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CENTER FOR INNOVATIVE FINANCE SUPPORT

How To Brief No. 6: HOW TO OVERCOME BARRIERS TO VALUE CAPTURE

Barriers to value capture can occur at any point in the implementation process. But barriers are unique to the project and can involve the value capture technique used, project design and location, the political and legislative climate, and the macroeconomic and real estate market conditions. Understanding common categories of barriers to value capture and exploring how other municipalities and implementing agencies have navigated them can help jurisdictions prepare for and successfully work through potential barriers that they might encounter.

Key Takeaways

Some common strategies for overcoming barriers to value capture are:

> **Anticipate potential barriers from the start and make a back-up plan.** Anticipating and planning for potential barriers from the inception of the value capture process can be vital to overcoming them successfully. Planning can include performing a market analysis, understanding macroeconomic and local real estate market and business conditions, communicating with stakeholders and understanding how they might react to the value capture technique, and outlining contingency plans for project funding.

> **Have a strong project champion.** Having a strong proponent for a project—in the implementing agency, local government, or a local developer or business leader—to promote the project and value capture technique can help solve funding shortfalls and improve relations with project partners and stakeholders.

> **Allow for flexibility in the programming of the project and the value capture technique.** If a project's design and location allow for adjustments, doing so can ease the resolution of legal constraints, challenges, or stakeholder opposition. Flexibility in the value capture design will allow a jurisdiction to adjust as the funding needs or stakeholders change throughout the implementation process.

Introduction

Many transportation agencies would like to expand their use of value capture techniques to raise needed revenue to meet funding gaps, accelerate project timelines, and meet public policy objectives. However, barriers may present themselves at any point in the value capture implementation process and halt progress. This brief identifies common barriers that have appeared during the implementation of value capture techniques and outlines key takeaways on how each agency navigated its unique barriers. Impediments can be unique to each project and be related to the value capture technique used, the location and programming, the political climate, macroeconomic and real estate market conditions, and enabling legislation for value capture. Though each situation is unique, there are common categories:

- Development risk
- Public approval, public perception, or stakeholder opposition
- Lack of political support
- Differing needs among areas within a jurisdiction
- Legislative or statutory provisions
- Vulnerability to legal challenges
- Lack of long-term partnerships with the private sector
- Lack of technical or administrative capacity
- Inadequate revenues
- Economic or real estate market downturns
- Market risk.

The following section explores these categories in depth and illustrates case studies in which these barriers have occurred. Barriers are not mutually exclusive and some of the case studies explored below experienced multiple impediments. For further detail on each case study, see the corresponding case study writeup, linked to below.[1]

Common Barrier Categories

Development Risk

Barriers to successful implementation of a value capture technique may arise due to troubles related to development risk. As explored in the following case studies, these barriers may arise due to a developer's response when exposed to risk, financial instability, and variable market conditions.

N STREET PROTECTED BIKEWAY TIF, LINCOLN, NE

The N Street Protected Bikeway project in the City of Lincoln, Nebraska, connects the citywide bicycle trail system to downtown. Financing for this project required the use of funds from four tax increment financing (TIF) districts—because it benefits several development projects along a corridor rather than one district location—as a major share of a larger package drawing funds from 20 distinct sources. The TIF district that was to provide the largest share of funding to the bikeway project fell through at the last minute when the developer was unable to secure financing for its project. To overcome this significant and unexpected funding shortfall, the mayor, who was a strong project proponent, was able to negotiate with a different developer seeking to build a TIF-supported residential project along the bikeway. The mayor proposed extending the boundaries of that TIF district, the Aspen Heights TIF district, to include a segment of the bikeway so that significant funds from that TIF district could be used. The

[1] Value Capture Case Study Writeups, https://www.fhwa.dot.gov/ipd/value_capture/case_studies/

developer accepted, and this TIF district was the second-largest source of funds for the bikeway.

Key takeaway: Strong support from a powerful project proponent (the mayor) helped to secure new funding sources when another source fell through.

RENO AIR RIGHTS, RENO, NV

In the case of Reno's I-80 Air Rights project, a private developer secured an air rights lease from the Nevada Department of Transportation (NDOT) with plans to build a hotel-casino on top of I-80. The developer built a concrete and steel platform, but backed out of the project after having financial troubles. For 30 years the lease was transferred among private parties who did not develop on the platform and performed little maintenance on the space. Eventually, pharmacy chain Walgreens secured an air rights sublease to build a drugstore above the highway. The project was completed in 2002.

