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**CENTER FOR
INNOVATIVE FINANCE SUPPORT**

How-To Brief No. 13: HOW TO MEET THE ADMINISTRATIVE AND INSTITUTIONAL REQUIREMENTS FOR VALUE CAPTURE TECHNIQUES

Understanding the administrative and institutional requirements for value capture is important to implementing value capture successfully. Administrative support can come from existing sources and systems or be acquired as the implementation process commences. This how-to brief describes the core resources required to pursue and implement value capture techniques.

Key Takeaways

Value capture exploration and implementation benefit from the following core resources:

- > **Enabling Legislation.** Value capture techniques may require enabling legislation. Legal counsel familiar with land use law and with experience in municipal finance can identify value capture techniques available for local use. Legal counsel will be able to establish the legal basis, precedent, and supporting evidence to avoid potential legal challenges or invalidation.
- > **Communication.** Support from the public, policy makers, and local politicians can expedite implementation and maintain use of value capture in the future. Clear messaging on the benefits (including equity), transparency on where and how funds will be spent, and from where value is derived are important aspects of outreach and education.
- > **Staff resources and skills.** Value capture will require revenue collection, property value assessment, and accounting staff support and systems from jurisdictional offices covering finance, auditing, and assessments. These staff and resources are needed during the exploration, implementation, and operation phases of any value capture pursuit.

Introduction

Successful value capture implementation requires certain institutional and administrative capacities, such as policy support from agency leadership, open channels of communication with affected stakeholder groups, specialized technical skills of agency staff, and interagency or interjurisdictional collaboration. Agencies intending to pursue or expand the use of value capture may already have many of the necessary capacities in place and others that need further development. Two key tools in the Value Capture Toolkit can help agencies meet the institutional and administrative requirements for successful value capture implementation. The Agency Self-Assessment is a diagnostic tool, available online, that asks a series of questions

related to each of the key aspects of institutional and administrative capacity. The Value Capture Capability-Maturity Matrix (CMM) defines different levels of institutional and administrative capacity for value capture and shows how an agency can move from one level of maturity to the next. Developing the institutional and administrative capacity for value capture is an iterative process, and agencies need not have achieved the highest level of maturity on the CMM before attempting value capture. Instead, the Agency Self-Assessment and CMM provide a roadmap that helps agencies identify areas of strength and priority areas for growth.

The components that reflect the organizational and staffing requirements most likely needed to support the implementation of value capture practices in transportation planning organizations are described in Table 1.

Table 1. Summary of Requirements

Requirements	Description	Staff, Agencies, Parties involved
Policy	Policy direction from elected and/or agency leadership regarding funding transportation infrastructure equitably using value capture, and how the implementation can advance policy goals for economic development, transportation, conservation, and greenhouse gas reduction, among others.	Appointed leadership and senior staff
Enabling legislation	Does enabling legislation or authority exist? If so, do local ordinances have to be passed, confirmed by local officials, or does are ballot initiatives required?	Legislature, elected officials, municipal legal counsel, and state attorney general.
Communications	<p>Private sector: Leadership communication with potential private sector partners and coordinated deliberate outreach to create support.</p> <p>Public: A communication strategy to educate the public on value capture and its benefits. The communication strategy should also solicit public feedback.</p> <p>Interagency: Planning, finance and accounting, collection, assessments, permitting, and legal functions may be spread across multiple departments or agencies. Interagency communication among leadership and staff is important and these connections will have to be made in advance if these levels of coordination do not presently exist.</p>	Executive decision makers, project champions, and staff members
Staff management and skills assessment	Staff with experience or training in planning, real estate and development, legal and contract administration, and finance are needed for initial planning and/or long-term implementation for value capture. Some skills are only required at certain planning or implementation stages and therefore managers need to inform and support leadership with staffing or consultant needs.	Leadership, staff managers, and staff members
Experience in long-term revenue sharing	If revenue sharing agreements do not exist between departments or agencies, they have to be developed and negotiated. Agreements should factor in legal and administrative processes as well as upfront and long-term costs associated with administering the program.	Leadership, executive decision-makers, local politicians.

Necessary Administrative and Institutional Capacities

For a state, municipality, department, or agency considering readiness levels for implementing value capture, the FHWA Value Capture CMM is useful. The CMM will suggest the steps necessary to advance institutional capacities for value capture; the key capabilities are described in the following section.

