

Value Capture:

Primer on Special Assessment Districts



Primer
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FOREWORD

State and local governments often struggle to mobilize the necessary funds to maintain, rebuild, and expand their local transportation networks. Planned projects often face funding hurdles that may result in projects being delayed or canceled altogether, leaving important safety and mobility objectives unmet.

Derived from real estate developments, value capture refers to a set of techniques that allow monetizing of the appreciation in real property values triggered by infrastructure improvements. Such monetization enables generation of future revenues that can be leveraged upfront to help finance current or future infrastructure improvements. Under the right circumstances, this may allow practitioners to help close funding gaps and accelerate project delivery, as well as trigger much-needed economic development/redevelopment to provide livable communities, create jobs, and create environmental stewardship benefits.

If a jurisdiction creates or improves public infrastructure and thereby creates specific and identifiable benefits for individual properties (in addition to benefits that might be created for all properties or persons), then the individual benefiting properties could be assessed a fee (“special assessment”) to help fund the infrastructure project up to, but not exceeding, the value of the benefit that they receive. The amount of the special assessment could be based on the value of the benefit or the cost of construction. Typically, special assessments terminate after project construction or financing costs have been retired. Courts require a clear link between the property being assessed and the infrastructure costs or benefits (nexus). Additionally, courts require that special assessment fees be proportional to each property’s fair share of the benefits received or costs imposed.

Assuming that a jurisdiction is authorized to levy property taxes and special assessments, these special assessment fees are collected through a jurisdiction’s existing property tax collection process. This simplifies administration. The special assessment fee revenues are not deposited into a jurisdiction’s general fund. Instead, they are deposited into separate accounts and used only for the projects for which the fees are collected.

This primer was developed on behalf of the FHWA Every Day Counts (EDC)-5 Value Capture Implementation Team and is based on literature reviews, interviews, case studies, and lessons learned from practicing agencies. It introduces the concept of special assessments and how they can provide a funding source to help improve transportation and other critical infrastructure needs. It also provides several examples showing how public agencies have established and managed special assessments.

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LIST OF ACRONYMS AND ABBREVIATIONS

BID	business improvement district
CID	community improvement district
DDOT	District of Columbia DOT
DOT	Department of Transportation
FHWA	Federal Highway Administration
GSA	General Services Administration
LID	local improvement district
NoMA	North of Massachusetts Avenue (Washington, DC)
ReTRAC	Reno Rail Transportation Access Corridor
SAD	special assessment district
SSD	special services district
TID	transportation improvement district
TIF	tax increment financing
TIFIA	Transportation Infrastructure Finance and Innovation Act of 1998

EXECUTIVE SUMMARY

Assuming that a jurisdiction is authorized to levy a property tax and special assessments; if that jurisdiction creates or improves public infrastructure and thereby creates specific and defined benefits for individual properties (in addition to benefits that might be created for all properties), then the individual benefiting properties could be assessed a fee to help fund the infrastructure project up to, but not exceeding, the value of the benefit that they receive.

These fees are collected through a jurisdiction's existing property tax collection process. This simplifies administration. The special assessment fee revenues are not deposited into a jurisdiction's general fund. Instead, they are deposited into separate accounts and used only for the projects for which the fees are collected.

In order to levy a special assessment, a jurisdiction typically determines:

- What properties receive a special (specific and direct) benefit;
- How to fairly apportion the special assessment among the benefiting properties based upon either the benefit(s) received or the infrastructure costs incurred. Methods for allocating the special assessment among benefiting properties include:
 - Establishing a fee schedule for specific improvements (such as connecting a property to municipal water mains or providing curb cuts);
 - Dividing the costs equally among all properties;
 - Pro-rating the costs according to property area or front footage; or
 - Establishing the benefits received based upon:
 - Proximity (by either distance or time) to the infrastructure improvement; or
 - Increases in land value as a result of the infrastructure improvement.

Special benefits from infrastructure improvements, as measured by increases in land value, might begin before the infrastructure project has been completed and, in some cases, even before construction begins. If a particular infrastructure improvement is strongly needed or desired, serious discussions about planning or budgeting for such a project may be sufficient to induce an increase in land prices. Thus, value capture mechanisms have the greatest potential to be effective if they are in place before infrastructure projects start.

Unlike many taxes and fees, infrastructure access fees based upon land value encourage development where land values are high—close to the infrastructure. This creates more compact and efficient land use patterns that allow more people and businesses to be served by infrastructure at lower costs (both absolute and per capita) than when development is more disbursed and infrastructure is extended at great cost over wider areas with fewer taxpayers.

Successful implementation of special assessments complies with the substantive and procedural requirements of State authorizing legislation, including uniformity and due process.

CHAPTER 1: INTRODUCTION TO SPECIAL ASSESSMENTS

1.1 Funding Transportation Facilities and Services

In 1902, the year of the first comprehensive census of governments, the property tax generated 68 percent of combined State and local revenue. Between 1900 and 1942, the property tax diminished as a State revenue source as State governments shifted away from the property tax in favor of sales and income taxes.¹ After World War II, States increasingly relied upon distributions from the Federal Government for transportation and other infrastructure. In the transportation arena, Federal support typically came from the Highway Trust Fund, supported by a Federal per-gallon tax on fuel. State funds, both for State roads and for State matching funds for Federal aid, were supported by State per gallon taxes on fuel.² Sales and excise taxes on fuel resemble user fees. The more we drive vehicles with internal combustion engines, the more gas we consume and the more fuel tax we pay. However, fuel taxes cover only some costs associated with roadway transportation. Roads and highways are also subsidized by general fund revenues.³

When Federal transportation funding began, it prompted a surge of infrastructure creation and private development. The following results have been observed:

- Land hoarding and speculation (vacant lots, surface parking, and underdeveloped lots) occur near infrastructure amenities and at the centers of transportation networks.⁴ This can inflate land prices at these locations.
- High land prices near infrastructure amenities (such as transportation facilities) encourage development at the fringe of a community where land is cheaper and the perceived transportation costs (in the absence of roadway user fees) seem minimal. “Drive until you qualify” has become the motto for many.⁵
- “Leap frog” development occurs, where large tracts of undeveloped land separate developed tracts. Some metropolitan areas that are losing population nonetheless continue to expand their urbanized area.⁶

¹ Lincoln Institute of Land Policy and George Washington Institute of Public Policy. (2017). “State-by-State Property Tax at a Glance.” <https://www.lincolnst.edu/research-data/data-toolkits/significant-features-property-tax/state-state-property-tax-glance>.

² Oregon was the first State to tax gasoline in 1919 (see Corning, Howard M. *Dictionary of Oregon History*. Binford & Mort Publishing, 1956). Over the next 10 years, other States adopted this tax. The Federal Government began taxing gasoline through the Revenue Act of 1932. However, it wasn't until the Federal Aid Highway Act of 1956 that gas tax revenues were dedicated to the Highway Trust Fund. See “When Did the Federal Government Begin Collecting the Gas Tax?” at <https://www.fhwa.dot.gov/infrastructure/gastax.cfm>.

³ Frontier Group. (2015). “Who Pays for Roads?” <https://frontiergroup.org/sites/default/files/reports/Who%20Pays%20for%20Roads%20vUS.pdf>

⁴ Pagano, M. and O' M. Bowman, A. (2001). “Vacant Land in Cities: An Urban Resource.” Brookings. <https://www.brookings.edu/research/vacant-land-in-cities-an-urban-resource>. A survey of 70 cities revealed that on average 15% of urban land consisted of boarded-up buildings or vacant land. This ranged from slightly more than 20% in the South to about 10% in the Northeast.

⁵ Financial Independence Hub. (2016). “Affordable Housing: Is It Worth It To 'Drive Until You Qualify?’” <https://findependencehub.com/housing-worth-drive-qualify>

⁶ Examples include Detroit, Cleveland, and Buffalo. See Mallach, A. (2010). *Facing the Urban Challenge: The Federal Government and America's Older Distressed Cities*, The Brookings Institution. p.8.

- This discontinuous, sprawling development requires expanding infrastructure networks and creates high per capita infrastructure costs.⁷
- Traffic congestion sometimes increases substantially despite the significant extension and widening of roads, because sprawling development necessitates private vehicle use for almost every activity outside the home.⁸
- The concentration of development at the urban fringe may lead to economic decline in central cities and the underutilization of infrastructure there.⁹

Now, at a time when urban sprawl is creating demands for more infrastructure creation and maintenance, Federal and State revenues from fuel excise taxes are not keeping pace with State and local infrastructure funding needs.¹⁰ Increases in fuel prices do not increase fuel excise tax revenues. Excise tax revenues (levied per gallon) are dependent on the quantity of fuel consumed. Historically, fuel consumption increased along with increases in vehicle miles traveled. However, increasing vehicular fuel efficiency, combined with a leveling off in vehicle miles traveled from 2008 to 2015, has reduced revenues below what would have been collected if historical trends had continued.¹¹

1.2 Value Capture as an Overlooked Source of Funds

Transportation investments, while often creating benefits for the entire public, often also create discrete benefits for subsets of the population. Determining which populations receive which benefits creates opportunity for obtaining revenues from beneficiaries. For example, transit investments provide a direct benefit to transit riders. This is the justification for charging a transit fare to riders. Because transit moves people with fewer vehicles than if everybody drove their own car, transit reduces traffic congestion. This is a measurable benefit to drivers and could justify the expenditure of a portion of fuel tax revenues on transit. In communities with traffic congestion, transit service that provides convenient, affordable, and reliable service can make locations well-served by transit more desirable, as reflected in higher rents and sales prices. Improvements to a roadway or roadway network can likewise enhance the desirability and productivity of well-served locations.¹² Thus, landowners are often “invisible” or “overlooked” beneficiaries

⁷ Marohn, C. (2011). “The Growth Ponzi Scheme, Part 2.” <https://www.strongtowns.org/journal/2011/6/14/the-growth-ponzi-scheme-part-2.html>. See also Gallagher, L. “The Suburbs Will Die: One Man’s Fight to Save The American Dream,” *Time Magazine*, July 28, 2014, at <http://time.com/3031079/suburbs-will-die-sprawls>. Marohn estimates that property taxes return between 4 and 65 cents for every dollar of future liability incurred.

⁸ Rybeck, R. (2012). *Public Acceptability of Road-Use Pricing*. p. 15. [https://justeconomicsllc.com/pdfs/PublicAcceptabilityofRoadUsePricing-LiteratureReview\(fnl\)pbk12-04-30.pdf](https://justeconomicsllc.com/pdfs/PublicAcceptabilityofRoadUsePricing-LiteratureReview(fnl)pbk12-04-30.pdf)

⁹ Rybeck, W. (2011). “Re-Solving the Economic Puzzle, Shepheard-Walwyn Publishers.” pp. 146–148, and Kushner, J.A. “Affordable Housing as Infrastructure in the Time of Global Warming,” *The Urban Lawyer*, 42(4)/43(1), Fall 2010/Winter 2011, p. 207, crediting real estate speculation as a significant cause of the 2007 financial meltdown.

¹⁰ There are numerous reports about the insufficiency of fuel excise taxes, primarily because they are not indexed to inflation and because increasing vehicular fuel efficiency erodes revenues. See “State of the Highway Trust Fund: Long-Term Solutions for Solvency,” Hearings of the House Budget Committee, April 24, 2013, at <https://www.govinfo.gov/content/pkg/CHRG-113hhrg80475/pdf/CHRG-113hhrg80475.pdf>. See “Why gas taxes aren’t paying the bills anymore” at <https://www.bloomberg.com/opinion/articles/2018-02-15/gas-taxes-aren-t-paying-the-bills-for-roads-anymore>. See also “Failure to Act: Current Investment Trends In Our Surface Transportation Infrastructure, Preliminary Findings,” (American Society of Civil Engineers) September 2020, at https://www.infrastructurereportcard.org/wp-content/uploads/2020/09/FTA_SurfaceTransport_Study%E2%80%94FINAL.pdf. See also Congressional Research Service, “Funding and Financing Highways and Public Transportation,” May 11, 2020, at <https://fas.org/sqp/crs/misc/R45350.pdf>.

¹¹ In addition to increased fuel efficiency, some vehicles do not consume gasoline for fuel. For trends in vehicle miles per capita, see <https://www.enotrans.org/article/trends-in-per-capita-vmf>. For total vehicle miles traveled data, see <https://afdc.energy.gov/data/10315>.

¹² Guidebook to Funding Transportation Through Land Value Return and Recycling, NCHRP Report 873. <http://www.trb.org/Main/Blurbs/177574.aspx>

of transportation investments.¹³ Special assessments are one technique for obtaining revenues from landowners who benefit from transportation investments.

Special assessments have a long history. In the 1800s, streets in the District of Columbia were mostly unpaved. In dry weather, dust polluted the air. In wet weather, mud made travel difficult and unpleasant. Paving streets and sidewalks presented a tremendous advance. It would make travel easier, making homes and businesses more accessible. It would also clean the air.

During the 1800s, Congress managed the District's municipal business. Congress could have funded the paving of streets and sidewalks out of the District's general fund. After all, everybody would benefit. But, Congress realized that people whose property fronted a paved street would receive a special benefit. Once a street was paved, people would no longer track dust, mud, and manure into adjacent homes and businesses. Even if the owners of such properties lived in another city and never used the streets or sidewalks themselves, these owners would benefit financially because their sites were more valuable. Therefore, Congress enacted laws beginning in 1894 requiring adjacent property owners to contribute 50 percent of the cost of first-time paving of streets, gutters, curbs, and sidewalks through a special assessment.¹⁴

Special assessments are fees charged to property owners whose properties receive a specific and direct benefit from an infrastructure improvement.¹⁵ As an example, a special assessment might consist of a fee to connect a property to municipal water or sewer lines. Such fees are often established based on the typical cost of making such a connection. Thus, except for unusual circumstances, such fees would typically be the same for each connection made. Also, connecting a property to municipal water and sewer lines creates a benefit that is almost exclusive to the property being connected.

Alternatively, many public facilities create benefits for both the general public and for individual properties. Thus, to fund such facilities, jurisdictions might opt to use both general fund revenues and value capture fees. Value capture fees might be established based on several factors:

- Identification of properties deemed to receive a specific and direct benefit from the infrastructure improvement over and above the general benefit that accrues to all properties or taxpayers.
- The proportion of total benefits created that accrue as specific and direct benefits compared to the overall general benefits received by all taxpayers. Creating a highway interchange might provide benefits to an entire community or region in addition to specific and direct benefits provided to particular properties. Thus (as in the case of the first-time paving of DC streets), a portion of the cost is paid out of general revenues and a portion from special assessments.
- A formula for determining an equitable payment from each benefiting property. For that portion of the cost assigned to individual properties, the formula for equitable payment could be based on a variety of factors. These factors and payment formulas will be examined below.

¹³ Rybeck, R. (2018). "Financing Infrastructure with Value Capture: The Good, The Bad & The Ugly." <https://www.strongtowns.org/journal/2018/2/20/financing-infrastructure-with-value-capture-the-good-the-bad-the-ugly>

¹⁴ See D.C. Code, 2001 Ed. 9-401.04 through 9-421.13.

¹⁵ Lough, J. P. (2001). "Basics of Special Benefit Assessments." <https://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Library/2002/2-2001-Cont-Ed:-Lough-Basics-of-Special-Benefit-As>

With regard to identifying those properties receiving a specific and direct benefit, when water and sewer pipes are connected, those properties receiving a connection get a benefit. When a sidewalk is built, those properties adjacent to the sidewalk get a benefit. When a public parking facility is built, commercial properties within walking distance get a benefit, whereas nearby residential properties might not.

In this last example, all commercial properties within a defined area appear to receive a specific and direct benefit. This area is often referred to as a “special assessment district,” a “benefit assessment district,” a “community improvement district” or other similar terms.¹⁶ All the properties within the district deemed to benefit might be assessed a special fee. And the determination of the fee for each property could be based on a wide variety of factors that will be examined below.

