from the expected outcome (i.e., benefits/costs to each project stakeholder), including:

- Unexpectedly good outcomes
- Unexpectedly bad outcomes

Source: Irwin, T. (2007). "Government Guarantees: Allocating and Valuing Risk in Privately Financed Infrastructure Projects." The World Bank, Washington, DC.



Value capture, real estate and economic development, and risk are intrinsically intertwined, driven by a diverse range of factors.



The Value Capture Risk Assessment Primer



Assessing and managing risks associated with value capture in transportation funding is critical to project success.



The primer aims to increase the understanding of risks associated with value capture funding for transportation:

- What are typical risks associated with different value capture techniques?
- How to assess value capture risks to build resiliency into a project's funding strategy by incorporating means to cost-effectively deal with potential deviations in the ability to:
 - Generate the value expected
 - Capture or use the value generated



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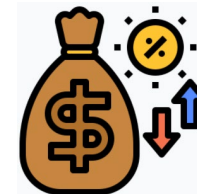
Macroeconomic Risks

Risks related to shocks of economic growth and inflation at the national level that are generally outside the control of project stakeholders.



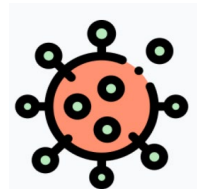
Economic Recessions

Interest Rate Changes



Geopolitical Conflicts

Catastrophic Events



Macroeconomic Risks

Example 1: TIFs across the country before and after the subprime mortgage crisis.



For example, TIF revenues in one Midwestern State increased by close to 382% between 2000 and 2007.



TIF revenues in the same State decreased more than 40% between 2009 and 2013.



Property tax rolls in other states across the country had large revenue swings as a result of the crisis.

Source: TIF Reform Task Force, Report of the TIF Reform Task Force, State of Illinois, 2018.

Macroeconomic Risks

Example 2: Events of national or international scope that disrupt the balance between real estate demand and supply, with both short- and long-term effects.



Demand for new homes increases as a result of private- and public-sector responses to mitigate the consequences of the event (e.g., a sudden shift to work-from-home or low interest rates).



Housing supply tightens due to economic uncertainty or increased construction costs caused by the disruptive event.



Higher housing prices increases residential property tax appraisal rolls, potentially benefitting VC techniques that rely on real property taxes in some areas.

Macroeconomic Risks

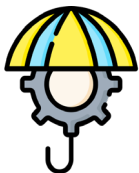
Example 2: Events of national or international scope that disrupt the balance between real estate demand and supply, with short- and long-term effects.



An event that causes increased vacancy rate for retail and office space, as well as hotel occupancy.



This could have a negative impact on revenues generated by VC techniques that rely on commercial property or sales taxes.



Mitigation: Local governments could choose to extend deadlines and facilitate property tax payment plans.

Real Estate Market Risks

Regional or local real estate bubbles and boom-and-bust cycles that disrupt real estate development and other economic activity within the community.



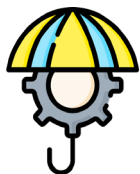
- Property tax revenue
- Sales tax revenue

Real Estate Market Risks

Example 3: Commercial risk caused by uncertainty associated with a new development approach to connect a blighted neighborhood and a thriving business district.



Photo Credit: Chicago Tribune



Mitigation: Sponsor and developer conducted commercial and legal feasibility studies to assess scenarios and potential outcomes.

Other Local Economic and Demographic Risks

Risks that are regional or local in nature, including shocks resulting from structural economic changes, natural disasters, or other causes.



Structural economic shift away from manufacturing to services, causing unemployment in sectors of the workforce.



Natural or environmental disasters impacting local businesses.

Other Local Economic and Demographic Risks

Example 4: Unemployment and migration at the Rust Belt.



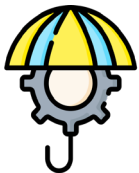
Outsourcing manufacturing jobs and automation has produced an industrial decline in the Rust Belt.



This translated into a decrease in economic activity in many communities, resulting in unemployment, out-migration, blight, and other signs of local economic contraction.



This can have a negative impact on revenues generated by VC techniques that rely on property or sales taxes.