Policy

Appointed leadership and senior staff need to understand value capture techniques to support their use in project funding. Policy makers, such as city council members, legislators, and department heads, will need to be briefed on the benefits of value capture, its applicability for local needs, other successful uses by peer regions, and ways that value capture can support regional transportation, planning, and other policy goals. Support from policy and decision makers is critical because they have the power to affect policy, change internal processes, allocate resources, and advocate for shifts in policy. To demonstrate how value capture can support policy:

- 1. Identify the ways in which value capture can fill in funding gaps or support existing capital programs.** Introduce the institution's leadership to value capture by presenting examples of successful programs at peer agencies and jurisdictions ([see FHWA Case Study Website](#)). Present the implementation of value capture programs as opportunities to provide new equitable and sustainable sources of funding and improve project delivery.
- 2. Provide ongoing education and share information.** Find opportunities for sharing information with leadership from peer regions that use value capture. Establish agencywide commitment to explore value capture for project funding.
- 3. Support or create policies for interagency revenue sharing and staff collaboration.** Foster relationships with policy aides, who may be easier to keep informed on value capture than policymakers themselves, and agency leaders who communicate top priorities to project managers. Work together with leadership and senior policymaking staff to communicate benefits of value capture to key stakeholders and elected officials.

KEY POLICY RESOURCES

- How to Brief #1: How to Adopt a Business Case Mindset for Value Capture
- How to Brief #10: How to Select an Appropriate Value Capture Technique
- How to Brief #11: How to Communicate Value Capture to Executive Decision-Makers

Enabling Legislation

Value capture techniques can require state, and sometimes local, legal authority depending on the technique and the home rule status of the state. In the broadest sense any value capture technique must meet the following legal requirements:

- There is an “essential nexus” (or “relationship”) between the private party’s activity and a burden that is placed on the community as a result; and the fee or requirement placed on the private party is “roughly proportional” to the burden imposed.¹
- Uniformity where the same tax or policy applies equally to every subject (person, business, or thing) in the same situation².
- Avoid challenges pursuant to “takings” under the Fifth and Fourteenth Amendments to the U.S. Constitution.

¹ FHWA Center for Innovative Finance, “Essential Nexus, Rough Proportionality, and But-For Tests State of the Practice”, p. 5

² Legal Information Institute, “Uniformity Requirement” <https://www.law.cornell.edu/constitutionconan/article-1/section-8/clause-1/uniformity-requirement>.

- Adhere to State and local laws and requirements, including but not limited to how districts and zones are defined, the placement and location of sponsorship signage, uses of funds, and revenue collection.

The following scenarios describe ways to pursue enabling legislation:

- 1. If no legislation exists to enable value capture.** Use the lack of authorizing legislation as justification to proceed with innovative partnerships that unlock social, community, or economic benefits. Identify comparable municipalities or states that have successfully introduced legislation and share these examples. Develop strategies for informing stakeholders of potential value capture legislative initiatives that would support the funding goals of the agency. Create a legislative strategy to provide a foundation for new value capture programs and advocate for new legislation by demonstrating the potential of value capture to fill unmet needs. Review the statutory authority, legal constraints, and financing restrictions that may need to be addressed in establishing a legal basis for value capture, then establish legal precedence.
- 2. If relying on a limited number of value capture tools.** Prepare strategy for briefing key legislative and leadership stakeholders to support new or refined legislative authorization for value capture initiatives. Support legislative advocates with policy and implementation successes in own and peer jurisdictions.
- 3. If enabling legislation is pending or recently passed.** Monitor bills under consideration to understand any future changes that may influence value capture programs or revenues. Keep legislative champions abreast of successful implementation efforts, and any needs that emerge as value capture is applied to major capital projects.