Today, State and local governments are looking for new and innovative ways to fund infrastructure construction, operations, and maintenance. Obtaining funding from infrastructure’s beneficiaries, sometimes called “value capture,” shows potential for filling this funding shortfall. Although most people are not familiar with the term “value capture,” value capture techniques were used extensively by both communities and private developers before World War II. This document will focus on some value capture techniques known as “special assessments” or “benefit assessments.” It will provide information about:

1. When special assessments make sense.
2. Evaluating different special assessment techniques to understand which ones are best suited to particular needs in a particular community.
3. Establishing and implementing special assessment techniques when they are deemed to be an appropriate infrastructure-funding technique

1.3 Role for Special Assessments

1.3.1 Opportunities

- **Justifiable Source of Funds:** Obtain funds from those who typically receive a windfall benefit from transportation investments.
- **Equity:** Obtain funds in proportion to the benefits received.
- **Administrative Ease:** Take advantage of the existing assessment and revenue collection mechanisms associated with the ubiquitous property tax.
- **Overcoming Tax Limitations:** In many States, revenues have been constrained and diminished by limitations to real property assessments and tax rates through referendums and legislation like California’s Proposition 13 (1978) and similar legislation that was enacted in many States around the

¹⁶ FHWA. “Value Capture Implementation Manual.” Section 6.1.
https://www.fhwa.dot.gov/ipd/value_capture/resources/value_capture_resources/value_capture_implementation_manual/ch_6.aspx#6_1

country during the 1980s and 1990s.¹⁷ Because special assessments are “fees” and not “taxes,” in some cases they have become alternatives to traditional property tax revenues.¹⁸

1.3.2 Challenges

- **Documentation:**
 - Establishing that identified properties receive a specific and direct benefit.
 - Establishing that the special assessment levy is roughly proportionate to the benefits received by identified properties.
- **Substantive and Procedural Requirements:** Groups that advocated for property tax limitations have sometimes been successful enacting legislation imposing stricter criteria on the formation of special assessment districts.¹⁹
- **Equity:** Assessment fees may have adverse impacts on lower-income residents. Exemptions and mitigation strategies have been developed.²⁰
- **Political Challenges:**
 - Property owners within the district may argue that it is inequitable that their neighbors outside the district or future residents are not required to pay the fee, even though they partially benefit from the infrastructure improvement.²¹
 - Some owners of benefiting properties might oppose legislation required for implementation, whereas others who will also benefit from the proposed infrastructure improvement might not be opposed but won’t necessarily be sufficiently motivated to testify or advocate in favor of such legislation.

¹⁷ In 2013, 46 States had limits on property tax rates, property assessments or both. In 2017, 36 of these States had limits on rates and 11 had limits on assessments. See *State-by-State Property Tax at a Glance*. <https://www.lincolnst.edu/research-data/data-toolkits/significant-features-property-tax/state-state-property-tax-glance>. Significant Features of the Property Tax. Lincoln Institute of Land Policy and George Washington Institute of Public Policy. (Property Tax at a Glance; accessed August 28, 2020).

¹⁸ Lough, J.P. “Basics of Special Benefit Assessments.” <https://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Library/2002/2-2001-Cont-Ed:-Lough-Basics-of-Special-Benefit-As>

¹⁹ For example, in California, see The Right to Vote of Taxes Act (“Proposition 218”), adopted by the voters in November 1996 and Proposition 218 Omnibus Implementation Act, Cal. Gov’t Code §§ 53750 et seq.

²⁰ Ibid.

²¹ FHWA. “Value Capture Implementation Manual.” 6.1.7. https://www.fhwa.dot.gov/ipd/value_capture/resources/value_capture_resources/value_capture_implementation_manual/ch_6.aspx#6_1

1.4 Definition and Authority

Special assessments are an infrastructure funding technique under which a fee is charged against property benefiting from an infrastructure improvement. It is typically charged as an “add-on” to the regular property tax. However, this add-on is a “**fee**” and not a “**tax**.”

A “**tax**” is a compulsory payment from “individuals, businesses or property to support and carry on the legitimate functions of the government.”²² A tax can be levied “without reference to peculiar benefits to particular individuals or property.”²³ Indeed, “[n]othing is more familiar in taxation than the imposition of a tax upon a class or upon individuals who enjoy no direct benefit from its expenditure, and who are not responsible for the condition to be remedied.”²⁴

A “**fee**” is also a compulsory payment from individuals, businesses, or property. However, unlike a tax, a fee is compensation for particular services or for something done or to be done.²⁵ A special assessment is a type of fee “levied against real property particularly and directly benefited by a local improvement in order to pay the cost of that improvement.”²⁶ In addition, “The rationale of special assessment is that the assessed property has received a special benefit over and above that received by the general public. The general public should not be required to pay for special benefits for the few, and the few specially benefited should not be subsidized by the general public.”²⁷ Thus, “[a]lthough a special assessment is imposed through the same mechanism used to finance the cost of local government, in reality it is a compulsory charge to recoup the cost of a public improvement made for the special benefit of particular property.”²⁸

1.5 Alternative Terms

Many different names are used to label or define special assessments in legislation. Perhaps the most common alternative term is “benefit assessment.” This term is used in California. However, because special assessments are often applied within a defined area or “district,” the acronyms have unpopular connotations:

- Special assessment district (SAD)
- Benefit assessment district

Whether for this reason or others, a host of alternative names for this technique can be found. They include:

- Transportation improvement district

²² Black’s Law Dictionary, 5th Ed., Abridged, 1983 p. 758.

²³ Fenton v. City of Delano. (1984). 162 Cal.App.3d 400, 405 [208 Cal.Rptr. 486], citing Black’s Law Dictionary (5th ed. 1979) p. 1307, cols. 1-2.

²⁴ Carmichael v. Southern Coal Co. (1937). [301 U.S. 495, 521-522](#) [81 L.Ed. 1245, 1260-1261, 57 S.Ct. 868, 109 A.L.R. 1327]

²⁵ Black’s Law Dictionary, 5th Ed., Abridged, 1983 p. 317.

²⁶ Solvang Municipal Improvement Dist. v. Board of Supervisors (1980) 112 Cal.App.3d 554 [hereafter “Solvang”]

²⁷ Solvang, p. 552.

²⁸ Solvang, p. 553.

- Downtown improvement district
- Public improvement district
- Community improvement district (CID)
- Local improvement district (LID)
- Business improvement district (BID) or special services district²⁹ (SSD)

Sometimes, these terms are just different names for the same thing, but other times there can be significant differences. For example, a traditional special assessment district is created by a taxing jurisdiction to fund an infrastructure project in an agency's budget that has been approved by that jurisdiction. The revenue will be collected and spent by that jurisdiction as it administers and implements the infrastructure project.

On the other hand, a traditional BID results when private property owners petition for the creation of such a district, to be funded by a special assessment collected by the local taxing jurisdiction but administered by a nonprofit organization created by the property owners. Having an organization of private property owners in charge of setting the assessments, determining how they are spent and hiring the contractors to carry out these privately approved projects is a significantly different approach, although it also entails a special assessment being charged to property owners.

Yet another approach is a special services district. Where the governing jurisdiction is not providing a set of desired services, residents may petition to create a new government entity, an SSD, to provide them. All voters within the district elect the SSD's governing board. The SSD has defined powers and duties, including the setting of fees and budgets to accomplish those duties.

Some of these more basic special assessment variants (BIDs, CIDs, and SSDs) will be discussed in more detail in Section 6.10 below. But the keys to understanding any particular special assessment arrangement will be found in its enabling and implementing legislation. Special assessment districts, business improvement districts, or special services districts cannot be established unless State legislation authorizes their creation and implementing legislation creates them pursuant to guidelines contained in the authorizing legislation. If the entity setting the assessment and spending the revenue is separate from the jurisdiction that creates it (e.g., a BID or SSD), additional information about powers and procedures will be contained in the entity's bylaws.

²⁹ BIDs and SSDs might be different in more than just name. BIDs, for example, are most often administered by private, nonprofit organizations composed of landowners who have obtained permission (via legislation) to have a jurisdiction collect a special assessment fee on their behalf. And SSDs are typically governmental entities with their own elected governing bodies and administrative capabilities (similar to school districts with elected school boards).

CHAPTER 2: WHICH JURISDICTIONS CAN UTILIZE SPECIAL ASSESSMENTS?

2.1 State Enabling Statutes

Owners of real property in all 50 States are subject to *ad valorem* taxation—meaning a tax applied to the value of the real property that they own.³⁰ Property taxes can be levied by each State. States also have the authority to delegate the power to tax property to subordinate levels of government such as counties, parishes, townships, cities, and school districts. Although property owners typically receive one property tax bill, the amount due might reflect several different property tax levies from different levels of government. Similarly, States can levy special assessments, and they can delegate this power to subordinate levels of government by statute.³¹

2.2 Local Implementing Statutes

Statutes authorizing or enabling special assessments will establish criteria for, and/or limits to, the exercise of this power. In order to implement a special assessment, a jurisdiction authorized by its State to levy a special assessment will enact legislation to create a particular special assessment pursuant to the conditions and limitations established in the enabling legislation.

³⁰ *State-by-State Property Tax at a Glance*. <https://www.lincolnst.edu/research-data/data-toolkits/significant-features-property-tax/state-state-property-tax-glance>. Significant Features of the Property Tax. Lincoln Institute of Land Policy and George Washington Institute of Public Policy. (Property Tax at a Glance; accessed August 28, 2020)

³¹ "Special assessments are authorized in all 50 States either under explicit enabling legislation or by State constitutional provisions." See "Special Assessments: An Introduction," FHWA, https://www.fhwa.dot.gov/ipd/fact_sheets/value_cap_special_assessments.aspx

CHAPTER 3: HOW SPECIAL ASSESSMENTS ARE USED

The sections below are illustrative and not intended to include all the types of public facilities and services that might be funded through special assessments.

3.1 Utility Hookups

Connecting an individual property to a municipal water or sewer line requires a modification of the water or sewer line. This modification primarily benefits the property being connected. This is a routine type of infrastructure modification, and many jurisdictions impose a fee based on the typical cost of establishing the connection.³²

3.2 Paving of Streets and Sidewalks, Street Lighting, Pedestrian Safety Countermeasures, Water and Sewer Extensions

Paving streets and sidewalks, establishing street lights, and extending municipal water and sewer lines create particular and direct benefits to adjacent properties.³³ Thus, these projects are suitable for being funded by special assessments levied against adjacent properties for a portion of project costs.³⁴ These types of public works projects are very common, so each type of project typically has a standardized cost per unit of distance. Therefore, special assessments for such projects might typically be calculated by multiplying the linear cost per foot by the distance across each adjacent property. Such a special assessment would be based upon “front footage.”

3.3 Transportation Corridor Improvements

3.3.1 Road and Street Improvements

Road and street improvements can create systemwide benefits, but they also create specific and direct benefits. In 1987, Fairfax County and Loudoun County in Virginia created a special assessment district for improvements to the Route 28 corridor.³⁵ Improvements included additional lanes, intersection reconfigurations, and signal improvements, as well as pedestrian and stormwater facilities.³⁶

3.3.2 Transit Corridor Improvements

Fairfax and Loudoun Counties teamed up again regarding the 23-mile extension of Metrorail transit service from Falls Church, VA, to Tysons Corner, Dulles Airport, and beyond. Both Fairfax and Loudoun

³² For example, DC Code 2001 Ed., § 9–401.08.

³³ For example, DC Code 2001 Ed., § 9–401.09.

³⁴ The portion of costs paid by special assessments versus the portion paid for by general fund revenues would be based on a determination regarding the proportion of benefits that accrue to the general public compared to the proportion of benefits accruing to adjacent properties. See Sections 6 and 8 below.

³⁵ See <https://www.fairfaxcounty.gov/transportation/rt28-tax-district> and <https://www.loudoun.gov/1897/Route-28-Transportation-Improvement>.

³⁶ Virginia Route 28 transportation improvement district and a wide variety of other types of value capture projects can be found at https://www.fhwa.dot.gov/ipd/value_capture/project_profiles.

Counties created special assessment districts (“transportation improvement districts”) to help fund the local share of the project.³⁷

3.4 Transportation Point Improvements

3.4.1 Interchange Creation or Improvement

Creation or improvement of a highway interchange could create benefits, nuisances, or both for nearby properties. Assuming that the highway network functions well, benefits could arise from obtaining faster access to other locations accessible via the highway network. On the other hand, increased volumes of traffic (and particularly truck traffic) along with noise and exhaust could be perceived as a nuisance by some property owners. Thus, the value of land near the interchange could be enhanced for warehouses, fueling stations, etc., and could be diminished for residences, parks, playgrounds, etc. Creating a special assessment district for such a project would entail identifying the types (and magnitudes) of benefits created along with identifying which properties would receive these benefits. In this regard, local zoning and other development regulations are important factors to consider along with existing and future demand for specific development types (residential, commercial, industrial, etc.).

To the extent that improved access to the highway network is a benefit, that benefit will be greatest immediately adjacent to the interchange and will taper off with distance.

3.4.2 Municipal Parking Garage

Like an interchange creation or improvement, the creation of a municipal parking garage creates a potential access improvement. In this case, the improvement would occur in areas where there is high demand for parking and low supply. Business properties in such areas are likely to become more valuable if convenient and affordable parking is provided. Typically, the area of impact would be walking distance from the garage. And while retail establishments and perhaps offices might benefit from enhanced parking availability, residential property, schools, and industrial property are less likely to receive enhanced accessibility, even if they are adjacent to the garage. Therefore, a special assessment district would be created to include benefiting properties within walking distance from such a garage, but it would also exclude properties within that area that do not benefit from proximity to a municipal parking garage.

³⁷ FHWA. “Value Capture Implementation Manual.” Appendix Case Studies: VIII Silver Line/Dulles Metrorail—Special Tax District.
https://www.fhwa.dot.gov/ipd/value_capture/resources/value_capture_resources/value_capture_implementation_manual/appendix.aspx#metrorail

3.5 Transit Lines and Stations

In a community or region with significant traffic and parking congestion, transit benefits could include:

- Faster or more predictable travel times for employers, employees, and customers
- Enhanced access to other locations accessible via the transit network
- Avoidance of parking scarcity and parking fees
- Reduced stress and enhanced productivity for transit patrons
- Reduced congestion for those who continue to drive if transit patronage reduces the number of private vehicles using the road network
- Reduced air pollution
- Enhanced retail opportunities if transit patronage is sufficient to increase foot traffic near transit stations or stops

These benefits could enhance the value of nearby properties if they are used for residential, retail, or commercial purposes. But these benefits are typically not meaningful for industrial activities. Therefore, as in most cases, land use and zoning are very important in helping determine what benefits are produced, their magnitude, and to whom they are distributed.

To the extent that access to the transit network is a benefit, that benefit will be greatest immediately adjacent to the transit stops or stations and will taper off with distance.

3.6 Other Infrastructure

Irrigation and flood control facilities benefit entire communities and regions. But they also provide a specific and direct benefit to properties that can access water for irrigation and properties that experience a reduced risk for flooding. Special assessments have been used to provide significant funding for these infrastructure facilities and services.

In the late 1800s, irrigation districts brought water to the arid lands of California to facilitate agriculture. Initially, these irrigation districts were funded by user fees levied on the amount of water withdrawn from the canals. This funding mechanism was easy to understand and it seemed fair. Those who used the water paid for it. The more they used, the more they paid.³⁸

After the canals were constructed and began operations, there were large landholdings adjacent to the irrigation canals that lay fallow. The owners of these estates were not irrigating crops and therefore were not making any payments to their irrigation districts. Yet, these landowners were becoming wealthy because access to water made their land more valuable.³⁹

³⁸ See Robert V. Andelson, ed., "Land Value Taxation Around the World, Third Edition," 2000, pp. 154–156.

³⁹ Ibid.

The Wright Act of 1897,⁴⁰ which enabled the creation and operation of these irrigation districts, was amended to allow (and later to require) districts to levy fees based on the value of land served by them. Not only did this increase revenues, but the large landholdings were quickly developed into some of the most intensively farmed land in the United States.⁴¹ For landowners, it didn't make sense to pay for access to water if they weren't going to use it.

