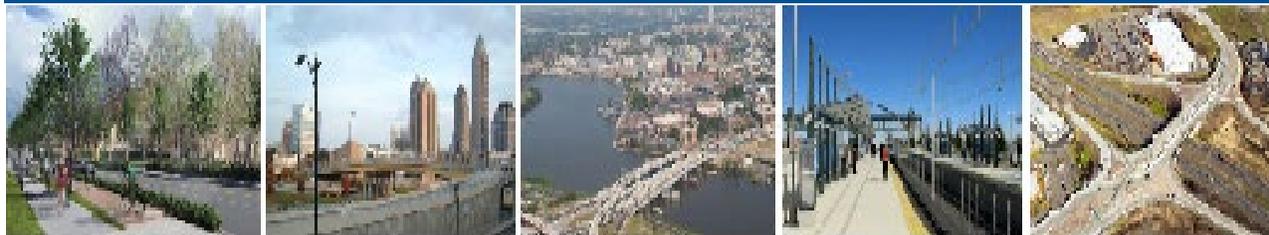




U.S. Department
of Transportation
**Federal Highway
Administration**

Center for Accelerating Innovation



Introduction to Development Agreements and Other Contract-Based Value Capture

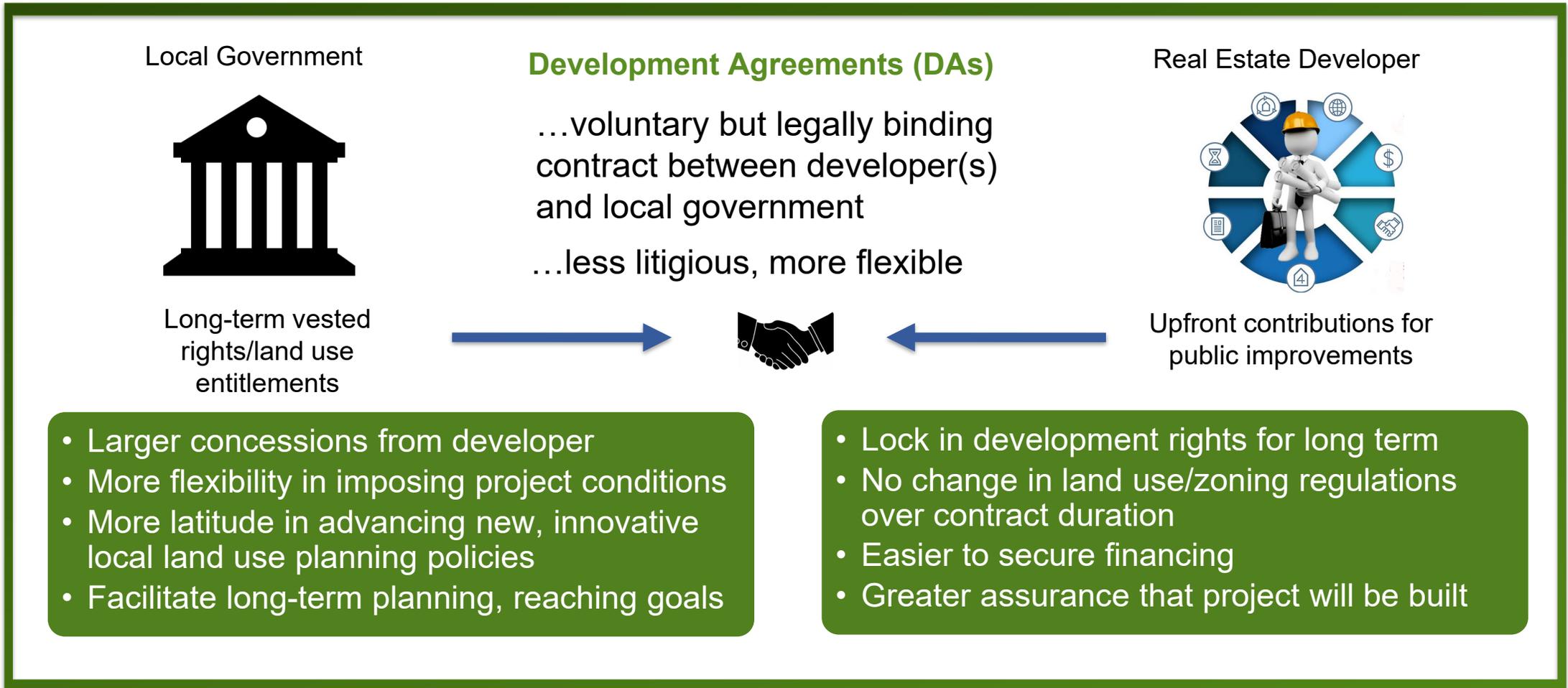
Presentation Outline

- 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?