KEY LEGAL RESOURCES

[FHWA Center for Innovative Finance, “Essential Nexus, Rough Proportionality, and But-For Tests State of the Practice”](#)

Communication: Private Sector Relations, Financially Interested Stakeholders

Private sector entities, primarily landowners, developers, and business owners are stakeholders that can advocate for or against a value capture implementation. Having a communication strategy and long-term goals for the relationship will improve the likelihood that the private sector will see the benefits and be a willing partner. To improve your agency’s private sector relations:

- 1. Begin engaging with the private sector and developers.** Research whether the revenue and economic opportunities associated with proposed value capture initiatives are sufficiently attractive to developers to justify public support for a project. Define and allocate risks that agency and private parties are willing to take and assess best practice mitigation strategies for shared risks. Understand the trade-off between restrictions and requirements and attractiveness of a project to potential bidders.
- 2. Introduce cooperative value capture options appealing to private interests.** Balance long-term actions with short-term wins to demonstrate the value of the value capture techniques in a more immediate way. Work cooperatively with public officials and private

developers to produce fair deals that can be publicly supported by all parties and that allocate risks appropriately.

- 3. Establish working relationships with private sector interests on projects.** Establish a transparent prioritization process that clearly communicates to developers where their fees are being spent, if applicable. Offer fair deals to private partners while also ensuring that the public sector gets the fair market value for use of public assets.

KEY COMMUNICATION RESOURCES

- How to Brief #12: How to Generate Stakeholder Support for Value Capture Projects
- How to Brief #1: How to Adopt a Business Case Mindset for Value Capture

Public Communications: Community Leaders and Interested Stakeholders

As with communication with the private sector, communications with key public stakeholders and community leaders are critical. A strong communication strategy is needed to educate, bolster support, and address concerns from the community. To improve public communications with community stakeholders:

- 1. Go beyond required outreach.** Work with community leadership and influential organizations to show how leveraging funds using value capture can accelerate project development and foster associated community development. Be aware of perceived fairness issues, particularly regarding benefits and burdens for specific constituencies, equity, and displacement/gentrification. Communicate agency positions on these issues directly. Build an understanding of local needs and cultural sensitivity by actively engaging community partners to solve problems. Establish a transparent prioritization process that clearly communicates justification for which projects receive value capture funding.
- 2. Reach and build advocate support.** Invest in internal public communications staff with the background and skills necessary to support transparent and inclusive communications with public and private stakeholders. Create measures of success for value capture projects. Develop an ongoing public communications strategy that focuses on contributions of value capture-funded projects to community well-being, achieving mobility goals, and supporting future projects that will enhance transportation options.

KEY COMMUNICATION RESOURCES

- How to Brief #12: How to Generate Stakeholder Support for Value Capture Projects
- How to Brief #11: How to Communicate Value Capture to Executive Decision-Makers

Staff Skills Assessment: Legal, Planning, Development, Contact Administration, Finance, and Revenue

Use the self-assessment tool to determine the department or agency's strengths, weaknesses, and overall capacity. Determine whether those needs are to be met locally by existing staff or new hires, shared with other departments, or contracted out to consultants.

- 1. Legal.** Capacity to confirm legislation exists and if so, what are the limitations. Implementing and reviewing the three legal tests for value capture: essential nexus, rough proportionality,

and but-for. Plan to build local capacity if multiple value capture techniques will be pursued or if staff resources do not exist.

2. **Planning, zoning, and development.** Determine the local and regional planning and zoning staff capacity. Leverage existing departments, local professionals, and MPO resources if available. When resources are identified (internal, partner agency, or consultant) determine how value capture will fit into broader transportation planning and economic and community development. Consider pilots or special planned development areas if there is local apprehension to significant changes to planning, zoning code, or permitting processes.
3. **Contract administration, finance, and revenue.** Effective tax administration capacity at the local level will enable collections and will aid in assessments. Staff capacity and leadership will be needed to implement or adjust systems in preparation for value capture.
4. **Maintaining institutional knowledge.** Create a group to serve as a shared service agencywide. These services should be available to support large innovative projects and should be able to identify when outside contracting support is needed to address unique aspects of potential value capture projects. Develop incentives for staff retention, including enhanced training, working conditions, and professional development. Refine documentation of internal management practices to establish internal guidance and records that can be used in training and development of new staff and so that institutional knowledge is preserved and built upon.