Some districts abandoned user fees, relying exclusively on access fees (based on land values). Soon, they became aware that water was being wasted, and they reinstated fees based on the amount of water being used. This history demonstrates the relationship between user fees (per-gallon water charges) and access fees (special assessments based upon land value). If user fees are high compared to the value of the facility or service, the infrastructure might not be used and land values will increase very little. If user fees are low compared to the value of the facility or service, the infrastructure might be overutilized and land values will increase more substantially.⁴²

This example related to the transportation of water reveals some important principles related to infrastructure funding:

- Charging user fees per unit of consumption has several advantages. Those who use what the infrastructure provides pay a fee in proportion to what they use. This is easy for consumers to understand. From an equity perspective, this seems fair. From an efficiency and conservation perspective, this system encourages consumers to avoid waste and conserve the resource, because people don't want to pay for a resource if they're not deriving some benefit from it.
- If infrastructure is valuable, landowners benefit financially merely by controlling access to the resource, even if they don't actually use it. Failure to charge for this benefit encourages landowners to hoard land rather than use it, on the assumption that the land might become even more valuable in the future. Allowing land near valuable infrastructure to lie fallow (or underutilized) wastes that infrastructure. And, to the extent that land hoarding pushes development to cheaper (but more remote) land, then that infrastructure might need to be extended (duplicated) at great expense.

⁴⁰ Now incorporated into the California Water Code, Division 11, IRRIGATION DISTRICTS [§§2500-29978] <https://law.justia.com/codes/california/2011/wat/division-11>. In particular, see §23511 and §23532 (power to create an *ad valorem* assessment) and §25650 indicating that an assessment against land value shall cover enumerated costs.

⁴¹ See Robert V. Andelson, ed., "Land Value Taxation Around the World, Third Edition," 2000, pp. 154–156.

⁴² In the case of a new highway interchange, free use of the highway or very low tolls may result in land value increases near the interchange, whereas very high tolls may result in little or no appreciation in nearby land values. Likewise, with transit, high transit fares will reduce transit use and limit land value increases near transit stops and stations, whereas low transit fares will induce transit use and increase land prices near transit stops and stations. See Rybeck, R. "Funding Infrastructure to Rebuild Equitable Green Prosperity" in *Revitalization News*, Issue 7, July 15, 2015, at <https://justeconomicsllc.com/pdfs/Revitalization%20News%20-%20Funding%20Infra%20To%20Rebuild%20Equitable%20Green%20Prosperity%20July%2015%202015.pdf>

Charging for infrastructure access with a fee based on land value ensures that landowners pay for infrastructure access in proportion to the access benefit that they receive. This is comprehensible and fair. Unlike many taxes and fees, infrastructure access fees encourage development where land values are high—close to the infrastructure. This creates more compact and efficient land use patterns that allow more people and businesses to be served by infrastructure at lower costs (both absolute and per capita) than when development is more disbursed and infrastructure must be extended at great cost over wider areas with fewer taxpayers.⁴³

- Attaining the right balance between user fees and access fees can improve efficiency, fairness, and sustainability of infrastructure systems, both in terms of resource utilization and land development patterns.⁴⁴

⁴³ Rybeck, R. "Using Value Capture to Finance Infrastructure and Encourage Compact Development," *Public Works Management & Policy*, Vol. 8, No. 4, April 2004, pp. 249–260 at 253. See also DiMasi, J. (1987, December). "The effects of site value taxation in an urban area: A general equilibrium computational approach." *National Tax Journal*, Vol.40, pp 577–590.

⁴⁴ Rybeck, R. "Financing Infrastructure with Value Capture: The Good, The Bad & The Ugly." <https://www.strongtowns.org/journal/2018/2/20/financing-infrastructure-with-value-capture-the-good-the-bad-the-ugly>

CHAPTER 4: CREATING AND TERMINATING A SPECIAL ASSESSMENT

4.1 Types of Projects That Generate a Geographic Benefit

As previously mentioned, some public goods and services generate benefits for an entire community, and no property receives greater advantage over another as a result. Some public goods and services benefit only some properties. Creating a tie-in to a municipal water and sewer line benefits only the property receiving the connection. And some public goods and services benefit the general community while also providing additional benefits to some properties. Examples include, but are not limited to, highway interchanges, transit stations, irrigation and flood control districts, and municipal parking facilities.

The types of benefits created (general or specific), their magnitude, and their geographic distribution depend on both the type of public infrastructure being provided and the economic and geographical context within which it is being provided. For example, building an underground rail transit system in the middle of an isolated rural cornfield will provide neither community benefits nor specific benefits to individual parcels. Indeed, such a project is likely to destroy perfectly good cropland without replacing it with anything else of value. So, as much as some might desire a list of infrastructure projects along with the types, magnitude, and extent of benefits produced by each, no such list can be produced outside of a particular geographic and temporal context.

4.2 Determining Benefiting Properties

4.2.1 Individual Properties

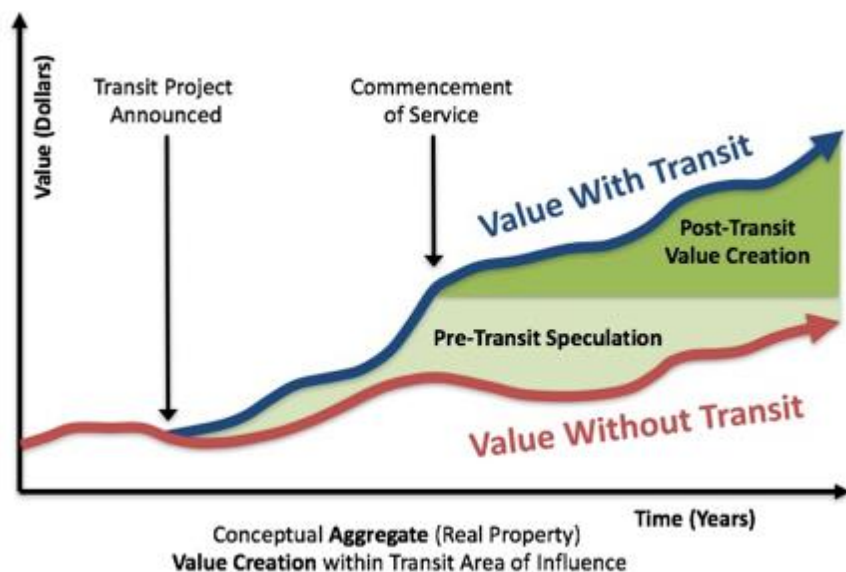
In the context of creating special assessments, individual properties receive specific benefits from infrastructure projects only to the extent that they receive benefits that are greater than or different from those benefits available to all properties generally. This can be measured by subtracting a property's land value before infrastructure improvement from its value afterwards. **If** the percentage increase in value is greater than the average percentage increase in land value for all properties (or if the percentage reduction in value is less than the average percentage reduction in land values for all properties), **then** there could be a reasonable assumption that the property received a special benefit.⁴⁵

Determining an increase in property value resulting from an infrastructure improvement entails selecting the appropriate time period for the "pre-improvement" measurement. Figure 1 represents value creation for a transit project, but this same scenario could play out for other types of infrastructure improvements as well.

⁴⁵ FHWA. "Value Capture Implementation Manual." Section 6.1.4.

https://www.fhwa.dot.gov/ipd/value_capture/resources/value_capture_resources/value_capture_implementation_manual/ch_6.aspx

See also Miller Nash Graham & Dunn, "The Seattle Waterfront Local Improvement District" (October 2013) at <http://www.millernash.com/the-seattle-waterfront-local-improvement-district-lid-10-30-2013>

Figure 1. Illustration of Value Creation⁴⁶

The key point illustrated here is that project-related land value uplift might begin with the announcement of the project.⁴⁷ Measuring value uplift after project completion misses a significant amount of project-related land value creation.

4.2.2 Districts

To the extent that specific and direct benefits to individual properties are created, these benefits are often related to the proximity of benefiting properties to the infrastructure being created or improved.

To the extent that specific and direct benefits to individual properties can be expected in proximity (as measured by time or distance) to an infrastructure improvement, a district could be created for all benefiting properties within such proximity.

4.2.2.1 Criteria

To establish a special assessment, a determination or finding is made to establish that specific and direct benefits are received by properties within a defined proximity to new or improved infrastructure.

⁴⁶ Page, S., Bishop, W., and Wong, W. (2016). "Guide to Value Capture Financing for Public Transportation Projects," TCRP Report 190, Figure 2, page 5. See also Center for Transit Oriented Development, "Capturing the Value of Transit," November 2008, Figure 3-1, page 13.

⁴⁷ Rybeck, R. (2004). "Using Value Capture to Finance Infrastructure and Encourage Compact Development," *Public Works Management & Policy Journal*, Vol. 8 No. 4, pp. 249–260. See note 15, p. 259.

4.2.2.2 Boundary Setting

The most difficult part of the process is to establish a boundary for a special assessment district. Properties within the district's boundary are deemed to receive a specific and direct benefit (and are therefore liable for a special assessment fee), whereas properties outside the district's boundary are deemed not to receive a specific and direct benefit (and are therefore exempt from a special assessment fee). If care is taken to avoid conflicts of interest, real estate professionals (i.e., appraisers, brokers, and lenders) can provide market-based information regarding the geographic extensiveness of special benefits generated by various infrastructure projects.

4.3 Establishing the Basis for the Fee

If identifiable properties receive a specific and direct benefit in excess of the benefits received by the general public, the basis for establishing a special assessment could be related either to the cost of the improvement or to the benefit received by the landowner. These two approaches will be discussed below. Regardless of whether the assessment is based upon "cost" or "benefit," the assessments levied may not exceed the benefit received by each property.⁴⁸ Any such excess liability could be challenged as a "taking."

4.3.1 Cost Basis

A jurisdiction wishing to recover a portion of its costs from properties receiving direct and specific benefits selects a method to determine how to apportion this cost among the benefiting properties. Several methods are discussed below regarding how each property contributes to the cost of the project.

4.3.1.1 Set Fee Per Property/Activity

One approach assumes that all benefiting properties should bear an equal proportion of the costs incurred and therefore should pay the same fee. This could be accomplished by establishing a fee for specific activities, such as connecting individual properties to municipal water and sewer pipes.

The cost of an area-wide project could be divided by the number of properties being served. For example, if street lights are provided to an area, the project costs could be divided by the number of properties within that area.

4.3.1.2 Variable Fee Per Property/Activity

Another approach is that each property should pay its fair share of the cost, but that each property's share might be different.

⁴⁸ Miller Nash Graham & Dunn, Attorneys at Law, "The Seattle Waterfront Local Improvement District (LID)," October 30, 2013, <https://www.millernash.com/the-seattle-waterfront-local-improvement-district-lid-10-30-2013>

4.3.1.2.1 Distance/Front-Foot Basis

When sidewalks are being built, curbs and gutters being installed, or lanes are being paved, a primary cost variable is distance. Some lots are wider than others and therefore have more “frontage” across which new infrastructure must be provided. Therefore, total costs might be divided by the number of linear feet to establish a cost per linear foot. This cost per linear foot could then be multiplied by the number of front feet for each property to determine each property’s fee.

For corner lots, whose frontage distance might be double that of other typical nearby lots, a determination could be made about the appropriateness of modifying the front-foot basis for all corner lots in recognition that corner lots might not necessarily receive twice the benefit from the infrastructure being provided or improved. The city of Reno, Nevada, for example, provides a 50 percent reduction in cost for the non-address frontage for single-family homes on a corner lot. However, apartment buildings and commercial buildings pay full cost.⁴⁹

4.3.1.2.2 Land Area Assessment

If a project was to control or collect stormwater runoff, it might be determined that larger lots (or lots with greater amounts of impervious surface) would generate more stormwater and therefore should pay more accordingly. Thus project costs could be divided by the number of square feet of total land area (or the square feet of all impervious surfaces such as roofs, driveways, patios, etc.) and then multiply this per-square-foot cost by the number of applicable square feet for each property.⁵⁰

4.3.2 Benefit Basis

A jurisdiction wishing to recover a portion of its costs from properties receiving direct and specific benefits also selects a method to determine how to apportion this cost among the benefiting properties. Several methods are discussed below regarding how each property benefits from the project.

4.3.2.1 Land Value Assessment

To the extent that transportation infrastructure provides a site with greater access to jobs, stores, education, recreation, employees, customers, etc., this accessibility enhances the productivity of that site and thereby enhances the benefits of owning it. The value of land reflects the benefits that people expect to receive from owning it. Therefore, to the extent that transportation (and other) infrastructure enhance the benefits of site ownership, they enhance its value.⁵¹

On the other hand, some public facilities such as airports, highways, and sewage treatment plants can create unpleasant noise or odors that can diminish the value of land—at least for certain purposes. Thus, airport noise might diminish the value of nearby land for residential purposes but increase its value for

⁴⁹ City of Reno, NV, “What happens if I own a corner lot? Will I receive a full assessment on both street frontages?” <https://www.reno.gov/government/departments/public-works/capital-projects/faqs>

⁵⁰ In the case of assessments to handle or treat stormwater, liability based on the area of impervious surfaces could be offset, at least partially, by property owner actions (installation of rain barrels, rain gardens, etc.) to reduce stormwater runoff. The District of Columbia has such a discount program. See <https://doee.dc.gov/riversmartrewards>

⁵¹ See Lari and others, “Value Capture for Transportation Finance.” Report 09-18 (University of Minnesota Center for Transportation Studies, 2009).

purposes related to air freight and air travel. So the interplay between zoning and infrastructure amenities and nuisances is critical in determining whether land values will increase or decrease.

Because land value reflects the net of advantages and disadvantages conferred by infrastructure to particular sites, some jurisdictions may conclude that land value is an appropriate basis for funding the infrastructure, which creates a significant portion of site value.

It is important to understand that land values and prices reflect expected benefits of ownership.⁵² Thus, measuring increases in land value after a new infrastructure project has been completed might miss a substantial amount of the land value uplift, much of which may have occurred earlier when the project was being discussed and planned.⁵³ Similar increases in land value would also occur if zoning or other development regulations were changed to enhance the intensity or value of subsequent development.⁵⁴ Land value increases would begin as soon as potential property owners felt that increased development permission was likely. This crystallizes the importance of having value-capture mechanisms in place before there is any expectation that a significant infrastructure project or up-zoning will proceed.

4.3.2.2 Total Value Assessment

If a new highway interchange provides enhanced accessibility to two adjacent sites, the land value created by this infrastructure improvement is the same regardless of whether either or both sites are developed or vacant. Nonetheless, some jurisdictions contend that infrastructure enhances “property value,” and they make no distinction between publicly created land values and privately created building values. In these instances, special assessments are created by applying an additional rate (percentage) to the total property assessment instead of applying it to only the land value.

⁵² Samuelson, P. (1973). *Economics*, Ninth Ed., (McGraw Hill) Chapter 28, “Pricing of Factor Inputs: Land Rents and Other Resources,” pp. 557–568.

⁵³ See “Taxpayers risk ‘missing out’ on share of land value surge near new projects” *The Sydney Morning Herald*, Sept 26, 2020, at <https://www.smh.com.au/national/nsw/taxpayers-risk-missing-out-on-share-of-land-value-surge-near-new-projects-20200924-p55ypo.html>. Similarly, prior to the completion of the NoMa-Gallaudet U Metro Station (discussed in Chapter 9 below), Washington, DC, real estate broker Mark Mallus noted that property values within the vicinity of the proposed station had already risen significantly. Given the region’s congested roads and the economic opportunities created at centrally located stations, the mere expectation of future access to Metro can have this effect.

⁵⁴ Upzoning, by itself, does not enhance land value. Instead, there must be economic demand for development that is prohibited or constrained by existing zoning. Only then will enhancing development permission lead to increases in land values and prices.

4.4 Proposing Legislation

As mentioned, States have authority to levy property taxes⁵⁵ and to levy special assessments.⁵⁶ However, counties, parishes, townships, cities, towns, or other governmental entities cannot levy property taxes or special assessments unless a State delegates these powers to those jurisdictions. And once a governmental entity has the authority to levy a property tax or a special assessment, it would enact implementing ordinances to employ these powers in particular instances.