Mitigation: Rigorous feasibility studies based on short/long term trends and local/national economic trends for a resilient project.

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Legal Feasibility and Legislative Risks

Risks that may impact the ability of the local government to use a particular VC technique on a project or limit the ability to finance a particular type of project.



Lack of clarity in the State enabling legislation prior to project implementation.



Adverse changes in the State enabling legislation that take place prior to project implementation.



State or local legislative changes affecting business or incentives used to spur development.

Legal Feasibility and Legislative Risks

Example 5: Legal challenges implementing Transportation Reinvestment Zones (TRZs) for counties in Texas.



TRZ legislation in Texas allows counties to establish a TRZ.

However, the Texas Constitution has been interpreted as not allowing counties to pledge incremental tax revenue to repay debt issued for a project.

Authority of a county to form a transportation reinvestment zone, collect an ad valorem tax increment, and pledge and assign all or part of the increment to secure bonds or pay the cost of a transportation project. Texas Attorney General. Op. GA-0981 (2012).



A constitutional amendment proposal to address the issue was defeated by voters in 2011.

A new amendment was to be voted on in November 2021.

"The constitutional amendment authorizing a county to finance the development or redevelopment of transportation or infrastructure in unproductive, underdeveloped, or blighted areas in the county." Texas Proposition 2 (HJR 99) (2021).



Mitigation: When dealing with a newly created local funding mechanism, conduct a thorough legal feasibility assessment.

Legal Feasibility and Legislative Risks

Example 6: Legal challenges of using naming rights.

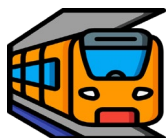


There are regulations that restrict naming rights, such as the 1965 Highway Beautification Act or the 14th Amendment of the U.S. Constitution.

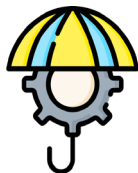
Pub. L. 89–285, Oct. 22, 1965



Portland, Maine's bus service faced controversy over ads promoting a marijuana ballot initiative on its buses.



Los Angeles Metro canceled its plan to sell station and other naming rights due to concerns about legal risk exposure.



Mitigation: When dealing with a new funding mechanism, conduct a thorough legal feasibility assessment early on.

Local Political Climate and Political Feasibility Risks

Risks that may affect the ability of a local government to use a VC technique due to changes in political climate or public support.



Elections



Changes in Enabling Legislation



Public Support
Prolonged Civil Unrest

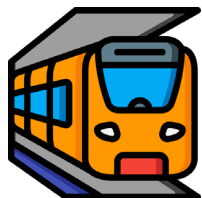
Local Political Climate and Political Feasibility Risks

Example 7: Resistance to TIDs for the Dulles Corridor Metrorail Project.

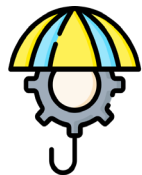


Landowners and developers resisted the creation of Transportation Improvement Districts (TIDs), a new tax.

There were concerns that landowners/developers outside the TIDs and/or future residents were not asked to pay, despite benefiting from the improvements.



The Landowners Economic Alliance for the Dulles Extension of Rail (LEADER) gathered support from at least 51 percent of landowners to establish the TID.



Mitigation: Conducting effective outreach and identifying champions in the developer community to generate awareness of the project's value generation benefits.

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Economic Growth Impact and Related Risks

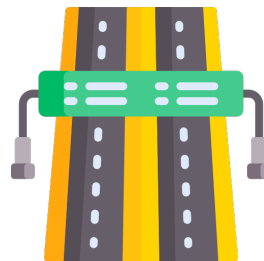
Risks resulting in the generation of less revenue than expected or inability to secure financing to fund the project.



Project Location



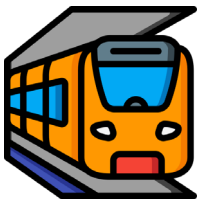
Feasibility Studies



Project Choice

Economic Growth Impact and Related Risks

Example 8: Lack of experience with transit joint development (TJD) – early years of the Dallas Area Rapid Transit (DART) LRT stations.



In the 1990s, DART struggled to generate TJD along its new LRT system. Expected developer contributions to the City Place station failed to materialize when the real estate market softened.

Other transit agencies across the country had similar experiences.