In this project, the halting of the original project because of a loss of funding, coupled with the lack of market demand for the space from other developers, created a barrier to development and effective use of air rights as a value capture technique. Air rights require strong demand and tight supply of land for development and re-development. To protect against repeating the problems of the I-80 Air Rights project, NDOT revised its Air Rights policy and now requires competitive bidding for air rights that ensures a baseline level of market demand for the space.

Key takeaway: The implementing agency adjusted its policy for the use of air rights leases to developers to reduce the risk associated with this value capture technique.

Figure 1: Completed Walgreens on top of 1-80 in Reno, NV

Photo Credit: Reno Gazette Journal

Public Approval, Public Perception, or Stakeholder Opposition

The lack of public or stakeholder support for a specific value capture technique can present itself as a barrier to implementation, especially if a project is contingent on voter approval. Ways in which agencies have navigated public or stakeholder opposition to a value capture technique center largely on direct public outreach programs to address misconceptions about value capture and to educate the public on the benefits of the project and how the technique distributes the cost. Public processes also result in changes to the project design to ensure that input from members of the public was heard, and potential impacts are reviewed and addressed in the planning process and the value capture technique implementation.

LOOP 202 SOUTH MOUNTAIN FREEWAY, MARICOPA COUNTY, AZ

The Loop 202 South Mountain Freeway project in Phoenix, Arizona, which provides important connections and alleviates traffic congestion in downtown Phoenix, has made use of a countywide sales tax district for project funding that was authorized and reauthorized in 20-year increments. The original 1985 ballot initiative for the sales tax district had broad public support, passing by a wide margin. When the ballot measure came up again in 2004 to enable funding for another 20-year period, it faced some public opposition. To overcome this potential barrier and garner public approval for the reauthorization of the sales tax district, the mayors of cities in Maricopa County conducted extensive constituent outreach at town halls, stump speeches, and media events advocating for the ballot measure.

Key takeaway: Powerful project champions (local mayors) conducted and supported direct public outreach programs that helped the public understand how the funding was going to be used and how the projects benefit the region. These efforts secured the reauthorization of the sales tax district in the 2004 ballot measure.

PEARL STREET GARAGE AND RIVERWALK, BIDDEFORD, ME

For the Pearl Street Garage and RiverWalk project in Biddeford, Maine, the city used joint development, a TIF district, and special assessment district (SAD) to create a downtown parking structure and pedestrian amenities. The parking garage also charged market rate fees to cover part of the construction costs. Though many in the community supported the parking garage project, there was opposition. Some opposed the project out of general opposition to government action and preference for limited government. Others were opposed to any paid downtown parking, including many who supported a 2014 ban on downtown parking meters and who saw the garage as undermining the spirit of that ban. And some opposed the project in broad opposition to the mayor and/or city councilmembers. Opposition to the project itself also resulted in opposition to the mix of value capture techniques used, with some opposing them out of concern about a raise in property taxes.

To overcome this barrier and generate stakeholder buy-in, the mayor and city councilmembers supporting the project dedicated significant political capital to communicating the need for and benefits of the project. Along with this, the mayor and city council devised a funding program designed to not increase residential property tax rates. This focused the SAD on downtown businesses who were the beneficiaries of the parking garage and RiverWalk.

Key takeaway: To make the value capture techniques more attractive to the public, the municipality made it a priority to demonstrate the need for and benefits of the project to the public. The municipality also designed the funding program to only draw from downtown businesses that were direct beneficiaries of the parking garage and RiverWalk, ensuring that residential property tax rates would not increase.

N STREET PROTECTED BIKEWAY TIF, LINCOLN, NE

In the case of the N Street Protected Bikeway TIF, described under the "Development Risk" section, stakeholder opposition was related more to the project itself than to the value capture technique. Downtown retailers had initial concerns about loss of parking whereas some businesses and residents had concerns about the loss of a vehicle travel lane in either direction. In response to these concerns, the city converted some parallel parking on side streets to diagonal to reduce the net loss in number of parking spaces. The city also communicated to the public that the streets already had excess capacity so the loss of a lane would not heavily impact traffic flow.