4.4.1 State Authorizing/Enabling Legislation

States wanting component jurisdictions to be able to implement special assessments will delegate this power through enabling legislation. This legislation would indicate which levels of government are authorized to implement special assessments, the circumstances that make special assessments appropriate, and any other conditions or criteria limiting the exercise of this power. For example, the legislation could address:

- Identifying benefiting properties;
- Creating special assessment districts and boundaries; and
- Establishing the basis for such a fee.

4.4.2 Local Implementing Ordinance

If the State or other jurisdiction authorized to levy a special assessment wishes to implement such a levy, an implementing ordinance would need to be enacted by that jurisdiction. This ordinance would note the jurisdiction's authority to levy a special assessment and indicate the degree to which the prerequisite conditions for such a fee have been met and how, pursuant to conditions and criteria in the authorizing legislation, a particular special assessment would be levied. These details typically would include:

- Identifying the properties receiving a special benefit;
- Defining the district boundaries based on the geographic extent of properties receiving a special benefit;
- Defining any exclusions of properties within the district;
- Defining the basis for the fee;
- Establishing the fee as a schedule or rate; and

⁵⁵ *State-by-State Property Tax at a Glance*. <https://www.lincolnst.edu/research-data/data-toolkits/significant-features-property-tax/state-state-property-tax-glance>. Significant Features of the Property Tax. Lincoln Institute of Land Policy and George Washington Institute of Public Policy. Property Tax at a Glance.

⁵⁶ Special assessments are authorized in all 50 States either under explicit enabling legislation or by State constitutional provisions. See "Special Assessments: An Introduction," Federal Highway Administration, https://www.fhwa.dot.gov/ipd/fact_sheets/value_cap_special_assessments.aspx

- Establishing a termination date for the special assessment. This typically occurs after specified capital costs (such as the debt service on a bond) have been fully recouped. On the other hand, some special assessments fund ongoing operating costs. In such cases, the special assessment might be more or less permanent. As a practical matter, the ordinance is likely to establish a sunset or termination date with an option for its renewal.

4.5 Sending Out Public Notices

Both the authorizing and implementing legislation would be introduced, considered, and voted upon according to the laws and customs for enacting legislation in a particular jurisdiction. This includes notifying the public and providing them with an opportunity to review the proposed legislation and to comment upon it prior to a vote.

4.6 Conducting Public Hearings

Typically, as part of the legislative process, hearings are held to obtain input from the affected public. Persons who are interested in the provision of public infrastructure generally, and those who could be subject to the fee in particular, are typically afforded an opportunity to testify about proposed legislation to convey their support or opposition, or to propose changes.

4.7 Enacting the Legislation/Ordinance

Pursuant to the laws and customs for adopting legislation, the legislative and executive branches of a jurisdiction may enact a special assessment authorizing legislation or implementing ordinances.

4.8 Notifying the Public

Once implementing legislation has been enacted, the agency administering the infrastructure project and the finance and revenue agency coordinate project funding with establishment of an account to receive special assessment fees. Affected property owners are notified that the special assessment fee has been enacted and will be collected as a surcharge to their regular property tax payments. Certain administrative and regulatory procedures (e.g., finalization of an assessment roll) might be required and might entail their own requirements for notice and hearings or appeals.

4.9 Termination

If a special assessment is established to fund a capital project, termination is likely to occur when specified capital costs (such as payment of debt service on a bond) have been completed. Alternatively, if the special assessment funds ongoing operating costs, there might be a sunset or termination date with an option for renewal of the special assessment.

4.10 Special Assessment Variants

As mentioned above, the most traditional special assessment practice entails a jurisdiction imposing a special assessment to fund a capital project undertaken by one of that jurisdiction's agencies. Thus the assessment is collected by and spent by a jurisdiction in pursuit of a duly approved and budgeted project. However, there are variants whereby special assessments are collected by a jurisdiction but established and administered by another body. A few of these variants are discussed below.

4.10.1.1 Business Improvement Districts

A BID is an entity authorized by a State and created by a local government pursuant to that authorization. However, it is run by private property owners to provide enhanced services in the public realm. These service enhancements might include more frequent pickup of street litter, landscaping, hospitality services, marketing, wayfinding signage, or public entertainment.

The public sector might not be able to provide this level of service throughout the jurisdiction, and might conclude that providing additional services within a small area would be inequitable. On the other hand, if some private landowners within a neighborhood agreed to fund these additional services and other landowners in this neighborhood did not contribute, the noncontributing landowners would receive the benefits without paying the costs.

To avoid this "free rider" problem, some jurisdictions provide a process whereby property owners can elect to create a BID, select its directors, and establish a mandatory fee to be collected as a special assessment by the jurisdiction in addition to (and as part of) its regular property tax collection process. However, revenues from this additional mandatory fee are not spent by the jurisdiction that collects them. Instead, the BID fee revenues are distributed to and administered by the BID directors. Thus, BIDs are created by and accountable to property owners within their boundaries.⁵⁷

Typically, BIDs engage primarily in operating services such as those mentioned above, although some landscaping and signage activities are considered capital projects. The scope and character of BID activities will be determined by State authorizing legislation, local implementing legislation, and the bylaws of each BID.

4.10.1.2 Community Improvement Districts

CIDs, as established in Georgia and Missouri, are similar to BIDs because they are typically initiated and administered by developers or commercial property owners. However, their fundraising and planning powers are more robust, akin to SSDs, allowing them to take on significant capital infrastructure projects.⁵⁸

⁵⁷ Washington, DC, contains several business improvement districts. To coordinate some of their activities, they have created a DC BID Council. You can learn about the Council and about individual BIDs at <https://www.dcbidcouncil.org/aboutdcbids>.

⁵⁸ See https://www.fhwa.dot.gov/ipd/value_capture/defined/community_improvement_districts.aspx

4.10.1.3 Special Services Districts

SSDs are independent elected public bodies with enumerated taxing and administrative powers established to fulfill a function, or set of related functions, not being handled by existing jurisdictions. These might include street lights, drainage, sanitation, water and sewer services, power generation and distribution, or landscaping of public spaces.

In some cases, properties within an SSD might span multiple jurisdictions. For example, a flood control district, defined by a watershed, could include several jurisdictions. Although some school districts are organized like SSDs with public elected boards empowered to raise taxes and spend revenues for facilities and teachers, they are classified as “school districts” and not as “special service districts.”

States might establish criteria for creating SSDs. A special election by the voters within the designated area is typically necessary to create an SSD. Often, they are created by developers when the developer is the only voter within the designated area. Once established, they are accountable to all residents within the SSD. In California, they are called community facilities districts or Mello-Roos districts (after the names of the State legislators who created them in the 1980s).⁵⁹ Due to Proposition 13, community facilities districts may not use the value of the properties as a basis for calculating the fee. Instead, they could divide the cost of the facility or service by front footage (good for sidewalks or water and sewer lines) or by the number of properties served if it appears that each property receives roughly the same benefit (e.g., street lighting).⁶⁰

⁵⁹ See California Debt and Investment Advisory Commission, California Mello-Roos Community Facilities Districts Yearly Fiscal Status Reports 2017–2018, <https://www.treasurer.ca.gov/cdiac/reports/M-Roos/2018.pdf>

⁶⁰ Proposition 13 is embodied in [Article XIII A of the Constitution of the State of California](#). Section 4 of Article XIII A prohibits special districts from imposing *ad valorem* taxes on real property or a transaction tax or sales tax on the sale of real property.

CHAPTER 5: ADMINISTERING SPECIAL ASSESSMENTS

Once the legislative framework has been established by State enabling legislation and enacted into law as a local implementing ordinance, the assessments are administered. In their most simple form, special assessments might be a schedule of one-time fees applied to property owners who want a new sidewalk or hookups to municipal water and sewer pipes. Under other circumstances, the assessments will constitute an annual surcharge to property taxes that may be applied for many years.

5.1 Fee-for-Service Payments

As mentioned above, some activities—such as constructing a new sidewalk or connecting a building to the municipal water and sewer pipes—entail simple, one-time fees.

5.2 Property Tax Surcharges

5.2.1 Collection

One of the advantages of special assessments is that they piggyback on the existing property tax revenue collection mechanism. This allows a fee to be added to the regular property tax bills of properties that have been defined in legislation as receiving a specific and direct benefit from infrastructure creation or improvement. The billing, collection, and enforcement processes are already in place.

5.2.2 Segregation of Funds

Although special assessments are collected as part of the property tax payment process, the amount of the special assessment fee for each property subject to the fee is deposited into an account dedicated to the funding of the project for which the special assessment was established

CHAPTER 6: SPECIAL ASSESSMENT LEGAL AND REGULATORY ISSUES

As mentioned above, all 50 States have the authority to levy property taxes and special assessments.⁶¹

6.1 Ensuring Appropriate Legislation

A State only needs legislation to implement a particular special assessment in a particular time and place related to a specific infrastructure improvement under its administrative jurisdiction.

Subordinate jurisdictions, however, cannot implement a special assessment unless they first obtain a delegation of power from their State to levy a special assessment. This is referred to as “authorizing” or “enabling” legislation. If enabling legislation is enacted, the subordinate jurisdiction could then enact an “implementing” ordinance to create a particular special assessment pursuant to the criteria and conditions specified in the enabling legislation.

California, for example, has several State statutes that authorize special assessments for different types of public infrastructure facilities and services. In addition, there are several statutes that establish procedural requirements for the creation of special assessments. Proposition 218 (California Constitution articles XIII C and D) can supersede inconsistent provisions in these procedural statutes. Therefore, in California, special assessment implementation legislation references the appropriate authorizing legislation and conforms to the procedural statutes, including the requirements of Proposition 218.⁶²

6.2 Treating Property Owners and Users Equitably

Most States, either by constitutional provision or by statute, have a requirement of “uniformity” that all taxpayers in the same circumstances be treated alike. In the case of property taxation, it requires that all property of the same type and condition be treated alike.⁶³

“Uniformity in taxation implies equality in the burden of taxation, which cannot exist without uniformity in the mode of assessment, as well as in the rate of taxation. Further, the uniformity must be coextensive with the territory to which it applies. And it must be extended to all property subject to taxation, so that all property may be taxed alike and equally.”—Exchange Bank v. Hines, 3 Ohio St. 15. And see Edye v. Robertson, 112 U. S. 580, 5 Sup. Ct. 247, 28 L. Ed. 798. Adams v. Mississippi State Bank, 75 Miss. 701, 23 South. 395; People v. Auditor General, 7 Mich. 90.⁶⁴

⁶¹ Special assessments are authorized in all 50 States either under explicit enabling legislation or by State constitutional provisions. See “Special Assessments: An Introduction,” Federal Highway Administration, https://www.fhwa.dot.gov/ipd/fact_sheets/value_cap_special_assessments.aspx

⁶² Lough, J.P. “Basics of Special Assessments.” <https://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Library/2002/2-2001-Cont-Ed.-Lough-Basics-of-Special-Benefit-As>

⁶³ *Black’s Law Dictionary*. Abridged Fifth Edition, (West Publishing) 1983. See “Uniform” at p. 796.

⁶⁴ *Black’s Law Dictionary Online*. <https://thelawdictionary.org/uniformity/#:~:text=Uniformity%20in%20taxation%20implies%20equality%20in%20the%20burden,coextensive%20with%20the%20territory%20to%20which%20it%20applies>

Because a special assessment is applied to some properties but not others, it involves showing that properties subject to the special assessment receive a special (specific and direct) benefit from a particular public facility or service, apart from any general benefit that might accrue to all properties generally.

Once it is shown that identified properties receive a special benefit, they can be subjected to a special assessment provided that the special assessment is proportionate to the special benefits received or to the costs of providing them. Under no circumstances can the special assessment exceed the special benefits received, regardless of whether the assessment is based on benefits or costs.⁶⁵

6.3 Avoiding and Surviving Legal Challenges

Avoiding and surviving legal challenges is best accomplished by strictly adhering to authorizing legislation and procedural requirements. Documentation of findings is also critical. The following process for establishing a special assessment is generally applicable:

- (a) Initiation as specified in State authorizing legislation. Typically, proceedings may be initiated by a petition signed by the persons proposed to be assessed or by the action of an authorized legislative body.
- (b) Preparation of Assessment Engineer's Report. An assessment engineer prepares a report for presentation to the legislative body that generally contains the following:
 - (i) A description of the improvements to be financed, including plans and specifications (which may be general in nature);
 - (ii) A cost estimate for the acquisition or construction of the improvements as well as the incidental and financing costs;
 - (iii) Identification of the benefits resulting from the improvements, separating the general benefits from the special benefits;
 - (iv) An assessment diagram depicting the boundaries of the assessment district based upon the geographic extent of properties receiving special benefits, any zones, and the parcels within the assessment district;
 - (iv) A description of the method of spreading the assessments throughout the assessment district;
 - (v) An assessment roll, which is a list of all the parcels proposed to be assessed and the proposed assessment against the parcels; and
 - (vi) The proposed maximum annual assessment per parcel.⁶⁶

⁶⁵ See Miller Nash Graham & Dunn, "The Seattle Waterfront Local Improvement District (LID)" (October 2013), <http://www.millernash.com/the-seattle-waterfront-local-improvement-district-lid-10-30-2013>

⁶⁶ Lough, J. P. "Basics of Special Assessments." <https://www.cacities.org/Resources/Documents/Member-Engagement/Professional-Departments/City-Attorneys/Library/2002/2-2001-Cont-Ed:-Lough-Basics-of-Special-Benefit-As>

CHAPTER 7: SPECIAL ASSESSMENT EXAMPLES

7.1 The Seattle Waterfront LID⁶⁷

Location: Seattle, Washington

The transformation of Seattle’s central waterfront—beginning with the replacement of the Alaskan Way Viaduct with a deep bore tunnel, followed by the replacement of the seawall, removal of the viaduct, and the creation of a multipurpose boulevard with parks and open spaces—was an expensive and controversial project.

The impetus for this project was the 2001 Nisqually earthquake that damaged the viaduct and its supporting seawall. In 2009, Washington State authorized \$2.8 billion from State and Federal sources for a deep bore tunnel to replace the viaduct.⁶⁸ An additional \$200 million would be raised by tolls, and the Port of Seattle would contribute about \$267 million to fund the \$3.35-billion tunnel.⁶⁹

The remainder of the project, replacing two piers, reconstructing Alaskan Way as a boulevard with substantial pedestrian amenities, and other items, was estimated to cost about \$728 million.⁷⁰ The replacement of the viaduct with a tunnel would free up some real estate for development. In particular, pedestrian amenities and parks connecting the Seattle waterfront to adjacent areas of the downtown were expected to enhance the economic vitality of the area. This expectation of special benefits for properties in the project area raised the possibility that the benefiting properties should help pay for the project through a special assessment levied in what Seattle refers to as a LID. There are six improvements that Seattle anticipated would be partially funded by the LID: 1) the Promenade, 2) the Overlook Walk, 3) the Pioneer Square Street Improvements, 4) the Union Street Pedestrian Connection, 5) the Pike/Pine Streetscape Improvements, and 6) Pier 58 (collectively, the “LID Improvements”).⁷¹

The Waterfront Seattle Project Special Benefit Feasibility Study was commissioned to assess the value of private real estate in this area prior to the project and its likely value afterward, to determine if the proposed improvements would create any special benefit for these properties and, if so, by what amount. It is reasonable to assume that the removal of the viaduct, by itself, might enhance real estate values in adjacent inland areas. However, for purposes of the LID studies, only the impacts of the six improvements listed above were considered.⁷² The feasibility study concluded that the proposed

⁶⁷ Seattle Office of the Waterfront and Civic Projects. “Local Improvement District.” <https://waterfrontseattle.org/local-improvement-district>

⁶⁸ Washington State Legislature. SB 5768. <https://apps.leg.wa.gov/bills/summary/?BillNumber=5768&Year=2009&Initiative=false>

⁶⁹ Washington State Department of Transportation. (2020). “Budget.” <https://www.wsdot.wa.gov/Projects/Viaduct/Budget>

⁷⁰ Seattle Office of the Waterfront and Civic Projects. “Budget and Schedule.” <https://waterfrontseattle.org/about/budget-schedule>

⁷¹ Seattle Central Waterfront Improvement Program, Local Improvement District Assessment Hearing, Hearing Examiner Findings and Recommendation, p. 7. http://clerk.seattle.gov/~CFS/CF_321780.pdf

⁷² Summary of Final Special Benefit/Proportionate Assessment Study for Waterfront Seattle Project Local Improvement District (LID), Transmittal letter, p. 3. https://waterfrontseattle.blob.core.windows.net/media/Default/WFS%20LID/2019_1204_report_delivered.pdf.pdf

improvements would likely provide between \$300 and \$420 million in special benefits to nearby properties.⁷³

Seattle then commissioned the Waterfront Seattle Project Formation Special Benefit/Proportionate Assessment Study for Local Improvement District. This study performed a parcel-by-parcel analysis of the properties in the downtown Seattle area to determine whether any properties would receive a special benefit from the LID improvements and if so, which ones. Key points from the study include the following:

“As discussed further within the report, in the ‘without LID’ (existing) situation, there is poor connectivity between the Puget Sound shoreline/Alaskan Way vicinity and the higher elevation city streets (i.e., Western Avenue) due to topography, historical street layout and other issues. With the LID project completed, accessibility to the waterfront from nearby areas including the Pike Place Market, downtown business district and Pioneer Square will vastly improve. On an overall basis, referring to the economic studies and rating system discussed herein, the waterfront area in general improves from a subjective quality rating of average in the ‘before’ scenario to excellent with the LID project completed.