The main problem in these early cases was the lack of appreciation for the complexity of TJD rather than a misreading of the market.



Mitigation: Ensure that the local government is knowledgeable of and fully invested in the TJD concept. Work with developers with a successful track record in TJD.

Sources:

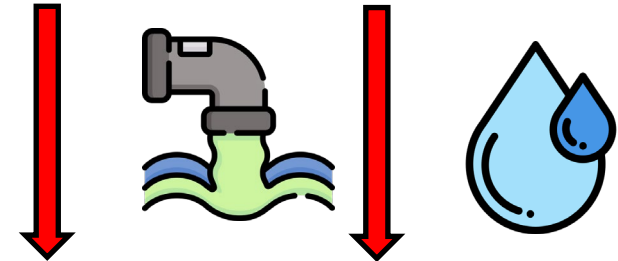
- Cervero, R., Ferrell, C., & Murphy, S. (2002). *Transit-oriented development and joint development in the United States: A literature review*. Transit Cooperative Research Program Research Results Digest, (52). http://onlinepubs.trb.org/onlinepubs/tcrp/tcrp_rrd_52.pdf
- <https://www.aiadallas.org/v/columns-detail/Unbuilt-Dallas/qj/>

Fiscal Impact and Risks

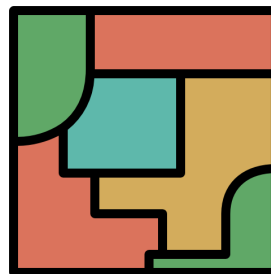
Risks affecting the local government's ability to sustain basic government services as a result of the commitments made to the project.



Overcommitting
Future Tax Revenues



Hampering the Ability
to Sustain Other
Essential Services



Too Many
Tax Increment
Financing Districts

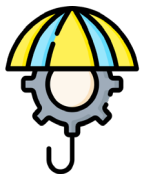
Fiscal Impact and Risks

Example 9: TIF projects not spurring the expected economic development.

One study found that there are instances when TIF projects do not generate the economic development expected in the “But-For” test.



In practice, this means that the TIF projects end up being subsidized rather than creating additional revenue.



Mitigation: Rigorous “But-For” test feasibility studies that are based on realistic expectations and that stress-test developers’ assumptions.

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Policy and Institutional Risks – Social Equity

Risks generated by the VC technique/project that has a disproportionate impact on low-income or other disadvantaged communities.



Displacement /
Gentrification



Loss of Cultural or
Historical Sites



Diversion of
Public School
Funding



Excess Noise



Air Quality
Deterioration

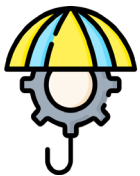
Policy and Institutional Risks – Social Equity

Example 10: When development or re-development associated with a TIF district project affects low-income/minority residents.



TIF districts are used to pay for projects that spur development or redevelopment in blighted neighborhoods, sometimes disproportionately affecting low-income residents through gentrification and displacement.

Existing low-cost housing units are cleared and replaced with higher income units or commercial development, forcing the migration of lower income and minority residents.



Mitigation: Utah requires the development of affordable housing in Housing and Transit Reinvestment Zones. California and Portland, Oregon have similar requirements for TIF districts.

Utah: U.C.A. 63N-3-603; Portland HOU-1.06; California HSC Division 24 (33000 – 37964)

Policy and Institutional Risks – Administration and Transparency

Risks arising from limited transparency or communication of risk cost, risk allocation rationale, and the risk-return decision-making including the non-disclosure of unknown project risks.



Feasibility Studies
Risk Assessments



Public Information

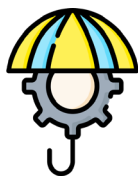
Policy and Institutional Risks – Administration and Transparency

Example 11: Lack of transparency in the distribution of funds in TIF districts.



One study found that in some instances, TIF district project funds were redistributed without informing the public in a way that could be easily understood:

- How funds were distributed between projects in low-income areas vs. projects in higher-income areas.
- How much property tax revenue was diverted away from public schools.