Key takeaway: The city actively communicated with residents and businesses to understand their concerns about the project and implemented positive project changes in response.

Figure 2: N Street Sample Block Layout

Source: Downtown Lincoln Association.

Lack of Political Support

Although a project may meet all the statutory requirements for a value capture technique, it may still lack the support of elected representatives for political or other reasons.

NAPA JUNCTION RAIL INDUSTRIAL PARK SERVICE ROAD TIF, YANKTON COUNTY, SD

Yankton County, SD used value capture to fund the upgrading of a gravel road to a concrete industrial access road, bringing highway access to the site of a new industrial park. A private developer spearheaded the project and partnered with the county government, who was able to receive a low-interest State Infrastructure Bank Loan to build the access road. To repay the loan, the partnership identified TIF as a potential source of funding. Though the Napa Junction Rail Industrial Park and access road project met the eligibility criteria for creation of a TIF, the project did not initially have the support of the Yankton County Commission. After a few years, a different slate of County Commissioners amenable to the TIF were elected in 2014 and the TIF district was approved in 2015. The new county commissioners had run on business-friendly platforms, though not specifically related to support for this project.

Key takeaway: The developer of the industrial park and other project supporters were patient and persistent and were able to establish the TIF necessary for project funding following the election of a new set of county commissioners who were in favor of the project.

Differing Needs Among Areas within a Jurisdiction

Some agencies face the challenge that a value capture technique may affect different areas of the jurisdiction in ways that are at odds with other public policy goals such as job attraction or affordable housing. Similarly, smaller areas within a jurisdiction may have significantly different needs from the rest of the jurisdiction.

PASCO COUNTY MULTIMODAL MOBILITY FEE PROGRAM, PASCO COUNTY, FL

As Pasco County, FL was developing its Multimodal Mobility Fee Program to pay for transportation infrastructure, reduce sprawl, and promote economic development, the county became concerned that the impact fees could be a barrier to certain types of desirable development. To mitigate this potential impediment and incentivize development, the county established a buy-down program that reduces mobility fees for certain land uses that meet established criteria, such as urban redevelopment, business attraction and expansion, and transit-ready land uses. The buy-down program created a need for other revenue sources to cover the cost of infrastructure made necessary by new development. To meet this funding need, the county drew from a diverse range of funding sources, including the countywide TIF, Penny for Pasco (a local infrastructure sales tax), and local gas taxes. So far, these additional funding sources have been sufficient in backfilling the program’s incentives.

Key takeaway: When Pasco County realized that its impact fee program could disincentivize certain types of development in some areas in the county, it established a program to reduce mobility fees for certain land uses.

PORTLAND SYSTEM DEVELOPMENT CHARGES, PORTLAND, OR

As the City of Portland established its Transportation System Development Charges (TSDCs) program to tie infrastructure funding to new growth, it became apparent that two high-growth areas in the city experienced uniquely high demand for infrastructure. To meet the heightened need of these areas, the city’s Bureau of Transportation created two TSDC “overlay districts” to fund specific transportation infrastructure projects in areas projected to experience a high level of growth. Developments in these overlay districts pay additional TSDCs above those in other parts of the city. The overlay rates for these high-growth areas are determined using the same citywide methodology but are based on overlay area-specific rate studies. Unlike the citywide TSDCs, which can fund projects anywhere in the city, the TSDC overlay charges are used to fund projects only in their respective overlay areas. When the overlay zone project list is complete, it will sunset, rather than be updated along with the citywide list. This ability to create overlay districts provides a way for the city to respond to the unique needs of higher growth areas without imposing additional costs on low-income and slower growing areas.

Key takeaway: The City of Portland realized that two areas in the city experienced higher levels of infrastructure demand than the rest of the city, so it created two overlay districts for its TSDC program that fund transportation infrastructure projects in those high-demand areas.

Legislative or Statutory Provisions

The successful implementation of value capture techniques depends on compliance with statutory requirements for their use. Statutory requirements can become barriers to the use of certain value capture techniques if a project design does not fit into the statutory framework or if state legislation changes after an agency has already begun the implementation of a value capture technique.