Special benefit to affected properties is derived from enhanced relative location provided by the LID improvements, superior waterfront amenities/market appeal and other factors. This is strongly supported by study of numerous projects with elements of similarity to the Seattle waterfront improvements that have been completed in other cities (New York, Boston, Chicago, Vancouver BC, Portland and San Francisco). These studies, along with others, were also utilized in the condominium valuation process.

The difference in estimated market value of individual parcels without the improvement project and again with the project assumed completed, as of the same date, is the special benefit estimate. Estimated value ranges without and with the LID project are refined into valuation conclusions based on factors affecting market value of individual parcels. Examples of such factors include changes in locational characteristics and differing highest and best use or development potential before/after completion of the LID improvements. ... For each assessable parcel within the LID boundary, this basis of valuation results in a special benefit estimate, which is the difference in value before (or without) the project as compared to the same parcel after (or with) the project.

Proportionality is an important element in any special benefit study. Properties with similar highest and best use, location and physical characteristics should experience a roughly similar special benefit on an overall property basis. Both land value for a specific parcel and overall improved property value are analyzed as part of this study. Many properties within the LID boundary are improved but, due to high land values, the existing improvements may not contribute to overall property value. Also, because zoning within the downtown core often allows new construction at high density (i.e., skyscrapers built on relatively small parcels of land), investors/developers are acquiring

⁷³ Seattle Central Waterfront Improvement Program, Local Improvement District Assessment Hearing, Hearing Examiner Findings and Recommendation, p. 7. http://clerk.seattle.gov/~CFS/CF_321780.pdf

underimproved (currently developed at low density) properties for redevelopment or investment hold.

Completing a separate land value analysis offers comparisons between the land and improvements components of these redeveloped sites. It also maintains proportionality of the estimated increase in market value (special benefit). Therefore, properties improved to their highest and best use (*not* underimproved) such as office/retail buildings, apartments and condominiums—typically multi-storied structures—specially benefit in a proportionate manner; this is, there is benefit to both the land and to the improvements.⁷⁴

The Formation Study recommended a LID boundary that encompassed approximately 6,200 properties in the downtown Seattle area and estimated a total special benefit to properties within the recommended LID boundary of \$447,908,000.⁷⁵

The total estimated LID-funded improvements cost is \$346 million. Seattle set a cap of \$160 million plus financing costs (\$175,500,000 total) as that portion of the total cost to be paid by the owners of property specially benefited by the project. As mentioned above, special assessment payments by property owners cannot exceed the benefits that they receive from the project. Dividing the \$175,500,000 special assessment cap by the total estimated special benefit to the assessable property of \$447,908,000 yields an assessment/benefit ratio of 39.20 percent. In other words, each parcel receives one dollar in market value increase (special benefit) for each \$0.39± of LID assessment. Multiplying the individual special benefit estimates for the affected parcels by this constant ratio results in recommended proportionate final assessments to each parcel.⁷⁶

7.2 NoMa-Gallaudet U Metrorail Station SAD and Adjacent Streets⁷⁷

Location: Washington, DC

During the 1960s and 1970s, the central business district of the District of Columbia (the District) experienced significant disinvestment and a reduction in both private business employment and population, like many other cities. During the 1980s, there was a resurgence of interest in the District's downtown. In 1988, the renovation of Union Station near the U.S. Capitol focused development interest on the downtown's previously neglected east end. North of Union Station were many vacant parcels adjacent to the railroad tracks. These had been the site of freight railroad sidings for the loading and unloading of rail freight. This activity had stopped during the 1960s. By the end of the 1980s, the railroad trestles and tracks had been removed, leaving large empty parcels adjacent to the west side of the tracks leading into Union Station.

⁷⁴ Waterfront Seattle Project: Summary of Final Special Benefit/Proportionate Assessment Study for Waterfront Seattle Project Local Improvement District (LID) Seattle, Washington (Nov. 18, 2019) pp. 3–6 of 237.

https://waterfrontseattle.blob.core.windows.net/media/Default/WFS%20LID/2019_1204_report_delivered.pdf

⁷⁵ Seattle Central Waterfront Improvement Program Local Improvement District Assessment Hearing Hearing Examiner Findings and Recommendation, p. 8 of 123. http://clerk.seattle.gov/~CFS/CF_321780.pdf

⁷⁶ City of Seattle. Waterfront Seattle Project Final Special Benefit/Proportionate Assessment Study Executive Summary, (2019) p. 13. https://waterfrontseattle.blob.core.windows.net/media/Default/WFS%20LID/2019_1204_report_delivered.pdf p. 119 of 237.

⁷⁷ Rybeck, R. "Using Value Capture to Finance Infrastructure and Encourage Compact Development," Public Works Management & Policy, Vol. 8, No. 4, April 2004, pp. 249–260. <https://www.mwcog.org/asset.aspx?id=committee-documents/k15fV1f20080424150651.pdf>. Also, the recollections of the author.

After Union Station's renovation, some of the landowners near the intersection of New York Avenue and Florida Avenue (about one mile north of Union Station) sought permits to develop office buildings on these vacant lots. The permits were denied. The landowners requested an explanation. The permit office noted that the only vehicular access to these sites was from New York Avenue, North Capitol Street and Florida Avenue. These streets were already overburdened with rush hour traffic. The permit office concluded that granting office development permits for these parcels would generate unacceptable levels of traffic congestion in this area. The permit office noted, however, that the Metrorail transit tracks were immediately adjacent to these parcels and, if there was transit access to these sites, the permit office would reconsider. At that time, the closest Metrorail transit stops were at Union Station (one mile south) and at Rhode Island Avenue (one mile north).

In 1997, landowners arranged a meeting with District Government officials, requesting the development of a new transit station at this location. One District official noted that the District was close to bankruptcy. (Congress had just created a special appointed body to oversee and approve all District Government spending.) Furthermore, the creation of a new Metrorail station at this location was likely to substantially increase the value of nearby land. The official suggested that the landowners should share in the cost of developing the station if they wanted the project to proceed. The landowners appeared unhappy with this news and ended the meeting.

Dr. Marc Weiss, an economic development official, organized the landowners to support a new transit station. (Weiss also named the surrounding area "NoMa"—North of Massachusetts Avenue). Several months later, landowners offered \$25 million for construction of the new transit station (about one-third of the preliminary cost estimate). The landowners and the District Government agreed that the District would sell \$25 million in general obligation bonds to obtain construction funds and that a special assessment district would be established whereby the nearby commercial landowners would pay off the debt service (principal and interest) over the 30-year duration of these bonds.

Several commercial real estate experts were enlisted to determine which parcels would obtain special benefits from the creation of a new Metrorail Station at New York and Florida Avenues. As a result of this expert input, legislation was drafted to create a special assessment district for the partial funding of this project.⁷⁸ Owners of land upon which the station would be constructed agreed to donate the land in lieu of requiring public purchase or condemnation. Others temporarily granted free access for construction and staging activities. These donations sped up the process and reduced costs, ultimately benefiting the property owners who ended up with a transit station at their front door.⁷⁹

Construction proceeded. The station was named "NoMa—Gallaudet U" after the neighborhood and the nearby college. Several issues associated with the creation of the special assessment district are worth noting:

⁷⁸ Council of the District of Columbia. (2001). "New York Avenue Metro Special Assessment Authorization Act of 2001." <https://code.dccouncil.us/dc/council/laws/docs/14-44.pdf>

⁷⁹ FHWA. "Project Profile: NoMa—Gallaudet U Metrorail Station." https://www.fhwa.dot.gov/ipd/project_profiles/dc_noma.aspx

- **Setting boundaries:** There were existing Metrorail stations one mile north and one mile south. It was important that properties that were already benefiting from proximity to existing stations would not be burdened for the creation of a new station which would not provide any additional benefit. Reliance on commercial real estate experts was very helpful in this regard.
- **Including and excluding properties within the SAD:** According to the real estate experts, the primary property value benefits associated with creating the station would accrue to commercial properties. So existing residences were exempted from the special assessment.
- **The special assessment prompted request for relief from “double taxation:”** As the special assessment district was being finalized, commercial landowners complained that they would be “double-taxed.” They noted that after the station would be completed, the value of their land would increase, and they would end up paying higher property taxes. They argued that this constituted an unfair double taxation and requested that they receive a credit for special assessment payments against any future property tax increases.

The District officials who received this request were sympathetic and inclined to grant the credit against future tax increases. The District official who initially suggested the landowner contribution objected. He noted that commercial property taxes returned only about \$1.85 per year for every \$100 of enhanced land value. Using a present value calculation, property tax payments would return less than 20 percent of the publicly created land value.⁸⁰ Granting the property owners the credit they requested would have merely advanced to the District the property taxes that the landowners would have paid anyway, resulting in very minimal compensation to the public for creating an enormous increase in private land values.

District officials agreed to have an economist study the situation. The resulting study examined “optimistic,” “most likely,” and “pessimistic” assumptions about future development. Under the “most likely” scenario, the total commercial property value within 2,500 feet of the proposed station would increase from \$190 million to over \$1 billion, with over \$800 million in increased property value attributable to the new Metrorail station.⁸¹

⁸⁰ With regard to property taxation in particular, see Dick Netzer, *Economics of the Property Tax*, Brookings, 1966, pp. 74-85. See also, Dick Netzer, “Impact of the Property Tax Effect on Housing, Urban Land Use, Local Government Finance, Prepared for the consideration of the National Commission on Urban Problems” (May 1968) pp. 13–18, in which Netzer notes that property taxes, viewed as a sales tax, are much higher than “sin taxes” on alcohol or tobacco and range between 20 and 33 percent. This extraordinary tax burden is reduced for affluent homeowners to the extent that they itemize tax deductions and deduct State and local property taxes from Federal income taxes. This reduction in tax burden was minimized by recent tax reform legislation and has never been available to homeowners who do not itemize nor to tenants whose property tax payments are embedded in their rents and are nondeductible. Source accessed at [https://www.jec.senate.gov/reports/90th%20Congress/Impact%20of%20the%20Property%20Tax%20-%20Its%20Economic%20Implications%20for%20Urban%20Problems%20\(417\).pdf](https://www.jec.senate.gov/reports/90th%20Congress/Impact%20of%20the%20Property%20Tax%20-%20Its%20Economic%20Implications%20for%20Urban%20Problems%20(417).pdf).

⁸¹ Huestis, T.F. “Economic Analysis of the Proposed New York Avenue Metrorail Station,” Prepared for the DC Office of Planning and Economic Development, 2000. Note: “New York Avenue” was the original name of the station. It was later changed to “NoMa—Gallaudet U.”

Table 1. Economic Impact of the Proposed Transit Station on Nearby Commercial Properties.⁸²

Type of Economic Impact	Optimistic	Most Likely	Pessimistic
Annual Growth in Property Value (years 2–10/years 11–20)	7%/3%	5%/3%	4%/3%
Landowner Contribution* (Special Assessment)	\$41.4 million	\$41.4 million	\$41.4 million
Incremental Property Value	\$1,237 million	\$822 million	\$536 million
Property Value/Special Assessment	28.84	18.83	11.92
Assessment as a % of Annual Rents	1% to 2%	2% to 3%	2% to 3%

* \$41.4 million is the total principal and interest on \$25 million bond over 30 years.

Even under the “pessimistic” assumption about future growth, the increase in future property value was estimated to be almost 12 times the amount of the special assessment. The special assessment amounted to be from 1 percent to 3 percent of projected annual rents.

According to this analysis, there was no risk of overpayment resulting from subsequent property tax increases. Furthermore, there are other examples of infrastructure that is subject to both fee payments and property tax assessment. Water and sewer services are paid for by user fees. Yet, the existence of water and sewer services increases property values, resulting in higher property tax payments as well. In some areas, commercial property owners pay a fee to the neighborhood business improvement district (BID). BID services are expected to increase the value of properties within its service area, thereby leading to higher property taxes. Yet it is rare to hear property owners complain that they are “double-taxed” for water or for BIDs. Property owners solicited the creation of the Metrorail station and offered to contribute \$25 million because they assumed that the value of the station would exceed what they were paying for it.⁸³ Indeed, the report suggested that the District might want to implement additional value capture mechanisms to compensate for the enormous private wealth being created by public infrastructure.

- **Adjacent properties pay for street extensions:** The new NoMa-Gallaudet U Metrorail station entrance was located adjacent to the railroad tracks. Providing vehicular access to the station required a one-block extension of 2nd Street, NE from Florida Avenue south to the station entrance and a one-block extension of N Street, NE from 1st Street, NE east to its intersection with 2nd Street. These street extensions terminated at the railroad tracks. Therefore, they primarily served as access roads for two large properties, one north of the N Street extension and one south of it.

The Federal government’s General Services Administration (GSA) purchased the land to the north of the N Street right-of-way for the creation of a new headquarters building for the Bureau of Alcohol, Tobacco and Firearms. GSA had security concerns about the street extensions and alignment. The District Government explained that the street extensions would primarily provide access to the new headquarters. The District also demonstrated that the cost of operating and maintaining these street segments, over time, would dwarf the initial construction costs. After negotiation, GSA agreed to

⁸² Id.

⁸³ Id.

construct these streets to DC standards, with the understanding that the District Government would operate and maintain them after construction was completed.

This arrangement is yet another example of a local government prevailing on a property owner to pay for infrastructure construction. As in the case of the Metrorail station itself, the District Government realized that the street extensions were primarily a benefit to the adjacent properties and bargained successfully for those properties to pay the construction costs. One of the keys to successful value capture is for government infrastructure providers to understand ahead of time that they are creating value for nearby properties and to negotiate fair compensation for doing so.

Although optimistic projections about the results from infrastructure and private sector investments are common, these projections are rarely revisited after project completion. The business improvement district for this area and the Urban Land Institute hired RKG Associates to produce a report about the economic outcomes surrounding the station in 2014, ten years after it opened in 2004. The transformation of this derelict industrial area into a vibrant collection of offices, apartments, hotels, and retail uses is astonishing. Some of the findings from the 2014 report are as follows:

“Projects in the NoMa Station Impact Study Area and spurred by the NoMa–Gallaudet U Metro Station include approximately 3.8 million SF of office space, 183,000 SF of retail, 3,057 residential units and 622 hotel rooms. (Many other projects may also be influenced by proximity to the NoMa Gallaudet–U Metro Station but are outside the scope of this analysis.) Significantly too, over the next five years (2015-2019), another 2.4 million SF of office space, 285,000 SF of retail, and 2,624 new residential units are projected for delivery in the same area.

Approximately 14,338 direct, indirect and induced jobs were created between 2004 and 2014 as a result of the NoMa construction spending. In addition, another 15,168 permanent jobs (direct, indirect and induced jobs) have been created as of 2014, resulting in a total job impact of 29,506 jobs.