Potential mitigation measures:

- Develop a TIF district master plan
- TIF district capital budget to allocate district resources
- TIF performance monitoring

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VC Technique-Specific Risks

Technique	External Market	Legal and Political	Economic and Fiscal	Policy/ Institutional/ Equity
Impact Fees				
Negotiated Exactions				
Transportation Utility Fees				
Special Assessment Districts				
Business Improvement Districts				
Land Value Taxes				
Sales Tax Districts				
Tax Increment Financing				
At-Grade Joint Development				
Above-Grade Joint Development				
Naming Rights				

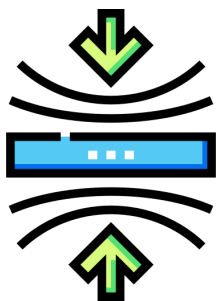
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Building Resiliency into a VC Strategy



Building resiliency is key to maximizing the value generated by the transportation investment and the long-term success of value capture as a funding source.



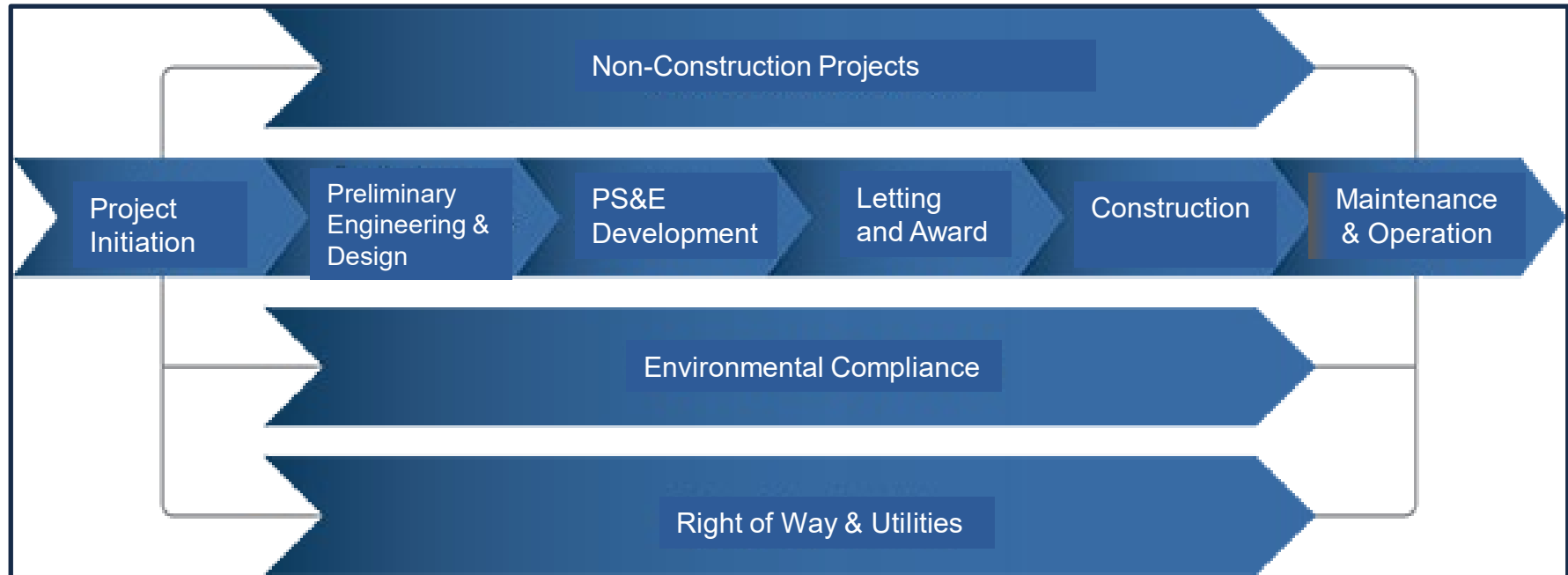
Building resiliency is about incorporating means to cost-effectively deal with potential deviations in actual project outcomes that may affect:

- The ability of the project to generate the value expected
- The ability to capture or use the value generated

This is accomplished through a “Risk-Adjusted Value Capture Strategy.”

A Risk-Adjusted VC Strategy through Integration and Phasing

Transportation Project Development Process Phases



Source: TxDOT Local Government Project Management Guide

Process-Related Risks

Wider Range of Risks

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