EL PASO TRANSPORTATION REINVESTMENT ZONE, EL PASO, TX

The City of El Paso, Texas, had to adjust the design of a transportation reinvestment zone (TRZ) to align with the state's requirements for this value capture technique. In Texas, TRZs are required to be contiguous. The first TRZ established by the City of El Paso was rescinded because it was bisected by government-owned parcels, including Fort Bliss and Franklin State Park. To solve this, the TRZ was redrawn and separated into two TRZs, each composed of contiguous parcels, and thus meeting statutory requirements.

Key takeaway: When its value capture technique programming did not align with statutory requirements, El Paso adjusted its TRZ design to consist of two TRZs rather than one segmented zone. This change put the El Paso TRZs in compliance with legislation.

ELBOW ROAD WIDENING PROFFER, CHESAPEAKE, VA

A change in Virginia's state legislation governing the use of proffer (Virginia's version of negotiated exactions) required the City of Chesapeake to revise its proffer policy. The Virginia State legislature made a change to enabling proffer legislation in 2016 that prevented municipalities from "suggesting unreasonable proffers," The word "suggesting" set a very low standard for legal challenge by developers, introducing a high degree of legal risk and uncertainty for municipalities. To adjust to this change in the enabling legislation, Chesapeake designed a residential proffer policy with a formal intake process with one point of entry and written documentation of the offer, ensuring that nothing said by another city official could be construed as a suggested proffer.

Key takeaway: The City of Chesapeake adjusted its value capture technique by designing and implementing a formal administrative process to ensure compliance with new state legislation for proffers.

Vulnerability to Legal Challenges

Although Chesapeake's response to change in state proffer legislation are an example of a value capture program change necessary to meet statutory requirements, it also involves another common barrier to value capture—vulnerability to legal challenges. Some value capture techniques may be vulnerable to judicial challenges if the authority of a jurisdiction to implement such techniques is unclear under existing legislation. The next case study outlines how Pasco County, Florida, was proactive in identifying legal precedent and establishing a legal case for meeting a dual rational nexus to protect its project from future legal challenges.

See the “Essential Nexus, Rough Proportionality, and But-For Tests: State of the Practice” report for more information on legal standards, issues, and tests surrounding value capture techniques.[2]

PASCO COUNTY MULTIMODAL MOBILITY FEE PROGRAM, PASCO COUNTY, FL

Pasco County, Florida, recognized from project inception the need for its Multimodal Mobility Fee Program to be able to withstand legal challenges. The county was proactive in setting the legal foundation of the program, assessing its legal feasibility, finding legal precedents, and making sure that the project met a dual rational nexus test. The dual rational nexus test had two prongs: the needs prong and the benefits prong. For the needs prong, there must be a reasonable connection between the benefit to the proposed development and the cost to the development for the additional capital facilities for which the fee is imposed. Pasco County addressed the needs prong by using program revenue only for capital facility costs, not operations and maintenance.

Key takeaway: The county anticipated that its value capture technique was vulnerable to judicial challenges and was proactive in evaluating potential sources of transportation funding, finding legal precedents for the project, assessing the legal feasibility, and established the basis for a rational nexus.

Lack of Long-Term Partnerships with the Private Sector

The use of certain value capture techniques may require an implementing agency to work with private companies, developers, nonprofit organizations, and civic and philanthropic sector partners that they are otherwise not used to working with. Forming long-term partnerships with and operating on the timelines of private sector businesses and organizations can be an exciting opportunity or could potentially become a barrier for some agencies.

MINNESOTA DOT HIGHWAY SPONSORSHIP, MINNESOTA

The Minnesota DOT Highway Sponsorship Program gives private companies and civic organizations the opportunity to collaborate with MnDOT to develop and implement a wide range of highway beautification and maintenance projects, but MnDOT had to navigate a learning curve to engage with private sector businesses and organizations. The DOT is designed to work with local government agencies and is not used to working with nongovernmental partners that operate on much shorter timelines for decisionmaking and implementation than the DOT. Furthermore, the DOT experienced challenges in identifying

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[2] Essential Nexus, Rough Proportionality, and But-For Tests: State of the Practice Report, https://www.fhwa.dot.gov/ipd/pdfs/value_capture/rational_nexus_and_but_for_study_state_of_the_practice_report_final_05122021.pdf

businesses and organizations interested in engaging in long-term partnerships. The long lead time associated with transportation projects can add to this obstacle, because it can be difficult to coordinate partnership formation with funding availability.

