U.S. Department of Transportation
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CENTER FOR
INNOVATIVE FINANCE SUPPORT

How-To Brief No. 3: HOW TO CREATE INTERAGENCY OVERLAY DISTRICTS FOR MULTI-JURISDICTIONAL VALUE CAPTURE

Several value capture mechanisms require the creation of geographic districts or zones that define the benefit area(s) where implementing agencies assess taxes and fees. Because the impacts of transportation investments are not confined by jurisdictional boundaries, benefit areas often cross multiple jurisdictions. Agencies can coordinate and cooperate across jurisdictions and levels of government to create Interagency Overlay Districts (sometimes called "Interagency Overlaying Tax Districts") for multi-jurisdictional infrastructure investments using value capture. This brief provides insight into how agencies can work together to create overlaying districts and several case study examples of interagency coordination for value capture.

Key Takeaways

> **Interagency overlay districts allow value capture areas to better reflect the underlying benefit area of an infrastructure investment.**

- This helps jurisdictions provide infrastructure in areas adjacent to development even if the benefits cross jurisdictional boundaries.
- This helps prevent developers from choosing parcels within the true benefit area of a new investment but beyond the political boundaries of the jurisdiction.

> **Interagency overlay districts help agencies make transportation infrastructure planning and funding decisions based on investment need rather than by asset ownership or political jurisdiction.** Without coordination, needed projects may go unfunded because the majority of benefits would occur outside the jurisdiction where the infrastructure needs to be built and therefore beyond reach of the value capture techniques needed to fund it.

> **A strong business case for the proposed transportation investment can help motivate stakeholder agencies and jurisdictions to form an interagency overlay district.**

- A market study can help demonstrate the benefits of the transportation investment to agencies and jurisdictions where benefits will accrue, as well as the necessity of paying for it using the proposed value capture technique.
- It may also be helpful to communicate the equity, land use, fiscal sustainability, and environmental benefits that value capture techniques promote.

What is an Interagency Overlay District and why is it important?

District-based value capture mechanisms such as impact fees, special assessment districts (SAD), and tax increment financing (TIF) require the formal identification of the geographic boundaries within which the mechanism will be applied. In keeping with the beneficiary pays principle that motivates value capture, these boundaries should represent the area served by or benefitting from a given transportation infrastructure investment or investment program. Yet benefit areas do not always conform to existing jurisdictional boundaries, nor do areas needing infrastructure investments. Issues arise when, for example, significant development in one jurisdiction imposes infrastructure costs on an adjacent jurisdiction or when developers avoid bearing their share of infrastructure cost by choosing locations within an infrastructure investment's benefit area but beyond a jurisdictional border. Such issues can be addressed by forming an interagency overlay district that makes infrastructure investments in and collects revenue from a multi-jurisdictional benefit area. This brief offers practical information on how to form interagency overlay districts for value capture.

How to form an Interagency Overlay District

There are five basic steps to forming an Interagency Overlay District:

1. Identify benefit areas empirically through a market analysis.
2. Communicate the "business case" for the proposed investment and value capture implementation to stakeholder agencies and jurisdictions.
3. Build support for the concept of value capture based on equity, fiscal sustainability, growth management, and environmental benefits.
4. Cooperate with participating agencies and jurisdictions to establish the geographical boundaries that best reflect the true benefit areas.
5. Formalize the boundaries as part of a multi-lateral legal agreement that will govern the value capture implementation.

Each of these steps is outlined below.

The beneficiary pays principle is the fundamental concept guiding value capture. In keeping with this principle, the overlay district should include the actual beneficiaries of projects and investments and reflect an observable connection between revenue collection, infrastructure investments, and beneficiaries. In contrast to closed system infrastructure, such as water/sewer for which beneficiaries can be easily identified as those who are connected to the system, and transit for which non-user benefits accrue based on proximity, roadways are open network systems. This means that they may confer benefits to a wider area that can be more difficult to identify by proximity.

Transportation facilities and services can create benefits and impact land values at all geographic levels, from the immediate vicinity surrounding an investment to a multicity region depending on the scope, scale, and location of the infrastructure. The first step in creating an interagency overlay district is understanding the geographic extent of benefits flowing from the transportation investment under consideration. Benefits may be widespread (e.g., productivity

gains, congestion reduction, reduced shipping costs) or local (e.g., a new turning lane from a minor arterial to a business park, providing better access for employees).

