LETTERHEAD

[StateAssn of Cities/Parishes, State Assn of Metropolitan Planning Organizations, Capital Region Planning Commission, etc]

The Honorable (name)

Attorney General

State Department of Justice

Address

Dear Attorney General (Name)

As you know, our state is actively facilitating the retention and expansion of businesses and jobs within our state. Success in this regard is highly dependent upon the quantity and quality of our public infrastructure. In spite of our growing infrastructure needs in (state name) and around the nation, the federal government’s infrastructure funding has not been keeping pace. Therefore, (state name) must increasingly depend upon its own resources. As we begin to explore the possibility of utilizing new infrastructure funding tools, we need to understand if there are any legal impediments, conditions or prohibitions regarding the ability of city or parish governments to implement them

My/Our jurisdiction(s) has/have recently become aware of “value capture” as a set of infrastructure funding tools used successfully by other states, counties and cities to fund infrastructure projects. Simply put, value capture is the process whereby a portion of higher land values, generated by new or improved infrastructure, are returned to the community that creates and operates that infrastructure. In addition to providing an often-overlooked source of funding, value capture tools preserve our environment, maximize the utility of our existing infrastructure, and minimize expensive infrastructure duplication, thereby reducing tax burdens and expanding business and employment opportunities.

Below are a set of value capture tools with brief descriptions. Please let me/us know if there are any laws or regulations that prohibit, preclude or condition their implementation. If there are, please provide citations to the relevant sections of the (state name) Code or Regulations.

Value capture funding mechanisms are predicated on the understanding that public facilities and services impact the value of land that is served by these facilities and services. Value capture funding mechanisms include:

* Infrastructure Development Districts (sometimes called special assessment districts or benefit assessment districts). When infrastructure creation or improvement will primarily benefit a limited area, that area is designated and property owners within such a district pay an additional property tax as compensation for the additional benefit that they receive. The IDD tax rate might be applied to only the assessed value of land or to the entire assessed value of properties within the designated district. Revenues are used to create, operate and maintain the infrastructure serving the district. Revenues can only be used on or for infrastructure within the district from which the revenue is generated.
* Sales Tax Districts: Similar to IDDs above, infrastructure in these districts is funded by an additional sales tax applied only within the designated districts. Revenues from the additional sales tax are placed in an account dedicated to financing the infrastructure improvements.
* Tax Increment Financing. When infrastructure investment is deemed to be essential for the development of an area, specified tax revenues within that area are benchmarked (i.e., a baseline of revenues is established) prior to the infrastructure investment. After the infrastructure investment is made, any revenues from this area that exceed the benchmarked amounts are deposited to a special account dedicated to the repayment of bonds used to finance the infrastructure. (Revenues up to the benchmarked amount are deposited into the general fund as before.)
* Development Impact Fees. When existing infrastructure is at or near its capacity, permits for new development are conditioned on payment of a fee by the developer to compensate the public for the cost of new infrastructure capacity necessitated by that new development. The U.S. Supreme Court has established criteria which must be met for development impact fees to avoid being designated as “takings.” With the understanding that development impact fees would be designed and implemented to meet these criteria for Constitutionality, are there any Louisiana statutes or regulations that would prohibit them?
* Exactions. When existing infrastructure is at or near its capacity, permits for new development are conditioned on the in-kind development of specified infrastructure by the developer so as to avoid placing a burden on existing taxpayers for the benefit of those who would occupy the new development. As with development impact fees, the U.S. Supreme Court has established criteria which must be met for exactions to avoid being designated as “takings.” With the understanding that exactions would be designed and implemented to meet these criteria for Constitutionality, are there any Louisiana statutes or regulations that would prohibit them?
* Lease or sale of public land and/or air rights. New or improved infrastructure can enhance the value of nearby land or air rights. When this property is publicly owned, the enhanced value can be recouped through its lease or sale to private developers.
* Joint Development. Private developers can be enlisted to develop publicly owned land to include both privately owned improvements (buildings) and public infrastructure or amenities. The price to acquire or lease public land for development is offset by the cost of developing public infrastructures or amenities.
* Land Value Tax (sometimes called split-rate property tax): This is a real property tax method in which a higher tax is imposed on land values than on improvement values (e.g., building values). The traditional property tax taxes both the value of buildings and land. Thus, some value capture is already included in the traditional property tax. In order to obtain a more robust return of publicly created land values, some communities reduce the tax rate applied to privately created building values while increasing the tax rate applied to publicly created land values. In addition to boosting land value return, this technique can reduce the cost of both buildings and land, thereby preserving and creating more affordable residential and commercial opportunities. (Harrisburg, PA relied on this technique to recover from the effects of Hurricane Agnes and urban flight during the 1970s.) Some states, like California, have enacted statewide measures that freeze or limit increases in property assessments and/or property tax rates. To what extent has (state name) enacted such measures and to what extent, if any, would they impede a revenue-neutral enactment of a “split-rate” property tax? To what extent might “incentive payments,” “incentive payment programs” or property classification under (state name) law permit or facilitate this type of “incentive taxation” reform?
* Transportation Utility Fees. Some jurisdictions impose a periodic utility-type fee on the occupants of real property based on estimates of the extent to which the occupants utilize nearby transportation infrastructure. Thus, the occupants of identical spaces might pay different fees depending upon whether the occupants are residents, offices, restaurants, retail stores, warehouses, etc.
* Naming Rights. Some public facilities, due to their visibility, provide marketing opportunities for private sector entities. When such a situation exists, a community might confer naming rights on a facility to the private sector entity that offers the highest fee.

Are (state name) parishes or cities permitted to create “enterprise zones” or similar districts within which parish or city property tax rates could be reduced as an incentive for property development and improvement along with business formation and expansion**?** If so, would this authority permit the adoption of value capture techniques to be applied statewide, parish-wide or within specified zones?

Thank you for assisting us in understanding the legal framework within which these important policy tools can be implemented. We look forward to your reply at the earliest possible time so that funding for necessary infrastructure can be obtained through appropriate means. If you have any questions about this inquiry, please contact \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Sincerely,

State Official(s)