To work with private sector partners' shorter timelines and keep the DOT organized and on track, the program officer established a compact timeline designed to reach implementation within 90 days of application. Furthermore, to develop long-term partnerships, the program director has been a champion of the project, promoting the program and identifying candidate partners.

Key takeaway: Organizing a clear and compact application-to-implementation timeline helped acclimate the DOT to working with private sector businesses and organizations. Additionally, having a strong project champion in the program director was instrumental in identifying candidate partners and fostering the start of potential long-term partnerships.

Lack of Technical or Administrative Capacity

The technical and administrative capacity of implementing agencies may stand as a barrier to the successful use of value capture techniques if the agency lacks the necessary staff, expertise, and data requirements. A jurisdiction has to have the technical capacity to collect data on local assessments and to determine benefit areas and appropriate fees or tax levels. If technical capacity is lacking, a jurisdiction could consider collaborating with a private business to organize data requirements and provide additional support.

A jurisdiction or implementing agency may refer to the Self-Assessment and Value Capture Capability Maturity Model (CMM) tool to determine if it has the technical and administrative capacity to implement value capture, as well as what it could do to fill capacity gaps.[3]

NAPA JUNCTION RAIL INDUSTRIAL PARK SERVICE ROAD TIF, YANKTON COUNTY, SD

Tax Increment Financing had not been used widely in Yankton County, South Dakota, when the Napa Junction Rail Industrial Park Service Road TIF was established. The project was initiated by the developer—an experienced rail industrial park operator—rather than by a public agency. The developer hired a financial consultant to perform the economic and fiscal analysis required for the TIF application submitted to the county. Using this process, it was not necessary for the county to maintain the administrative capacity and analytical expertise to perform such analyses, but instead it could use its expertise to review the materials provided by the developer.

Key takeaway: It may not be necessary for an agency or municipality to maintain a dedicated staff for value capture. For techniques such as tax increment financing, it may be sufficient to accept studies, analysis, and projections from the applicant for review using existing resources (e.g. the tax assessor, finance and budget staff, planning and economic development staff).

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[3] Links to Self-Assessment and Value Capture capability Maturity Model (CMM) available on https://www.fhwa.dot.gov/ipd/value_capture/resources/value_capture_resources/edc-5_resources.aspx

Inadequate Revenues

After adopting a value capture technique, a municipality may realize that the technique is not raising enough funds to meet its needs. Some ways that municipalities have navigated this barrier include complementing the use of the value capture technique with other funding sources or adjusting the technique itself to increase revenue.

HILLSBORO BICYCLE AND PEDESTRIAN CAPITAL IMPROVEMENT PROGRAM, HILLSBORO, OR

The Hillsboro, Oregon, City Council established a transportation utility fee (TUF) in 2008 to support citywide investment in pavement condition and bicycle and pedestrian facilities. The monthly TUF fees, which the city began collecting in 2009, provided a consistent source of revenue for maintaining local roadways. But the city's pavement management program, which inspects and evaluates the road conditions, identifies needed pavement maintenance, and performs the maintenance, had a significant backlog and required additional funding. To provide this funding, the city council in 2015 adopted a stepped rate increase to be implemented over five years, with the goal of fully funding the pavement program and allow the city to clear its backlog of street maintenance projects by 2024. The city also uses a mix of state and county gas taxes and vehicle registration fees to complement the TUF and meet the funding needs of the pavement management program. Since its implementation, the TUF program has allowed the city to reduce its maintenance backlog from $7.5 million to $5.8 million.

Key takeaway: The city adopted a stepped rate increase that raises transportation utility fees gradually over time to provide needed revenues that benefit infrastructure that serves virtually all members of the community.

Economic or Real Estate Market Downturns

An economic or real estate market downturn may unexpectedly occur, posing a formidable barrier to the success of a value capture technique. It is best to prepare for the possibility of a downturn from the project's inception, anticipating potential ways in which stakeholders may respond to a downturn, planning for how to address funding shortfalls, and creating contingency plans. Preparation for a potential market downturn requires a detailed understanding of the local and larger real estate markets. The case studies below outline how agencies have navigated barriers that arose due to an unexpected market downturn.