A market analysis is an important tool for identifying beneficiaries and benefit areas as well as how benefits are distributed throughout an area or concentrated on specific locations within that area. (See: How-to Brief #4: How to Use Market Analysis for Value Capture). An agency wishing to pursue value capture that requires interjurisdictional cooperation can use the market analysis demonstrate the benefits of the infrastructure to each affected jurisdiction and present a "business case" for their participation in the value capture implementation. Agencies that have already identified the need to collaborate for value capture may choose to partner to fund an independent market study so that all participants can agree that benefit areas have been identified objectively.

While the market analysis demonstrates the value of the investment to the agencies and jurisdictions whose cooperation is needed to implement the value capture technique, it may also be necessary to communicate the underlying principles of value capture (See: How-to Brief #1: How to Adopt a Business Case Mindset for Value Capture) and the benefits associated with the specific technique proposed. Adjacent jurisdictions often have common economic development goals, and this communication may take place bi-laterally between jurisdictions or levels of government, or it may be facilitated at the regional level by a Council of Governments or Metropolitan Planning Organization.

Once political jurisdictions and responsible agencies have reached an agreement on the extent of the benefits resulting from an investment, they must establish the specific geographic boundaries that most accurately reflect the extent of benefits. Transportation specialists and real estate assessment or appraisal professionals can lend expertise regarding appropriate district boundaries. District boundaries may change private sector development decisions, so involving planning and zoning officials can help coordinate district boundaries with land use goals and priorities.

Once the appropriate boundaries have been agreed upon, the interagency overlay district must be created as part of a legal agreement that establishes the interagency cooperation for the value capture technique. The document should cover all aspects of the implementation including how value is determined, how levies or fees are determined, revenue collection procedures, how rights and responsibilities are assigned, how to dissolve the agreement and the consequences of such dissolution. Lawyers representing each of the jurisdictions participating in the value capture implementation must draft the agreement to conform to all relevant statutes and regulations. This helps protect against internal disputes among signatories as well as challenges by developers and property owners.

Selected Case Study Examples

The following case studies illustrate three value capture implementations that crossed jurisdictional borders. The first two cases involve inter-jurisdictional cooperative agreements with interagency overlay districts, while the third (New Jersey) is an example of state-level

legislation that supports inter-jurisdictional cooperation and multi-jurisdictional revenue collection and investment.

Orange County Transportation Corridor Agencies

In 1986, the Foothill/Eastern Transportation Corridor Agency and the San Joaquin Hills Transportation Corridor Agency in California (known collectively as the Transportation Corridor Agencies, or TCA) formed a public joint-powers agency to manage financing, construction, and operations of several proposed roads in Orange County. Today, the TCA manages and operates 420 lane-miles of major toll roads, including State Routes 73, 133, 241, and 261.

The TCA charges developers of certain residential and commercial properties a one-time development fee (i.e., impact fee) that contributes to the repayment of debt issued to construct the transportation facilities. Fees are due at the time of building permit issuance and fee amounts differ according to proximity to the toll roads. The fees provided essential seed capital for project development and the construction of the roads and continue to be integral to the TCA's debt management.

TCA is managed by two boards of directors consisting of elected officials from Orange County and each of 18 member cities in the zone. A small staff facilitates agency activities. All TCA member agencies assess the impact fee in the areas of benefit.

Texas Transportation Reinvestment Zones

In Texas, one innovative method of financing transportation projects is transportation reinvestment zones. Texas cities, counties, and port authorities have the authority to create these zones in underdeveloped areas to facilitate the movement of traffic or enhance their ability to sponsor transportation projects. After a zone is created, the local governing body establishes a base year and the incremental increase in property tax revenue to be collected in the zone to finance future projects. This mechanism resembles traditional TIF but does not normally require a board of directors.