Our study found a strong correlation between the NoMa–Gallaudet Metro Station and the tremendous growth that has occurred in NoMa since 2004. Indeed, the \$4.7 billion of total economic output (\$2.2 billion in cumulative construction output and \$2.5 billion in permanent output in 2014), \$330 million of municipal revenue and millions of square feet of development that has come since 2004 would not have been possible without the investment in the NoMa–Gallaudet Metro Station. We concluded from our research that development catalyzed by the NoMa–Gallaudet Metro Station has been one of the District of Columbia’s most important new economic drivers over the past decade.”⁸⁴

⁸⁴ RKG Associates. (2014). “NOMA: Success Built on Transit.” https://www.nomabid.org/wp-content/uploads/2017/09/MetroAnniversaryReport_RKG.pdf

7.3 Potomac Yard Metrorail Station

Location: Arlington and Alexandria, Virginia

This is a counterpoint example to the NoMa–Gallaudet U Metrorail station mentioned above. Across the Potomac River from Washington, DC, and immediately south of National Airport was a large, 300-acre freight railroad switching yard. After railroad operations at the yard ended in 1989, the pension fund that owned the land sought to develop it to generate revenues. The fund proposed a mixed-use development for the site. However, development permits were denied because the only access to the project was US Route 1, a roadway that was already highly congested during rush hour. The Metrorail Yellow and Blue Line trains ran right through the east side of the site. The pension fund was informed that a Metrorail station at that location would allow for the granting of the development permit. The pension fund estimated that it would be profitable for the pension fund to pay 100 percent of the cost of a new transit station to obtain development permits. This made a big headline in the American Public Transit Association (APTA) newsletter.⁸⁵

Why did the pension fund offer to pay 100 percent of the transit station costs? As the owner of a 300-acre site, the lion's share of the land values created by a new station would accrue to the pension fund. It is unusual for a single landowner to be able to "internalize" most of the positive externalities from new infrastructure. But regardless of unitary or fragmented land ownership, it is clear that some infrastructure projects can create land value in excess of their costs. If there are multiple landowners (as is most often the case), this does not negate infrastructure's value creation potential. It simply makes it more difficult to organize and coordinate. However, with intention and skill, State and local governments can accomplish this.

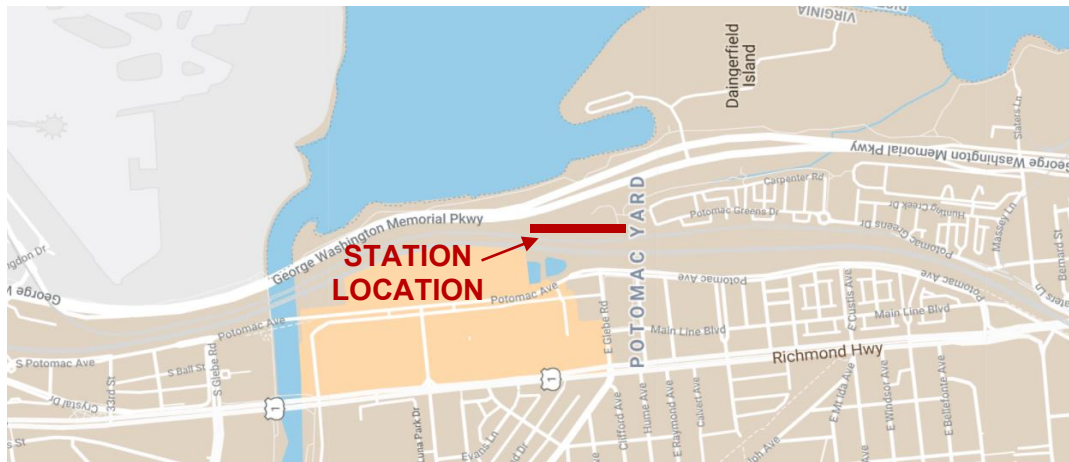
When residents on the other side of Route 1 heard about this proposal, they were concerned that it would be too "dense" and would generate too much traffic. (Due to its location adjacent to an airport, buildings could not be very tall.) Residents successfully petitioned elected officials to "downzone" the site. As a result, there was no longer enough development potential to justify the cost of creating a new transit station. The pension fund subdivided Potomac Yard into large parcels (landbays) and sold them. Landbay F was developed pursuant to the new zoning as a complex of big box stores with acres of parking. The downzoning resulted in auto-oriented development that generated much more traffic than the original transit-oriented development proposal.

Now, 25 years later, Alexandria is now seeking to transform its portion of Potomac Yard into a transit-oriented development. Construction for the new station broke ground in 2019, with an estimated cost of \$320 million.⁸⁶

⁸⁵ APTA Newsletter. (1995). "Private Developer To Build \$20 Million VA Metro Station: Public-Private Partnership Is Lauded."

⁸⁶ Washington Post. (2019). "Metro and Virginia Kick Off Major Construction on Potomac Yard Metro Station." https://www.washingtonpost.com/local/trafficandcommuting/metro-and-virginia-kick-off-major-construction-of-potomac-yard-metro-station/2019/12/18/8391758e-203f-11ea-bed5-880264cc91a9_story.html

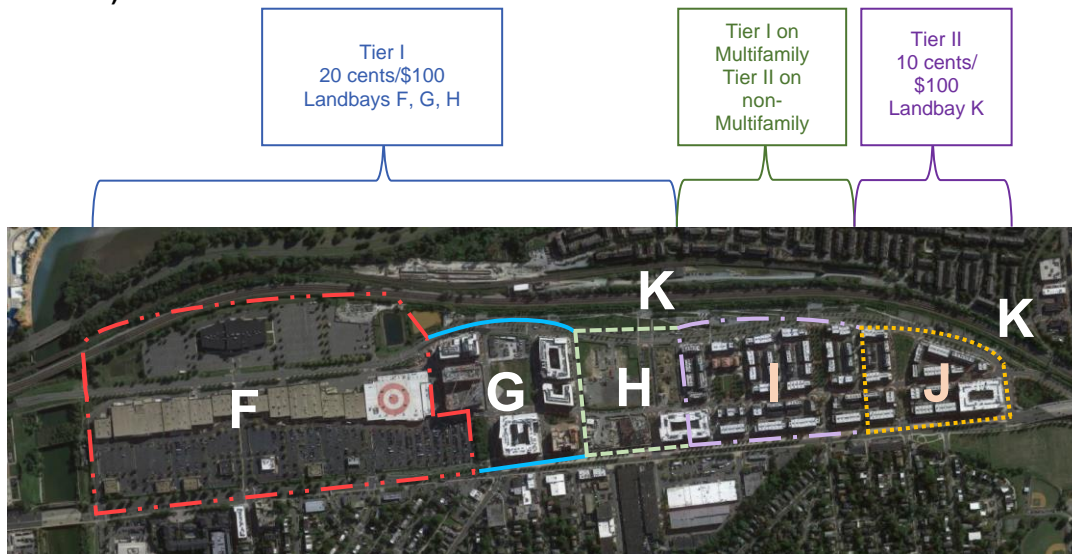
Figure 2. Potomac Yard Station Map. (North is to the left)⁸⁷



Source: © 2021 Google

As mentioned above, Potomac Yard was divided up into large parcels (landbays) and sold to various interests.

Figure 3. Landbay Map Showing Tier I & Tier II Special District Assessments (prior to removal of Tier II)



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Note: North is roughly to the left. The proposed north station entrance is at the top edge of this graphic above (east of) Land Bay G.⁸⁸

⁸⁷ Alexandria Gazette Packet. (2018). "Off the Rails in Alexandria: Citizens Express Outrage over Potomac Yard Metro Changes." <http://www.connectionnewspapers.com/news/2018/may/19/rails-alexandria>

⁸⁸ City of Alexandria. (2019). "Potomac Yard Metrorail Station Cost/Revenue Summary." p. 3. <https://www.alexandriava.gov/uploadedFiles/City2ndVDEQAddlInfoReqAttGPYMSCostRevSum20190429.pdf>

The City's adopted plan requires that station costs be paid for by revenue generated from new real estate development surrounding the station in designated areas in Potomac Yard. This revenue is allocated to a dedicated station fund and is generated by several mechanisms, including net new taxes from the ongoing development, two tiers of special tax assessments based on proximity to the station, and negotiated developer contributions on new construction closest to the station.⁸⁹ In particular:

- **Net new tax revenue:** For any new development taking place in Potomac Yard after January 1, 2011, the incremental tax revenue resulting from this new development is allocated to the station fund after accounting for the cost of City services associated with the new development. The baseline of tax revenue generated by uses in existence prior to January 1, 2011, continues to go to the City's General Fund and is not counted as available for Metrorail station financing. For new tax revenue generated by new development (in landbays F, G, H, I, J, and L), a fixed percentage (37.5 percent of residential, 16 percent of retail, 12 percent of office, and 7 percent of hotel tax revenue) is allocated to the General Fund to pay for City and school services that the new residents and businesses in Potomac Yard may require. These percentages are based on a fiscal impact study conducted for the City, and represent the amount necessary to cover the cost of the City's services for the new development.
- **Special assessment districts:**⁹⁰ Initially, two special assessment districts (Tier I and Tier II) were established to generate further revenue for the Station Fund. All taxable real property in both districts was to be assessed, with no exemptions. At the time, landbay L was the only area not included in a special district.
 - **Tier I:** Special assessment of 20 cents per \$100 of valuation applied to Landbays F, G, H, and the multifamily portion of I, with collections beginning in 2011.
 - **Tier II:** Special assessment of 10 cents per \$100 of valuation applied to the non-multifamily development in Landbay I and all of Landbay J. Prior to the elimination of Tier II, collections were planned to commence the first calendar year after the station opening. In 2018, the proposed South entrance to the Potomac Yard Metrorail Station was eliminated, and the Tier II special assessment was eliminated as well.
- **Developer contributions and shortfall guarantee:** The third primary source of revenue is from developer contributions made by the various owners of the landbays. In 2010, the owner of landbay F pledged to contribute \$10 per square foot (2010 dollars) of new development for up to 4.9 million square feet of development, indexed to inflation. In order to reduce the risk that the City may need to draw upon General Fund revenue, the owner of landbay F also agreed to cover any station fund cash flow shortfall for Alternative B or Alternative B-CSX should the station fund level be insufficient to cover annual debt service. This guarantee is capped at a cumulative amount of \$32 million of the life of the bond issuance, and cannot exceed \$10 million in any single calendar year.

⁸⁹ City of Alexandria. (2019). "Potomac Yard Metrorail Station Cost/Revenue Summary." <https://www.alexandriava.gov/uploadedFiles/City2ndVDEQAddlInfoReqAttGPYMSCostRevSum20190429.pdf>

⁹⁰ Although the Alexandria City Government refers to these as "special tax districts," these special assessments constitute "fees" and not "taxes."

7.4 State Route 28⁹¹

Location: Fairfax and Loudon Counties, Virginia

Fairfax and Loudoun counties formed Virginia's first transportation improvement district (TID), which is a form of special assessment district. The Route 28 TID accelerated highway improvements that otherwise would have relied on pay-as-you-go funding. The improvements, conducted over decades and multiple phases, generally included widening and interchange improvements throughout the corridor.

The TID encompasses 14,800 acres of land, approximately 14 miles along Route 28 in the two counties. A surcharge of up to \$0.20 per \$100 of assessed value is levied annually on the general property tax on commercial and industrial property within the TID. The billing, collection, penalties, and other procedures are the same as those for the general property tax.

Project costs are funded by the Route 28 TID (75 percent) and Virginia Department of Transportation (DOT) (25 percent). To cover the Route 28 TID portion, several series of bonds have been issued repayable from the TID revenues. To provide credit support to the bonds, each county covenants to make up any deficiencies in revenues to ensure debt service is paid.

The TID is created pursuant to the Multicounty Transportation Improvement Districts Act (Virginia Code Section 15.2-4600 et seq.). A district is formed upon the joint petition of commercial and industrial landowners of at least 51 percent of the land area or assessed value of real property within the contiguous TID. The Route 28 TID joint petition was filed in 1987 and outlined the following:

- Certain transportation improvements would be constructed in the TID;
- Virginia DOT would provide design, planning, and construction of improvements;
- A special improvement tax would be imposed and collected by the counties on commercial and industrial property in the TID; and
- Revenues would be used solely for annual payments required under the Virginia DOT contract.

The Route 28 TID, like all TIDs in Virginia, is governed by a nine-member commission—four each of the elected members of the Board of Supervisors of Fairfax County and Loudoun County and the Commonwealth of Virginia's Secretary of Transportation. The TID chairman is elected by and from among its members. The commission is advised by an advisory board composed of 12 taxpayer representatives.

The Route 28 TID is an example of many forms of partnering. The two counties came together to form the TID. The landowners signed on via the petition and participated on the advisory board. The Commonwealth worked with the counties and the landowners to advance the project construction. In addition, the Commonwealth's Northern Virginia State Highway Allocation bridged a funding gap in 1988 and 1989 when the TID saw declining property values. The public sector also partnered with the private sector to deliver a substantial portion of the project. In 2002, the Shirley Design Build Team was awarded the first Public-Private Transportation Act project to be implemented in the Northern Virginia area by

⁹¹ The National Academies of Sciences, Engineering, and Medicine. "Guidebook to Funding Transportation Through Land Value Return and Recycling." NCHRP Report #873. <http://www.trb.org/Main/Blurbs/177574.aspx>

Virginia DOT, which meant a public-private partnership would complete the remaining improvements in the corridor.

Over multiple phases and projects beginning in 1988 and continuing through today, the TID supported several hundred million dollars of improvements years before they would have been realized through traditional funding. The project made a significant difference in a corridor where a local match was needed to leverage Federal funds.

7.5 Reno Rail Transportation Access Corridor (ReTRAC) SAD⁹²

Location: Reno, Nevada

Reno is situated on a major rail corridor linking west coast ports, especially the Port of Oakland, to inland destinations. Prior to the Reno Transportation Rail Access Corridor (ReTRAC) project, dual mainline, at-grade rail tracks passed directly through the City's downtown, creating a number of concerns. By depressing a 2.25-mile downtown stretch of the rail corridor into a 1.75-mile, 54-foot-wide by 33-foot-deep trench, the ReTRAC project resolved numerous environmental, public health, and safety issues. An adjacent access road, relocation of the City's Amtrak station, and utility relocation was also included in the project.⁹³

The ReTRAC project eliminated 10 at-grade street crossings by replacing them with bridges and constructing one new bridge over the trench, minimizing emergency vehicle delay, vehicular delay, impacts from pedestrian conflicts, whistle warning noise, and air quality impacts. The project also increased property tax revenues by raising residential, commercial, and industrial property values along the corridor. New, developable real estate amounted to 120 acres.⁹⁴

The project allows Union Pacific to improve freight capacity by increasing train lengths to 8,000 feet with double-stacked containers. Greater train frequency is also possible, facilitating Nevada's warehousing industry.

⁹² The National Academies of Sciences, Engineering, and Medicine. "Guidebook to Funding Transportation Through Land Value Return and Recycling." NCHRP Report #873. <http://www.trb.org/Main/Blurbs/177574.aspx>.

⁹³ FHWA. "Project Profile: Reno Transportation Rail Access Corridor." https://www.fhwa.dot.gov/ipd/project_profiles/nv_retrac.aspx

⁹⁴ Ibid.

Figure 4. ReTRAC Construction⁹⁵



Project benefits include the following:

- Eliminated train, car, and pedestrian accidents
- Improved traffic flow
- Enhanced emergency vehicle access
- Increased adjacent property values
- Generated 120 acres of developable real estate
- Various environmental benefits

The ReTRAC project began in the mid 1990s as a way to mitigate traffic congestion and improve safety for residents of Reno and took 10 years to bring forward until completion at the end of 2005. Hundreds of planning meetings were held as the project progressed. The costs for the \$265 million dollar project were paid through a hotel room tax, **special downtown assessment district**,⁹⁶ a sales tax increase, city bond, and \$17 million in Union Pacific and Federal funds. It was completed on time and under budget.⁹⁷

⁹⁵ Ibid., photo credit: Schnabel Foundation Company

⁹⁶ The special assessment was based upon reductions in noise pollution, with commercial properties adjacent to the rail lines receiving the largest benefit. Information obtained via correspondence on October 7, 2020, with John Flansberg, P.E., Director, Public Works Department of Reno, NV.