ATLANTA BELTLINE, ATLANTA, GA

A real estate downturn unrelated to the transportation project caused a decrease in property values and therefore tax allocation district (TAD, Georgia's version of a TIF district) revenues fell short of debt obligations very early in the project's implementation. Preceding the real estate downturn, an agreement between Atlanta Public Schools and the city that allowed for the TAD to use funds from school tax revenues was paused due to a 2005 legal challenge that argued the TAD's use of educational revenues for non-educational purposes was illegal.[4] These two

[4] Federal Highway Administration, Center for Innovative Finance Support, Atlanta BeltLine Tax Allocation District, https://www.fhwa.dot.gov/ipd/value_capture/case_studies/atlanta_beltline_tax_allocation_district.aspx

combined factors resulted in projected funding from the TAD being halved, presenting a major funding barrier for the project.

To overcome this funding barrier exacerbated by the 2007-2009 recession, the State of Georgia conducted a referendum in 2008 to amend the constitution to allow for educational purpose revenue to be allocated toward TADs, which passed and became the Redevelopment Powers Law. This law thus restored a significant portion of the Atlanta BeltLine TAD revenues, helping to close the funding gap for the Atlanta BeltLine.

Key takeaway: A real estate downturn and legal challenge caused a significant funding shortfall, which was addressed through the passing of a law that allowed for TADs to draw from additional revenue sources such as school district revenues.

NEVADA REGIONAL ROAD IMPACT FEE PROGRAM, NEVADA

The Nevada Regional Road Impact Fee Program was designed to issue development credits to developers that fund or build roads that could be used for offsetting the costs and construction of future transportation developments and improvements. The goal of the credits was to accommodate growing demand for transportation improvements associated with the developments. Developers overbuilt beyond the program requirements as they anticipated rapid growth and were able to accumulate excess credits. Eventually an economic downturn slowed the pace of development, and developers were left holding a balance of excess credits. Developers resorted to selling the credits on the open market at a reduced rate, flooding the market. To overcome this barrier, the Regional Transportation Commission (RTC) Board began proposing stabilizing changes to the program. First, in 2012 the RTC proposed to buy back the credits using sales or fuel tax revenues, but neither source could be used without the approval of the legislature. In 2015, the RTC adjusted the impact fee program to issue waivers in lieu of credits, which ensured that developers can no longer exceed the impact fee value of improvements and credit such value toward future improvements. The waivers are only for projects identified in capital improvement plans, with impact fees based directly on the identified costs.

Key takeaway: RTC Board members explored options for buying back credits from developers that were selling credits on the open market in response to an unexpected market downturn with the goal of stabilizing the county’s revenue collections. The RTC eventually changed the impact fee program to issue waivers instead of credits and placed limits on waivers.

Market Risk

Some value capture techniques inherently involve the risk of not being able to generate adequate revenue to fund the project. This market risk may be related to unexpected responses or inadequate buy-ins from stakeholders. Like the strategies for navigating an economic or real estate market downturn, an implementing agency should anticipate potential ways in which key stakeholders may respond to the project or value capture mechanism, plan for how to address funding shortfalls, and create contingency plans.

PEARL STREET GARAGE AND RIVERWALK, BIDDEFORD, MAINE

The Pearl Street Garage and RiverWalk project in Biddeford, Maine, involved some market risk because revenue from market rate parking fees can be variable and can fall short of covering construction costs for multilevel parking garages. A TIF was used to make up some of the difference, but the developer required further mitigation of the risk that parking revenue would be insufficient. In response, a special assessment district was established encompassing downtown businesses that would levy an assessment only if parking revenues fall below a certain point.

Key takeaway: When the project faced market risk that could affect revenue streams for the project, the city and developer used multiple value capture techniques to set up secondary, backup revenue streams.

Conclusion

As this brief illustrates, barriers to value capture that may arise during implementation are unique to the project and its characteristics, including the project's design and location, the jurisdiction's political and legislative climate, and the macroeconomic and real estate conditions specific to the jurisdiction. Barriers do not equate to defeat, however, and many jurisdictions have been able to overcome the unique barriers they have faced and to use the value capture technique and complete their project, often also improving on the initial funding program or project design. Common themes found in successful strategies for overcoming barriers to value capture include anticipating and planning for potential barriers from the start, allowing for flexibility in the design of the project and value capture technique, and having a strong project champion to advocate for the project or technique.