Overview: An important legal concept for DAs

1

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

Developer Exactions

Long legislative history (1950-present)
Essential Nexus/Rough Proportionality tests
[Nollan (1987)/Dolan (1994)/Koontz (2013)]



Vested Right

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



Development Agreement

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



Presentation Outline

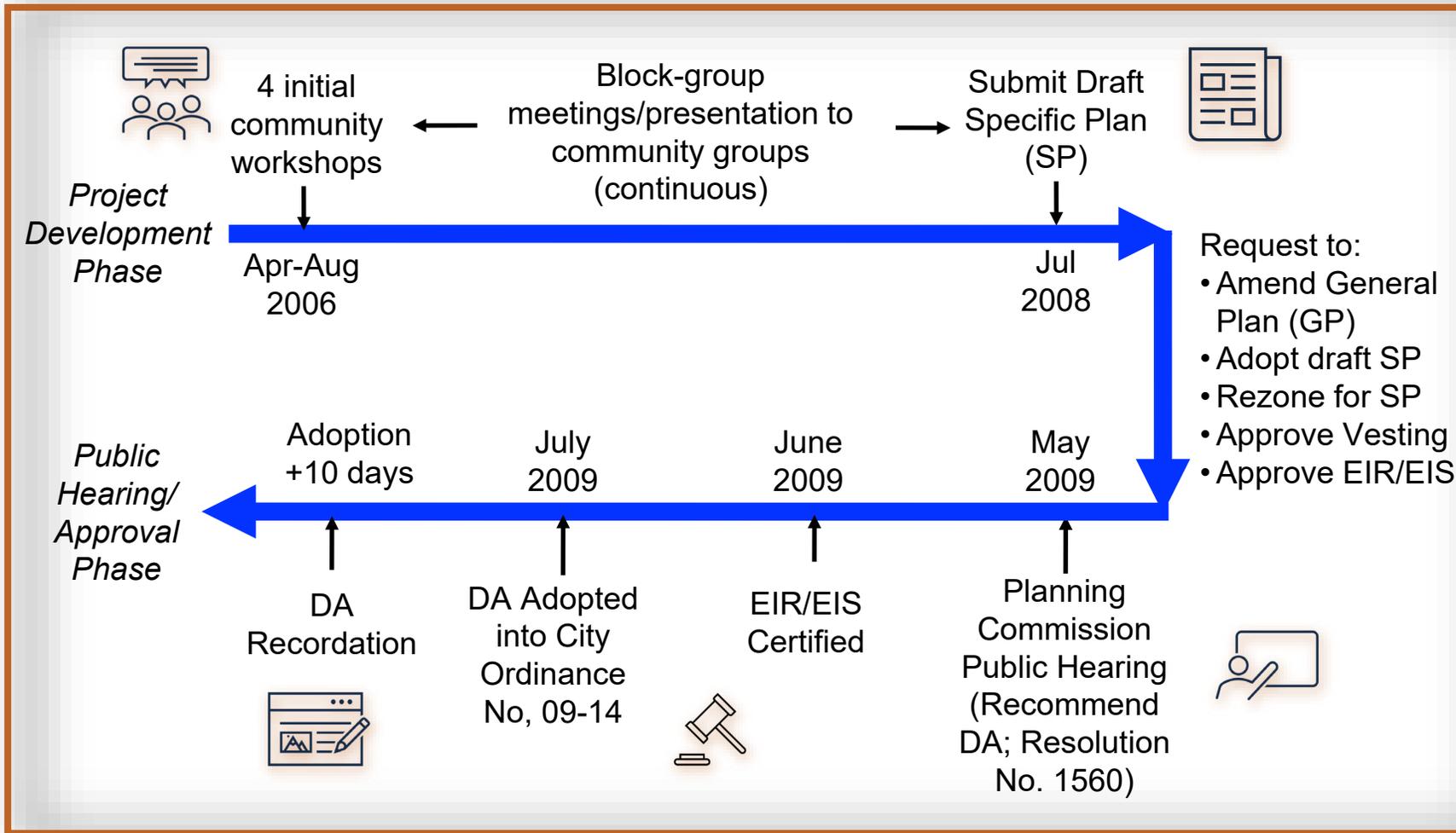
- 1 Overview/History of DAs
- 2 Key Elements of DAs
- 3 DA Implementation Process
- 4 DA Examples
- 5 Communities Benefits Agreements (CBAs)
- 6 DA/CBA Issues
- 7 Other Contract Based VC Techniques
- 8 Integrating VC Strategy thru Contracts