One important step in the process of establishing a transportation reinvestment zone is to establish mechanisms for funding and partnerships, including interlocal agreements and partnerships with Texas' regional mobility authorities. Under Texas law, transportation reinvestment zone revenue may support projects occurring in adjacent jurisdictions that benefit residents and property owners in the reinvestment zone. To that end, Texas Senate Bill 1110 of 2013 allows the governing bodies of two or more local governments to enter into a joint administrative agreement for adjacent reinvestment zones. With this agreement in place, each local entity may use reinvestment zone revenues to support transportation projects outside its boundaries. Senate Bill 1110 also allows for joint administration of reinvestment zones through the use of joint increment accounts overseen by an interagency leadership body.

Farm-to-market (FM) road 110 in Hays County offers one example of multijurisdictional coordination for a transportation reinvestment zone. The 13-mile FM 110 project is the development of a key corridor through central Hays County with the goal of reducing congestion in a high-growth area. To finance the project, the City of San Marcos and Hays County entered

into an advance funding agreement with the Texas Department of Transportation (TxDOT) to implement a transportation reinvestment zone to fund FM 110. Under the terms of this 2014 agreement, Hays County paid for 100 percent of the project development costs ($15 million) and TxDOT agreed to build the project with a loan of $48 million to the county from the Texas State Infrastructure Bank. Through the creation of the increment zone, revenues are expected to increase for both Hays County and the City of San Marcos. Fifty percent of the revenue from the interagency reinvestment zone will be used to repay the county's loan, with the remaining revenue to be allocated to meet other city and county needs. The zone is expected to generate between $63.3 million and $74.9 million in net present value terms, allowing the county to repay the $48 million loan in about 22 years.[1]

New Jersey Transportation Development Districts

New Jersey's Transportation Development District (TDD) Act of 1989 is an example of state-level legislation that supports inter-jurisdictional cooperation, by allowing creation of interagency overlay districts among jurisdictions, coordinated at the county-level. Transportation Development District Act authorizes the governing body of any county to apply to the state transportation commissioner for the designation of a TDD. Following such a designation, a county is required to initiate a joint planning process for the TDD with opportunity for participation from the State, affected counties and municipalities, and private representatives. The joint planning process produces a draft district improvement plan and a draft financial plan to govern the TDD.

One noteworthy example of a New Jersey TDD is the I-95/295 corridor in Mercer County. The I-95/295 corridor was designated a TDD in 1990 and encompasses parts of three townships: Hopewell, Ewing, and Lawrence. The TDD designation allows Mercer County to assess development fees for transportation improvements in high-growth areas throughout the district. To create this district, Mercer County initiated a comprehensive land use/transportation study designed to determine the appropriate development densities and infrastructure needs for the corridor in each of the three municipalities. The study involved the county, municipalities, and landowners, who took part in a joint planning process to determine a trip-based fee structure and identify the needed transportation improvements available public resources. The resulting TDD plan was approved by New Jersey Department of Transportation and the Mercer County Board of Chosen Freeholders in 1992. As a result of this TDD, the public and the development community have been successfully sharing the costs of needed improvements in this multi-jurisdiction area for many years.

[1] FHWA Center for Innovative Finance Support. Hays County, Texas Transportation Reinvestment Zones Case Study. *https://www.fhwa.dot.gov/ipd/value_capture/case_studies/hays_county_texas_transportation_reinvestment_zones.aspx*

Recommended Resources

Topic	Source	Where to Find
Creating Transportation Development Districts	Alternative Funding Strategies for Improving Transportation Facilities, Center for Urban Transportation Research (pages 11-19)	*https://www.cutr.usf.edu/oldpubs/Fairshare%20Report.pdf*
Transportation Improvement/Development District Resources	FHWA Center for Innovative Finance Support, Value Capture Resources, Special Assessments	*https://www.fhwa.dot.gov/ipd/value_capture/resources/value_capture_resources/special_assessment_resources/tid_tdd.aspx*
Transportation Reinvestment Zones	FHWA Center for Innovative Finance Support, Transportation Reinvestment Zone Fact Sheet	*https://www.fhwa.dot.gov/ipd/fact_sheets/value_cap_transportation_reinvestment_zones.aspx*
Interagency Development Impact Fees	Toll Roads of Orange County Development Impact Fee (DIF) Program Fact Sheet	*https://thetollroads.com/about/development*