⁹⁷ Lisa Loftus-Otway et al. (2008). "Protecting and Preserving Rail Corridors Against Encroachment of Incompatible Uses." TxDOT. p. 155.

Initial financing was sought through three loans from the U.S. Department of Transportation pursuant to the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA), including:

- \$50.5 million secured by County sales and City hotel room taxes;
- \$18.5 million secured by tax assessments on real property in a downtown business district; and
- \$5 million secured by lease income from property contributed by Union Pacific.

The sales and room tax loan closed in 2002 and was funded in 2004. Negotiations concluded in 2005 on the assessment district loan, although litigation prevented its closing. The City elected not to proceed with either of the two smaller TIFIA loans. Instead, Reno issued \$13.9 million in publicly offered bonds. The City repaid the original \$50.5 million loan with interest in May 2006.⁹⁸

According to the city of Reno, “The change in Downtown Reno is astounding. No more train/car/pedestrian accidents in the ReTRAC area, traffic flow is greatly improved, emergency vehicle access is enhanced, property values of buildings adjacent to the trench have significantly increased and there are even various environmental benefits.”⁹⁹

The process in Reno for creating a special assessment district can be found at <https://www.reno.gov/government/departments/public-works/capital-projects/special-assessment-districts>.

⁹⁸ FHWA. “Project Profile: Reno Transportation Rail Access Corridor.” https://www.fhwa.dot.gov/ipd/project_profiles/nv_retrac.aspx

⁹⁹ Lisa Loftus-Otway et al. (2008). “Protecting and Preserving Rail Corridors Against Encroachment of Incompatible Uses.” TxDOT. p. 155.

CHAPTER 8: SPECIAL ASSESSMENTS AS FUNDING OR FINANCING

“Funding” refers to the source of monetary resources required for undertaking a project. “Financing” refers to a variety of techniques to make cash available in the near term when funding resources are not available until farther into the future. Thus, if one buys a house by making a \$10,000 down payment and taking out a \$90,000 mortgage, the mortgage is a source of financing but not a source of funding. All of the funding comes from the purchaser’s resources (savings or income). But some of those resources are not available until the future, so the purchaser uses a mortgage as a financing tool to make cash available today in exchange for the purchaser’s commitment to pay both principal and interest in the future. When a government uses bonds to provide cash for an infrastructure project, the bonds are a source of financing, not a source of funding. The funding for the project consists of future taxes and fees that will be used to pay off the bonds.

8.1 Pay As You Go

This refers to a system in which costs for goods and services are paid for as they arise. As special assessment revenues are received and credited to an account dedicated to the funding (in whole or in part) for a specific infrastructure improvement project, these funds can be used to pay for that project. In contrast to pay as you go, “pay as you use” refers to a system where future generations bear part of the cost of infrastructure, paying off financing over time.

8.2 Local Match for Federal and State Programs

Special assessment revenues are sometimes used to provide the match required for State or Federal programs. In this way, special assessments generate more funding for the project than is raised by the special assessment itself.

8.3 Debt Service for Bonds or Other Financing Mechanisms

If the cash flow demands of an infrastructure project exceed the special assessment revenues in any particular year or set of years, anticipated future special assessment revenues are sometimes pledged to pay the debt service on bonds, loans, and other financing mechanisms that will provide the necessary cash when it is needed in the short term. Using this approach, total payments over the term of the financing mechanism will include both the principal amount of cash provided plus interest payments.

CHAPTER 9: HOW DO SPECIAL ASSESSMENTS WORK WITH TAX INCREMENT FINANCING?

Tax increment financing (TIF) is a budgeting device used to fund infrastructure projects without going through the traditional budget expenditure process. A typical project must be justified and compete for funding with other capital projects until an elected body approves its funding via expenditures from the jurisdiction's capital fund budget. Pursuant to a TIF, however, specified tax revenues in a geographic area are benchmarked. Any future increases in revenue above the benchmarked amount (or some indexed form of the benchmarked amount) are diverted from the general fund and deposited into an account dedicated to fund a capital project serving that area. Thus a jurisdiction diverts expected future revenue due to a project in lieu of spending capital funds. The key appeal of TIF is that no new taxes are required (taxpayers within the TIF district pay taxes as they otherwise would, even in the absence of a TIF) and the TIF-funded capital project does not compete with other spending priorities for existing tax revenues either.

TIFs were initially created to support infrastructure improvements in distressed areas where development was otherwise unlikely to occur. The underlying justification for this approach is that “but for” the proposed infrastructure project, specified tax revenues within a specified geographic area would remain constant. Because it is assumed that the proposed project will lead to increased revenues, those project-created revenues can be used to fund the project. In other words, the proposed infrastructure project appears to pay for itself. In practice, the “but for” nature of revenue growth is often assumed rather than proven. This has consequences including, but not limited to, the following:

- If revenues would have grown anyway, then the jurisdiction's general fund is being deprived of revenue and this will negatively impact the general fund's ability to fund other projects and programs.
- If future revenues fail to grow above the benchmarked amount, TIF revenues may be insufficient to pay debt service on bonds, loan or other financing mechanisms used to finance the project.

The first issue is a question of concern for those who believe that all spending projects should compete with transparency for funding on a level playing field. The second issue is a risk to bond repayment. This may cause lenders or bond purchasers to refuse financing for the project or may cause them to impose higher interest rates to compensate for the increased risk.

If jurisdictions have the authority to implement both TIFs and SADs, jurisdictions might consider creating them in tandem to:

- Provide additional revenues to support an infrastructure project.
- Provide a backstop for insufficient TIF revenues. If TIF revenues fall below a specified threshold, this would trigger the implementation of an enacted but contingent special assessment. To the extent that SAD revenues are determined by a formula and not subject to future development activity, SAD revenues are more certain. Thus, even if the SAD is never invoked, its mere existence as a backstop reduces risk to bond holders or lenders and can lead to lower interest rates on TIF financing.

The Potomac Yard case study mentioned previously shows that in the past few years, Alexandria, Virginia, has created both a TIF district and a special assessment district to pay for this station that is now under construction. For details, see “Potomac Yard Metrorail Station Cost/Revenue Summary,” April 29, 2019, at <https://www.alexandriava.gov/uploadedFiles/City2ndVDEQAddllInfoReqAttGPYMSCostRevSum20190429.pdf>.

CHAPTER 10: APPENDIX

10.1 Model Enabling Legislation

The special assessments are authorized in all 50 States either under explicit enabling legislation or by State constitutional provisions. The Center for Innovative Finance Support Value Capture website provides [links to Federal, State, and local legislation](#) that enables the use of different value capture strategies. Below are links to examples of Special Assessment State Statutes:

2019 California Code Streets and Highways Code — SHC Division 10 — The Improvement Bond Act of 1915, Part 12 - Redemption Fund Deficiencies, Section 8772; 20012002 SB1122 Sec. 3. (Adds) - Chaptered (Stats.2001 Ch.673); https://qcode.us/codes/glendora/view.php?topic=21-21_13-iv-21_13_220&frames=on

- [Update on Assessment Requirements Under Proposition 218](#)

2005 California Public Utilities Code Sections 99000-99026 Chapter 1. Special Benefit Districts

District of Columbia-special assessment district

- [§ 47-895.02. Establishment of the special assessment district](#)
- [§ 47-895.03. Levy of special assessment](#)

Idaho Statute, Title 50 Municipal Corporations; Chapter 31, Community Infrastructure District Act

2013 Mississippi Code Title 19 — Counties and County Officers Chapter 31 - Public Improvement District §19-31-33 — Benefit special assessments; maintenance special assessments; levy, collection, and enforcement; compensation of tax assessor and collector; installments; prepayment of benefit special assessments.

New Mexico Statute, Chapter 5 - Municipalities and Counties Article 17 — Infrastructure Development Zone Act Section 5-17-29 - Special assessment; bonds; imposition.

10.2 Model Implementing Ordinance

This section contains sample legislation for creating a special assessment district and for levying a special assessment to fund an extension of a roadway or similar infrastructure. This sample language was drafted expressly for this primer. Readers are advised to check the requirements for legislation in their jurisdiction prior to using this sample language in any way.

[Sponsor & Co-Sponsors]

A BILL

[LEGISLATIVE BODY NAME]

To establish the _____ Benefit Area; to authorize a special assessment on properties located within such area which are specially benefited by the construction of [proposed infrastructure facility] from [location] to [location]; to authorize the _____ government to collect such assessments in the same manner as real property taxes; and to authorize revenues so collected to be used to pay for the costs of the construction of this _____ along with _____, _____, and other essential elements of the public right-of-way.

BE IT ENACTED BY [Legislative Body Name], That this act may be cited as the “_____ Special Assessment Authorization Act of [YEAR]”.

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) “Chief Financial Officer” or “CFO” means the Chief Financial Officer of _____ as established by § _____ of the [jurisdiction] Code.

(2) ["Council" / "Board" / "Commission" etc.] means the [Full Name of Legislative Body].

(3) “_____” means the [FULL NAME OF JURISDICTION].

(4) “General Obligation Bonds” means the General Obligation Bonds issued or to be issued by the [jurisdiction], the net proceeds in the amount of \$_____ of which shall be used to pay costs of the construction of _____ from _____ to _____, and the debt service on which shall be the basis of calculation of the special assessment levied pursuant to section 5 of this act, and any general or special obligation bonds, notes or other obligations issued to refund such bonds or such refunding bonds, notes or other obligations.

(5) “Mayor” means the Mayor of _____.

(6) “_____ Project” means the acquisition and construction of _____ from _____ to _____, along with stormwater systems, sidewalks, tree boxes, streetlights, traffic signals and other essential elements of the public right-of-way.

(7) “_____ Benefit Area” or “___BA” means the special assessment district established pursuant to section 4.

(8) “___BA Account” means the account established pursuant to section 6.

(9) “___BA Special Assessment Annual Collection Amount” means the amount established pursuant to section 5.

(10) “___BA Special Assessment Total Collection Amount” means the amount established pursuant to section 5.

(11) “Tax lot” means a tax lot as shown on the real property tax records of _____.

Sec. 3. Findings.

The [legislative body] finds that:

(a) The development of property located on [legal description] will [benefit from / require] [proposed infrastructure description]. These properties are currently serviced only by [existing infrastructure description]. These [existing facilities] are not [appropriate / adequate / sufficient] for [description of essential infrastructure service].

(b) [Other reason(s) why properties within the defined benefit assessment area will receive a special benefit from the provision of nearby infrastructure.]. For this reason, the owners of these sites should contribute toward the initial construction of [proposed infrastructure].

(c) To effectuate the private sector contribution of approximately \$_____ to construct this project, it is necessary to utilize the [jurisdiction's] authority to issue bonds and expend the proceeds thereof, and to establish a mechanism or mechanisms, such as a special assessment on property specially benefited by the construction of these _____. Use of proceeds of the General Obligation Bonds should be a less costly means of effectuating the private-sector contribution than other means such as the issuance of special assessment revenue bonds.

(d) The value of certain real property on [legal description of the area within the benefit assessment area] will be increased as a result of the construction of the [proposed infrastructure] and other essential elements of the public right-of-way.

(e) For these reasons, the [legislative body] finds that creating this benefit assessment area will ensure the fair and efficient collection of contributions from the owners of specially benefited property.

(f) It is necessary to the public safety and welfare that (1) the [jurisdiction] assist in carrying out the ___BA Project, (2) a portion of the cost of this project be assessed against the lands specially benefited by it, and (3) the [jurisdiction] use the proceeds of the initial General Obligation Bonds to provide funds for the project in anticipation of the receipt of such special assessments.

(g) This act is being adopted following public notice and hearing at which persons interested in the ___BA Project and the levying of the special assessment were afforded the opportunity to present to the [legislative body] oral and written testimony concerning these matters, and the [legislative body] has considered the testimony and information presented at such hearing.

Sec. 4. Establishment of special assessment district.

There is hereby established the “_____ Benefit Area,” (“___BA”) which shall encompass those tax lots on Squares _____, _____, _____, ... and _____.

Sec. 5. Levy of special assessment; protest; termination of levy.

(a) Commencing with real property tax year _____, there is hereby levied, for any period prior to the expiration of such special assessment during which such tax lot meets the criteria stated in this subsection (a), a special assessment upon each tax lot of real property located within the ___BA which

(1) is shown on the zoning map of the [jurisdiction] as being located in a district that is zoned “_____”; *{this clause is used only if some properties within the benefit assessment area will be included or excluded because of certain zoning}*

(2) is not exempt from real property tax; and

(3) at any time on or after January 1, _____, included a land area of at least _____ square feet. *{This clause used only if a minimum lot size is required to participate in the special assessment.}*

(b) The total amount of the assessment levied by this act shall be the Special Assessment Total Collection Amount determined in accordance with subsection (c) of this section. The annual amount of the assessment levied by this act shall be the Special Assessment Annual Collection Amount determined in accordance with subsection (c) of this section. The [legislative body] hereby finds and determines that the properties upon which the special assessment is levied pursuant to this section are specially benefited by the construction of [the proposed infrastructure facility(ies)] mentioned above in an amount not less than the special assessments determined pursuant to this act.

(c) Within 120 days after the effective date of this act, the CFO shall determine the total debt service projected to be paid on the initial General Obligation Bonds from their date of issuance through maturity, which shall constitute the Special Assessment Total Collection Amount; provided, however, that the Special Assessment Total Collection Amount shall be subject to adjustment after such initial determination if the CFO determines and certifies that the actual debt service payable on the initial General Obligation Bonds will be less than the amount so projected. The Special Assessment Annual Collection Amount shall be one-thirtieth of the Special Assessment Total Collection Amount.

(d) Within ___ days after the effective date of this act, the CFO shall determine the tax lots of real property which are subject to the special assessment pursuant to subsection (a) of this section, the total assessed value for [jurisdiction] real property tax purposes of each such tax lot, and the aggregate total assessed value for [jurisdiction] real property tax purposes of all such tax lots, all based on the assessed land value for each such tax lot as of the valuation date applicable for tax year _____.

(e) Within ___ days after the effective date of this act, the CFO shall determine the Special Assessment Factor, which shall be the factor obtained by dividing the Special Assessment Annual Collection Amount by the aggregate total assessed value determined under subsection (d) of this section; provided, however, that the CFO may increase the Special Assessment Factor at any time but only by the amount that the CFO determines shall be necessary to ensure that special assessments hereunder shall be at least equal to the Special Assessment Annual Collection Amount in each year. The special assessment applicable to each tax lot shall be the amount derived by multiplying the Special Assessment Factor by the total assessed value of each tax lot as of the effective date of this act or, for any tax lot which becomes subject to the special assessment levied hereby after the effective date of this act, the date on which such tax lot becomes so subject. Each such special assessment shall be made part of the public record.

(f)(i) Within ___ days after the effective date of this act, the CFO shall give notice of special assessment, stating the amount of the proposed special assessment and the procedure for any protest with respect to the assessment, to the owner (as shown on the real property tax records of the [jurisdiction]) of each tax lot of real property which is subject to the special assessment pursuant to subsection (a) of this section as of the effective date of this act.

(ii) The CFO shall give notice of special assessment, stating the amount of the proposed special assessment and the procedure for any protest with respect to the assessment, to the owner (as shown on the real property tax records of the [jurisdiction]) of each tax lot of real property which becomes subject to the special assessment pursuant to subsection (a) of this section subsequent to the effective date of this act, promptly following the change which causes such tax lot to become so subject.

(g) The amount of any special assessment levied by this act on any tax lot shall be subject to protest by the owner by filing, within 30 days after notice of assessment, with the [Real Property Assessment Appeals body] on a form prescribed by the [body]. Such protest shall be reviewed by the [body] in accordance with the procedures set forth in [jurisdiction] Code § _-_____. Every decision filed by the [body] shall be maintained by the [body] and shall be made available for examination and photocopying at cost to any requestor.

(h) Special assessments levied by this act shall be collected at the same time and in the same manner as the [jurisdiction] real property taxes are collected from time to time.