DA Examples—Wide Range (Washington)

4

Location	Year	Term	Size (Acres)	Project Scope	Public Improvements
City of Bellevue	2009	5	Small (36)	<ul style="list-style-type: none"> Mixed use urban revitalization Linkage to regional LRT 	<ul style="list-style-type: none"> Transportation & other infra Park & recreation
City of Black Diamond	2011	15	Large (1,200)	<ul style="list-style-type: none"> Large-scale mixed use Master planned community 	<ul style="list-style-type: none"> Transportation & other infra Park & recreation Affordable housing
City of Des Moines	2007	15	Large	<ul style="list-style-type: none"> Redevelopment of blighted area Linkage to regional LRT 	<ul style="list-style-type: none"> Transportation & other infra
City of Everett	2009	20	Large	<ul style="list-style-type: none"> Cleanup of riverfront brownfield site Mixed use developed 	<ul style="list-style-type: none"> Transportation & other infra
City of Issaquah	2007	20	Small	<ul style="list-style-type: none"> Transit-oriented development (TOD) Zero-energy, demonstration project 	<ul style="list-style-type: none"> Most municipal facilities & services
	2012	28	Large (123)	<ul style="list-style-type: none"> Master planned urban village Reclamation of mineral resources 	<ul style="list-style-type: none"> Transportation & other infra Affordable housing
City of Redmond	2007	20	Small (27)	<ul style="list-style-type: none"> New Microsoft campus Density transfer 	<ul style="list-style-type: none"> Multi-modal access TDM, signals, intersections Water/sewer/stormwater
Snohomish County	2009	5	Small	<ul style="list-style-type: none"> 29 station BRT project along Hwy 99 Linkage to regional transport nodes 	<ul style="list-style-type: none"> Transportation & other infra

DA Example—Timeline (Inglewood, CA)



*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?

Local Community



Community support of development project

Community Benefits Agreements (CBAs)

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

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

CBA: Community Benefits



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



DA/CBA often used in conjunction

- ...relatively new to VC tool box
- ...legal grounds still being tested



- 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

- 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



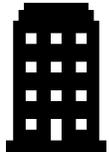
Other Contract Based VC Techniques

1

JDA Examples—Transportation



MBTA



New
NB HQ



New
Infill Station

- ✓ 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



4-Tower SF
Office Complex



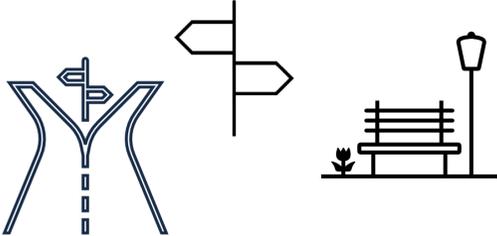
Dunwoody STA
Expansion

Other Contract Based VC Techniques

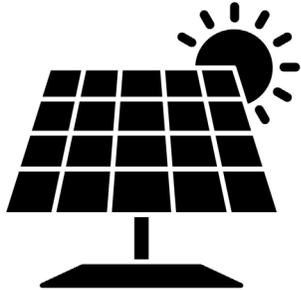
2

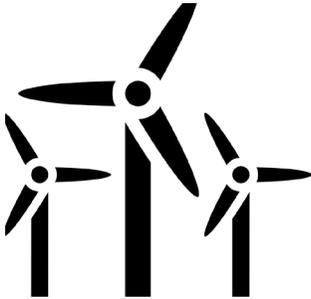
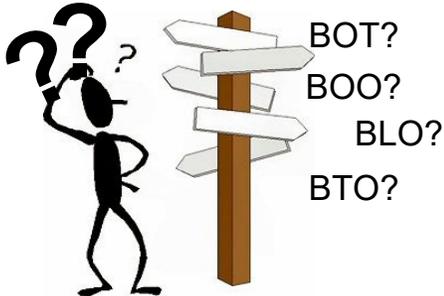
Public Asset/ROW Use Agreements

Naming Rights 

Corporate Sponsorships 

Advertising 
Sports Stadium

Third-Party Franchise Agreements 

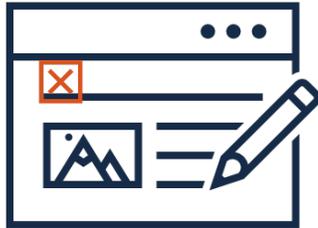
 

Presentation Outline

- 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**