KEY SKILLS RESOURCES

- FHWA Value Capture Self-Assessment and CMM tool
- [FHWA Center for Innovative Finance, “Essential Nexus, Rough Proportionality, and But-For Tests State of the Practice”](#)
- Value Capture Quick Start Guide

Interagency Collaboration

Interagency collaboration is important because it is rare that one single agency has all of the resources or authority to research, manage communications, implement value capture, and collect and distribute funds. Using existing resources, staff, and capabilities from peer agencies and other regional authorities can reduce the time to implement and spread the staffing burden. Interagency collaboration is important to building these workstreams and resource sharing agreement, and can be achieved through:

1. **Introducing value capture to potential partners.** Identify willing partnering agencies and collaborate on the planning and development of value capture funding options and strategies. Identify and provide resources to support multiagency value capture implementation. Consider agency coordination requirements for a range of innovative financing and leveraging of federal and state sources (e.g., U.S. Department of Agriculture, Housing and Urban Development, U.S. Economic Development Administration, and other non-transportation agencies). Establish a memorandum of understanding with partner agencies that assigns clear roles and responsibilities to each agency. Create opt-in

programs for local public agencies to participate in value capture programs such as development fee zones.

- 2. Expand coordination beyond project prioritization.** Initiate discussions and provide background information on the use of value capture as a potential funding source to accelerate project delivery. Engage with local officials to bolster political support and to ensure successful implementation of value capture-driven projects. Create partnership instruments for working with other governments, including resource sharing and cooperative agreements. Take advantage of technical assistance available from MPOs to local public agencies, especially for smaller agencies with fewer resources.
- 3. Solidify agreements and delegate responsibilities for long-term collaboration.** For complex multiagency projects and programs, establish a lead agency to direct questions, assign responsibilities, and respond to inquiries. Partner with neighboring districts and jurisdictions (including self-managing improvement districts) to demonstrate widespread cooperation and incentivize participation to increase contributing members.

KEY SKILLS RESOURCES

- How to Brief #5: How to Integrate Value Capture into Land Use Planning
- How to Brief #6: How to Overcome Barriers to Value Capture

Experience in Long-Term Revenue Sharing (or Revenue Segregation) with Local Governments (Management, Finance, and Accounting)

Using existing resources and administrative processes can reduce some of the operational expenses and staff demands when implementing value capture. These collection and finance resources can be shared among agencies or departments, requiring some sort of agreement to devote resources. Alternatively, whole new administrative mechanisms or entities can be created to manage a new value capture implementation. To improve capabilities with revenue sharing:

- 1. Build support for financial management and compliance.** Identify financial management requirements under federal guidelines, state laws, and government accounting standards required for value capture-funded projects. Encourage local partners to create administrative mechanisms (e.g., improvement districts) to capture externalities through new assessments on private actors. Make use of available resources of centralized revenue collection functions situated elsewhere in government.
- 2. Create interlocal agreements or memoranda of understanding (MOUs).** Build on prior coordination efforts to develop MOUs with partner agencies that outline revenue management procedures required for value capture-funded projects. Assign repayments from local governments into an enterprise fund dedicated to specific purposes.
- 3. Find logical process points for tracking and making collection transparent.** Create transparent and predictable practices for collection. Provide clear guidance and timelines, for example, clear schedules so developers understand when fees are due (such as at time of permitting or with normal real estate tax bills).
- 4. Maintain long-term management of revenue sharing and funding support.** Build in periodic audits and reviews of financing and revenue management systems to confirm that

requirements of loan provisions and administration are being met based on requirements of implementation agreements. Adapt and renew administrative understandings and adjust risk balance of participating agencies.

KEY REVENUE SHARING RESOURCES

- How to Brief #3: How to Create an Inter-agency Overlaying Tax District
- How to Brief # 14: How to Manage Revenue Collection, Monitoring, and Reporting for Value Capture
- [Case Study: Nevada Regional Road Impact Fee](#)

Conclusion

Given the persistent and growing backlog of transportation needs, value capture can be a long-term solution to closing local gaps and worth the short-term startup efforts. The development and implementation of value capture techniques will require more planning and staffing resources than increasing rates or modifying traditional sources of transportation funding and finance. Value capture will require upfront investment for research, communication, and development of support before implementation. When enabling legislation or authority is available, local resources have to be dedicated to pursuing, implementing, and administering value capture. Education and outreach are important to the success of the value capture implementation and should focus on demonstrating the benefits of generating local funding to deliver more and better projects sooner, as well as maintenance for projects that would not have been funded otherwise.