Introduction to Development Agreements and Other Contract-Based Value Capture
Presentation Outline

1. Overview/History of DAs
2. Key Elements of DAs
3. DA Implementation Process
4. DA Examples
5. Communities Benefits Agreements (CBAs)
6. DA/CBA Issues
7. Other Contract Based VC Techniques
8. Integrating VC Strategy thru Contracts
Presentation Outline

1. Overview/History of DAs
2. Key Elements of DAs
3. DA Implementation Process
4. DA Examples
5. Communities Benefits Agreements (CBAs)
6. DA/CBA Issues
7. Other Contract Based VC Techniques
8. Integrating VC Strategy thru Contracts
Overview: What are DAs?

Development Agreements (DAs)

...voluntary but legally binding contract between developer(s) and local government
...less litigious, more flexible

- Larger concessions from developer
- More flexibility in imposing project conditions
- More latitude in advancing new, innovative local land use planning policies
- Facilitate long-term planning, reaching goals

Local Government

Long-term vested rights/land use entitlements

Real Estate Developer

Upfront contributions for public improvements

- Lock in development rights for long term
- No change in land use/zoning regulations over contract duration
- Easier to secure financing
- Greater assurance that project will be built
Overview: An important legal concept for DAs

Zoning ordinances can be changed at will by government, but DA provides…

Vested Right

…property owner’s irrevocable right to develop his or her property that cannot be changed by future growth restrictions or other regulatory reversals

First introduced in California in the 1970s, the need for DA was triggered by the new “vested right” requirements set by the Avco case (1976)
Overview: DA legislative history

Long legislative history (1950-present)
Essential Nexus/Rough Proportionality tests

Vested right after substantial developer liabilities
[Avco vs. CA Coastal Commission (1976)]

CA Development Agreement Law (1979)
First of a kind; VR and nexus test exemption

…best suited for large-scale, long-term, master planned development projects

…should not be confused with Comprehensive Development Agreement (long-term concession used for P3 delivery)
Presentation Outline

1. Overview/History of DAs
2. Key Elements of DAs
3. DA Implementation Process
4. DA Examples
5. Communities Benefits Agreements (CBAs)
6. DA/CBA Issues
7. Other Contract Based VC Techniques
8. Integrating VC Strategy thru Contracts
Key Elements of DAs

Common provisions covered in DAs include…

**Project**
- Permitted use
- Density
- Max height, size

**Improvements**
- Roads, signals
- Water/sewage
- Park, bike path

**Timeline**
- DA term
- Milestones

**Applicable Laws**
- State/Federal laws
- Local plans: GP, SP
- Env. reviews

**Defaults**
- Non-performance
- Remedies/termination
- Amend, cancel

**Processes**
- Annual reviews
- Recordation
- Costs: admin/legal
Presentation Outline

1. Overview/History of DAs
2. Key Elements of DAs
3. DA Implementation Process
4. DA Examples
5. Communities Benefits Agreements (CBAs)
6. DA/CBA Issues
7. Other Contract Based VC Techniques
8. Integrating VC Strategy thru Contracts
DA Implementation Steps

1. ESTABLISHING PURPOSE/FINDINGS
2. APPLICATION PROCESS
3. PUBLIC HEARING & NOTICES
4. DECISION-MAKER INPUT & REVIEW
5. RECORDATION/POST-APPROVAL STEPS
6. AMENDING THE DA
7. DA ACCOUNTABILITY

- Public Input (DA Negotiation)
- Public Hearing (DA Approval)
- Notices
- Planning Commission Input/Findings
- Legislative Body Action
Presentation Outline

1. Overview/History of DAs
2. Key Elements of DAs
3. DA Implementation Process
4. DA Examples
5. Communities Benefits Agreements (CBAs)
6. DA/CBA Issues
7. Other Contract Based VC Techniques
8. Integrating VC Strategy thru Contracts
## DA Examples—Wide Range (Washington)

<table>
<thead>
<tr>
<th>Location</th>
<th>Year</th>
<th>Term</th>
<th>Size (Acres)</th>
<th>Project Scope</th>
<th>Public Improvements</th>
</tr>
</thead>
</table>
| City of Bellevue      | 2009 | 5    | Small (36)   | • Mixed use urban revitalization  
• Linkage to regional LRT                                                       | • Transportation & other infra  
• Park & recreation                           |
| City of Black Diamond | 2011 | 15   | Large (1,200)| • Large-scale mixed use  
• Master planned community                                                       | • Transportation & other infra  
• Park & recreation  
• Affordable housing                        |
| City of Des Moines    | 2007 | 15   | Large        | • Redevelopment of blighted area  
• Linkage to regional LRT                                                        | • Transportation & other infra                           |
| City of Everett       | 2009 | 20   | Large        | • Cleanup of riverfront brownfield site  
• Mixed use developed                                                             | • Transportation & other infra                           |
| City of Issaquah      | 2007 | 20   | Small (27)   | • Transit-oriented development (TOD)  
• Zero-energy, demonstration project                                              | • Most municipal facilities & services                |
|                       | 2012 | 28   | Large (123)  | • Master planned urban village  
• Reclamation of mineral resources                                                | • Transportation & other infra  
• Affordable housing                        |
| City of Redmond       | 2007 | 20   | Small (27)   | • New Microsoft campus  
• Density transfer                                                                 | • Multi-modal access  
• TDM, signals, intersections  
• Water/sewer/stormwater               |
| Snohomish County      | 2009 | 5    | Small        | • 29 station BRT project along Hwy 99  
• Linkage to regional transport nodes                                             | • Transportation & other infra                           |
**DA Example—Timeline (Inglewood, CA)**