(i) Unpaid special assessments levied by this act shall give rise to a lien therefore, which shall attach to the real property in the same manner and with the same priority, and be collected under the same authority and remedies, including sale of the property, as with respect to [jurisdiction] real property taxes, except that the lien of such unpaid special assessments shall be junior to the lien only of the unpaid real property taxes.

(j) The levy of special assessments by this act shall terminate on the date on which the Special Assessment Total Collection Amount has been received by the [jurisdiction], as certified by the CFO to the Mayor pursuant to section 6.

Sec. 6. Application of assessment.

The CFO shall establish the ___BA Account within the General Fund for the deposit and application of special assessment revenues from the ___BA. Monies held or to be held in ___BA Account shall be used to pay the principal of and interest on the General Obligation Bonds or any other then-outstanding [jurisdiction] general obligation bonds. When the total aggregate deposits into the ___BA Account are equal to the Special Assessment Total Collection Amount, the CFO shall so certify to the Mayor.

Sec. 7. Regulations.

The CFO may adopt any regulations it deems necessary to carry out the purpose and intended effect of this act.

Sec. 8. Fiscal impact statement.

The [legislative body] adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section _____ of the _____ Act. *{Not all jurisdictions require fiscal impact statements.}*

Sec. 9. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, override of the veto by the [legislative body]), and publication in the [jurisdiction] Register.

10.3 Case Study Documents and Links

10.3.1 The Seattle Waterfront Local Improvement District (LID)

Section 7 (p. 27 or 36/68) provides examples of special assessments. Each of these examples has extensive footnotes that contain links to the project site and/or articles about them. A LID is a funding tool governed by State law, by which property owners pay to help fund the costs of public improvements that directly benefit their property. For the Waterfront LID, property owners will contribute to a portion of the improvement costs based on the “special benefit” they will receive from those improvements.

In January 2019, Council passed, and Mayor Durkan signed into law an ordinance officially forming the Waterfront LID. This ordinance commits the City not to exceed \$160 million in LID funding, plus the amounts necessary to pay the costs of financing.

The LID is a key component of the Waterfront Seattle Program funding plan, along with City and State funding and private philanthropy. A LID was included in the Waterfront Strategic Plan and approved by Council in 2012. Below are major milestones:

- January 2011, the Seattle City Council (Council) adopted [Resolution 31264](#), creating the Central Waterfront Committee (CWC) to oversee the development of the waterfront conceptual design and framework plan, ensuring robust and innovative public engagement, identifying public and private funding sources, and establishing the foundation for a lasting civic partnership.
- In August 2012, the Council adopted [Resolution 31399](#), which stated the City’s support of the Central Waterfront Concept Design and Framework Plan based on broad and inclusive public engagement over two years.
- In 2015, Seattle City Council adopted [Ordinance 124865](#), authorizing execution of an Agreement for Activation and Programming of Westlake Park and Occidental Square Park, which transferred programming, management, concessions, and most permitting responsibilities of Westlake Park and Occidental Square Parks to the Downtown Seattle Association; http://clerk.seattle.gov/~archives/Ordinances/Ord_124865.pdf.
- [Waterfront Local Improvement District \(LID #6751\) Final Assessment Roll](#)
- [Waterfront LID Formation Ordinance No. 125760 passed in January 2019](#)
- [Assessment Roll Hearing on Waterfront Local Improvement](#)
- [Assessment Roll Hearing on Waterfront Local Improvement](#)

10.3.2 NoMa-Gallaudet U Metro Station SAD

- [NoMa - Gallaudet U Metrorail Station Project Profile](#)
- [NoMa - Gallaudet Red Line Station Case Study](#)
- Council of the District of Columbia. (2001). [New York Avenue Metro Special Assessment Authorization Act of 2001](#)
- NoMa-Gallaudet U Metro Station: [Success Built on Transit Municipal Revenue and Economic Impact Analysis](#)

10.3.2.1 [Letter Requesting Owner of Square 710 to Fund Street Extensions](#)

- [NoMa Developments, Redevelopment Area Boundary by Section](#)
- [NoMa-Gallaudet U Metro Study - NoMa BID](#)
- [Potomac Yard Metrorail Station Cost/Revenue Summary](#)
- [DHCD Responses to Questions in Advance of the Performance Oversight Public Hearing on Fiscal Years 2019/2020](#)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DISTRICT DEPARTMENT OF TRANSPORTATION



Office of the Director

June 16, 2003

Frank Miles

Project Executive

General Services Administration

Property development Division

Room 2002 (WPC)

Washington, DC 20407

Dear Mr. Miles:

The Deputy Mayor for Planning and Economic Development has requested that I write you about the District's position regarding payments for the construction, operation and maintenance of new streets in the vicinity of the new headquarters building for the Bureau of Alcohol Tobacco and Firearms. As you may already know, the District has no legal obligation to build new streets surrounding your development on square 710, nor has it budgeted any funds for doing so.

It is our position that if GSA funds the design and construction of streets surrounding its property in accordance with standards and specifications accepted by the District Department of Transportation (DDOT), DDOT will agree to operate and maintain these streets in perpetuity. The streets GSA would design and construct are 2nd Street, NE from Florida Avenue south to its intersection with N Street, NE and N Street, NE from 1st Street NE east to its intersection with 2nd Street, NE.

It is DDOT practice to get private interests to pay for improvements to public rights of way where these improvements are necessitated by and serve the interests of private development. Last year, DDOT refused to give approval for the development of the Field School along Foxhall Road unless the school paid for the creation of a turn lane and turn signal. DDOT also negotiated to get the Washington Hospital Center to pay for new traffic signals and turning lanes associated with traffic that will be generated by their expansion plan.

2000 14th Street, N.W., Washington, D.C. 20009 (202) 673-6813

GSA Cost Sharing Policy for Design & Construction of 2nd & N Streets, NE

Page Two

Below is information from DDOT engineers about estimated costs for street design and construction.

New Construction of Streets Surrounding Square 710:

Assuming that N Street between 1st & 2nd Streets, NE is equivalent to two blocks in length, then the approximate cost of design and construction of this street and an extension of 2nd Street from Florida Avenue, NE to N Street, NE would be about \$750,000.

Thank you for your considering our views. Please feel free to contact my assistant, Rick Rybeck, Deputy Administrator for Transportation Policy and Planning if you have any questions. Mr. Rybeck can be reached at 671-2325.

Sincerely,

Dan Tangherlini

DT:rr,cc

cc Eric Price
Andrew Altman
Michelle Pourciau
Ken Laden

10.3.3 Potomac Yard Metro Station

Private Developer to Build \$20 Million Va. Metro Station

Public-Private Partnership is Lauded

Passenger Transport: The Weekly Newspaper of the Transit Industry

Volume 53, Number 47

November 27, 1995

By Joe Dougherty, Senior Editor

Alexandria, VA — In what officials cite has a classic example of a transit public-private partnership, the Washington Metropolitan Area Transit Authority and the RF&P Corporation on November 16 agreed on a plan in which the commercial real estate company will design and build a new \$20 million station along WMATA's Metrorail line.

The agreement, signed on the Potomac Yard property where the new station will be built, marks the first time ever that a private corporation has underwritten the design and construction of a transit rail station. It is also the first time a station has been added to an existing transit system between currently operating stations, officials said.

"This is a historic day for WMATA and for transportation in the United States," said general manager Lawrence Reuter, who joined the members of the Arlington, Alexandria, and Fairfax, Virginia, Washington, and Virginia governments at the signing. "This is where good business and good public policy benefits everyone."

Virginia Lieutenant Governor Donald Beyer, speaking above the rumble of a passing Metrorail train, applauded the agreement, saying "It will have a ripple effect. The station will serve families and companies, and it will lead to more growth."

The new station will be built between the National Airport and Braddock Road stations along Metrorail's Blue and Yellow lines on the grounds of Potomac Yard, formerly one of the nation's largest railway freight yards. Real yard operations ceased there in 1994. Under the contract, RF&P will pay for the station design and construction costs, estimated at \$20 million, and WMATA will operate and maintain it.

Richmond-based RF&P, which owns the 342-acre site that spans Arlington County and the city of Alexandria, plans to build a 16-million-square-foot, mixed-use development that will include more than 5,000 housing units along with office and retail uses.

The new station will serve as one of the northern Virginia's biggest transportation hubs, as Metro's Yellow and Blue lines will join with Amtrak, Virginia Railway Express commuter rail, Metrobus, taxi, and pedestrian and bicycle paths. Nearly 15,000 commuters are expected to use the station each day when it is fully operational.

WMATA is expected to see increases in off-peak direction ridership and off-peak hour, weekend, and holiday ridership as commuters use the station to go to neighboring Crystal City and downtown Washington.

“The Potomac Yard Metro Station will benefit our nearby neighbors, the larger surrounding communities, the environment, the Metro authority, and RF&P,” said Denton Kent, RF&P’s president and chief executive officer. “The station allows the integration of mass transit in the development in a rational and efficient fashion.”

U.S. Deputy Transportation Secretary Mort Downey said the Metrorail system has been a critical element in shaping the Washington region. “This is the latest step in the process,” he said. “It’s a destination that will be served by a variety of efficient and environmentally friendly transportation alternatives. It sets a new benchmark for transportation.”

Reuter said that, in today’s budget environment, transit general managers realize funding is tight, but that ridership is nonetheless expected to grow. “Partnerships like this one today accomplish both those goals.”

Alexandria Mayor Patricia Ticer said the “public sector private sector and the community will benefit” from the new agreement. “This project, in the shadow of the nation’s capital, is the best example of the ability of the public and private interest cooperate for the benefit of the public good.”

Plans call for the project to advance in three phases, with Phase I providing for environmental assessments and general planned development, beginning in January 1996. Phase II, which is scheduled to begin in January 1997, includes design work, while Phase III will include construction. Officials said the station is scheduled to open in March 2000.

Passenger Transport



APTA

The Weekly Newspaper
of the Transit Industry

Washington, D.C., Monday, November 27, 1995

Volume 53, Number 47

Private Developer To Build \$20 Million Va. Metro Station

Public-Private Partnership Is Lauded

By Joe Dougherty
Senior Editor

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10.4 Glossary

Assessed Value: The dollar value assigned to a property for the purposes of measuring applicable taxes. There are three primary methods for determining assessed value:

- Comparable sales
- Cost to replace minus depreciation
- Income

Assessed value multiplied by a tax rate determines the tax liability for a property. Determination of the assessed value of a property is an administrative function. Setting tax rates is a political function.

Authorizing/Enabling Legislation: State-level legislation that authorizes/enables a subordinate jurisdiction (county, parish, township, city, etc.) to levy a special assessment. This legislation will provide substantive and procedural requirements for establishing special assessments.

Benefit (general): The typical level of benefit that accrues to properties throughout a jurisdiction from a particular public facility or service. For example, a new highway might reduce traffic congestion, speed up freight deliveries, and reduce the price of goods throughout a jurisdiction.

Benefit (special): A specific and direct benefit that accrues to some properties as a result of their proximity (in distance or time) to a particular public facility or service. For example, while a new highway might benefit all properties generally, those properties closest to highway interchanges obtain even more value from the highway (due to easier access), and this would be reflected in higher property values as a result.

Bond: A certificate that acknowledges the indebtedness of the bond issuer to the holder. The holder of the bond is the lender (creditor), and the issuer of the bond is the borrower (debtor).

Excise Tax: This is a tax levied against the quantity of a good purchased or sold. A per gallon tax on motor fuel, for example, depends solely on the amount of fuel sold. Fluctuations in the price of motor fuel do not lead to changes in revenue as long as the amount sold remains constant. (This is in contrast to a sales tax, which is levied against the price of the good sold.)

Fee: This is a charge for a good or service. It is similar to a “price,” in that the consumer is either paying for a direct benefit received from the government or compensating the government for an expense incurred because of or on behalf of the person or entity paying the fee. Fees are distinguished from “taxes” because there is no direct relationship between the payment of a tax and the receipt of benefits (or compensation for costs incurred). Most people pay for water with a per-gallon fee for the operation of a municipal water purification plant. The more water you use, the more you pay. Many people also pay property taxes, some of which might be used to fund capital expenses for the water authority. This is a tax and not a fee because payment is unrelated to the utilization of municipal water. However, the land value portion of the property tax is more like a fee, because access to municipal water (and other infrastructure amenities) enhances the value of land. So the part of the property tax applied to land values is more like a fee and the part applied to building values is more like a tax.

Fee Rate: The means for determining the amount of a special assessment. A “fee rate” could be expressed as a “cost per front foot” or as a “rate (percentage) applied to property value.”

Fee Schedule: An adopted and published fixed-fee for defined public services such as water main and sewer main hookups, curb cut installation, or zoning changes requested by the property owner.

Front Foot: A measure of distance along the side of a property that faces a street. Distance is one of the primary cost variables in many types of infrastructure projects (sidewalks, streets, utility lines, etc.) The length of an infrastructure facility segment constructed along one or more sides of a property is expressed in “front feet.”

Implementing Ordinance: Legislation that establishes a special assessment to fund a particular infrastructure project. This legislation must satisfy the substantive and procedural requirements provided in the applicable State’s authorizing legislation.

Land Value Uplift: The increase in land value caused by the creation or improvement in nearby infrastructure. As mentioned in the report, even the expectation of infrastructure improvement has led to land value uplift prior to the commencement of improvement activities.

Site Value: Land value. This term emphasizes that land value is related to the location of the site and not merely to the value of dirt.

Special Assessment: A fee imposed on properties that receive a special (specific and direct) benefit from a particular public facility or service.

Tax: This is a charge owed to a government. However, payment of a tax bears no direct relationship to any particular benefit received or costs incurred. Instead, taxes represent a payment for general and possibly indirect benefits. Most people pay for water with a per-gallon fee for the operation of a municipal water purification plant. The more water you use, the more you pay. Many people also pay property taxes, some of which might be used to fund capital expenses for the water authority. This is a tax and not a fee because payment is unrelated to the utilization of municipal water. However, the land value portion of the property tax is more like a fee, because access to municipal water (and other infrastructure amenities) enhances the value of land. So the part of the property tax applied to land values is more like a fee and the part applied to building values is more like a tax.

Tax Levy: The amount of taxes to be collected by a jurisdiction.

Tax Liability: The amount of taxes owed on a property.

Tax Rate: Percentage or fixed dollar amount which is used to determine how much tax is owed. Tax rate is expressed in terms of dollars per \$100 or \$1,000 of assessed value. For a property with an AV of \$100,000 at a tax rate of \$1.00 the following equation would be used: $\$100,000/\$1,000 \times \$1.00 = \100 tax liability.

Tax Increment Financing (TIF): A technique for funding an infrastructure project without allocating existing revenues or raising new taxes. An assumption is made that “but for” an infrastructure project, tax revenues in a defined location would remain constant. Tax revenues are measured and benchmarked at this “pre-project” level. If TIF legislation is enacted, any future increase in tax revenues above the benchmarked level within the defined location is deposited into a special account dedicated to the funding

of the infrastructure project. An important feature of most TIFs is that the public pays the same taxes regardless of whether a TIF exists or not. For this reason, the author refers to TIF as “revenue segregation” rather than as “value capture.”

Uniformity: The legal requirement that all taxpayers or taxable property in the same circumstances and conditions should be treated the same.

Value Capture: When infrastructure is well-designed and well-executed, it tends to increase the value of nearby property. “Value capture” describes several techniques that return a share of infrastructure-created value to the public sector that created it.

10.5 Resources

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http://www.fhwa.dot.gov/ipd/fact_sheets/value_cap_special_assessments.aspx

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National Academies of Sciences, Engineering, and Medicine. (2016). *Guide to Value Capture Financing for Public Transportation Projects*. TCRP Report 190, Washington, DC: The National Academies Press. <https://doi.org/10.17226/23682>.

Rybeck, R. (2018). “Financing Infrastructure With Value Capture: The Good, The Bad & The Ugly.” <https://www.strongtowns.org/journal/2018/2/20/financing-infrastructure-with-value-capture-the-good-the-bad-the-ugly/>

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Vidali, S., et al. “Guidebook to Funding Transportation Through Land Value Return and Recycling.” NCHRP Report 873. <http://www.trb.org/Main/Blurbs/177574.aspx>

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FOR FURTHER INFORMATION, CONTACT:

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