- **Project Development Phase**
  - 4 initial community workshops
  - Adoption +10 days
  - DA Adopted into City Ordinance No, 09-14

- **Public Hearing/ Approval Phase**
  - DA Recordation
  - July 2009
  - June 2009
  - May 2009

- **Submit Draft Specific Plan (SP)**
  - Jul 2008
  - Request to:
    - Amend General Plan (GP)
    - Adopt draft SP
    - Rezone for SP
    - Approve Vesting
    - Approve EIR/EIS

- **New SoFi Stadium:**
  - LA Rams/LA Chargers

- **Hollywood Park:**
  - $5B, 300-Acre
  - Mixed Use
Presentation Outline

1. Overview/History of DAs
2. Key Elements of DAs
3. DA Implementation Process
4. DA Examples
5. Communities Benefits Agreements (CBAs)
6. DA/CBA Issues
7. Other Contract Based VC Techniques
8. Integrating VC Strategy thru Contracts
CBAs: What are they?

Community Benefits Agreements (CBAs)

…voluntary but legally binding contract between developer(s) and local community
…ensure sustained benefits to host community

Local Community
- Community support of development project

Real Estate Developer
- Social amenities/economic benefits

CBA signatories—residents, labor/environmental/religious groups, affordable housing advocates
- Monetary and non-monetary benefits
- Increased transparency, accountability

Timely project approvals
- Easier to get government subsidies
- Easier to secure financing, especially when paired with DA
- Build relationship to avoid legal battles
CBAs: Community Benefits

1. Affordable Housing
2. Local Hiring
3. Living Wages
4. Job Training
5. Local Business Support
6. Open Space and Parks
7. Community Facilities and Services
8. Education Partnership
CBA Examples—Wider, More Ubiquitous

- LA Staples Center
- Seattle Dearborn Street Goodwill Project
- Pittsburgh Consol Energy Center Arena
- San Francisco Bayview-Hunters Point Residential Development
- San Diego Ballpark Village Development
- Denver Gates-Cherokee CBA—Brownfield Site on LRT Line
- Atlanta Beltline CBA—LRT Transit Loop
- Los Angeles International Airport CBA
- Detroit—Require City-negotiated CBA for some development projects
Presentation Outline

1. Overview/History of DAs
2. Key Elements of DAs
3. DA Implementation Process
4. DA Examples
5. Communities Benefits Agreements (CBAs)
6. DA/CBA Issues
7. Other Contract Based VC Techniques
8. Integrating VC Strategy thru Contracts
DA/CBA Issues

- Need greater public participation and transparency
- Concerns about local government relinquishing their ability to change zoning
- Misuse of DAs for unreasonable exactions
- Vested right as currency, sell before built
- Lack good framework for renegotiation

DA/CBA often used in conjunction
...relatively new to VC tool box
...legal grounds still being tested

- Legitimacy of community representatives for negotiating on public’s behalf
- Enforceability issue, largely untested legal environment
- Use more ubiquitous but overall performance outcome has been mixed
- Often combined with DA for remedy
Presentation Outline

1. Overview/History of DAs
2. Key Elements of DAs
3. DA Implementation Process
4. DA Examples
5. Communities Benefits Agreements (CBAs)
6. DA/CBA Issues
7. Other Contract Based VC Techniques
8. Integrating VC Strategy thru Contracts
Other Contract Based VC Techniques

1. JOINT DEVELOPMENT AGREEMENTS (JDAs)

✓ Non-private deals where local agencies directly partake in development projects committing public assets
✓ Revenue (and/or cost) sharing arrangements

“Public Assets”

- Public Land/Facilities
- Air Rights Above
- Subsurface Rights Below
- Rights Adjacent to Public ROW

JDA…deals with real estate development projects themselves

DA…deals with public improvements to support real estate developments
Other Contract Based VC Techniques

JDA Examples—Transportation

- New HQ for NB/Mixed-Use Sports Complex—$500M
- MBTA commuter rail in-fill station for NB employees—$20M
- NB paid:
  - 100% station/track construction
  - Some O&M costs for first 10 years

- Office Tower Campus for State Farm/KDC—largest corporate office project in Atlanta
- Direct connection and new access to MARTA Dunwoody Station paid by KDC
- MARTA provided
  - Easement, supervision, O&M

New NB HQ

New Infill Station

MBTA

4-Tower SF Office Complex

Dunwoody STA Expansion
Other Contract Based VC Techniques

Public Asset/ROW Use Agreements

- Naming Rights
- Corporate Sponsorships
- Advertising

Third-Party Franchise Agreements

BOT? BOO? BLO? BTO?
Presentation Outline

1. Overview/History of DAs
2. Key Elements of DAs
3. DA Implementation Process
4. DA Examples
5. Communities Benefits Agreements (CBAs)
6. DA/CBA Issues
7. Other Contract Based VC Techniques
8. Integrating VC Strategy thru Contracts
Integrated VC Strategy thru Contracts

Integrated VC Framework

✓ Start **early**, think **long-term**

✓ Local buy-in on “**but-for**” grounds

✓ Use **multi-layered** approach

✓ **Integrate** and **phase** multiple techniques

  ➡ Based on **risk** and **equity** considerations

  ➡ Using long term **CONTRACT VEHICLES**