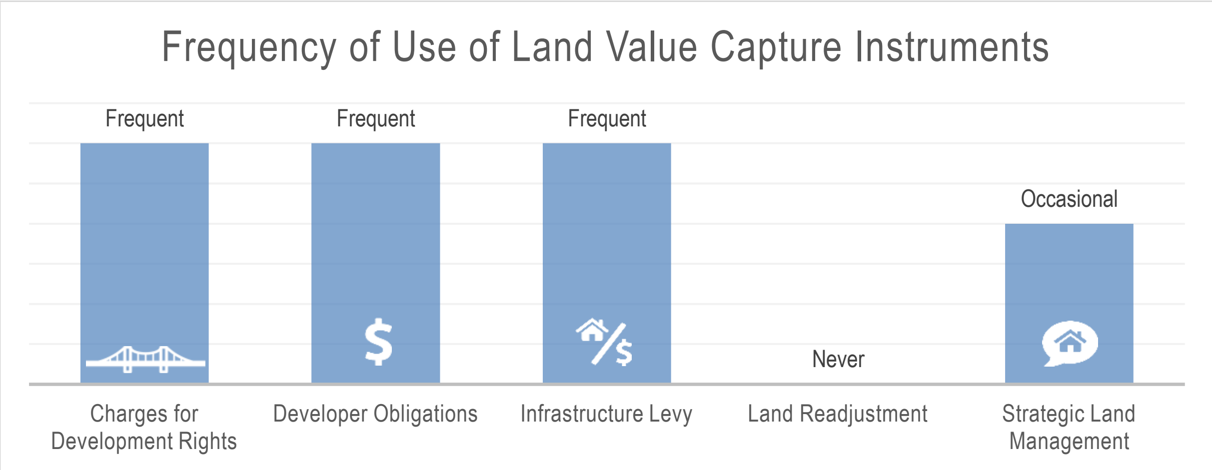
United States of America



Several land value capture instruments are systematically used in the country. States create the enabling framework for land value capture, hence the high variability of instruments across the country. Charges for development rights are levied to enable the construction of affordable housing units. Infrastructure levies constitute an alternative method for financing public capital facilities and services. States may authorize counties and municipalities to create land banks to acquire, hold, lease and dispose of property. There is no legal framework for land readjustment.

Main instruments

Instrument (OECD-Lincoln terminology)	Local name	National legal provision	Implementation	Use
Charges for development rights	*Incentive Zoning; Density Bonusing; Inclusionary Housing Ordinances; Project-by-project negotiations*	None	Local governments	Frequent
Infrastructure levy	*Special Assessments; Downtown/Business Improvement Districts; Facilities Districts; Transit Districts*	None	State and local governments, as well as special purpose bodies	Frequent
Developer obligations	*Exactions; Impact fees; Linkages*	None	Local governments	Frequent
Strategic land management	N/A	None	Local governments and special purpose bodies	Occasional

Note: Negotiating density and intensity of uses on a project-by-project basis happens through zoning instruments such as Planned Unit Developments and Development Agreements. Local governments seek a host of public benefit and amenities, such as open space and below market-rate housing, during such negotiations.

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Enabling framework

The United States is a federal republic composed of 50 federated states, 3 031 counties at the intermediary level and 35 879 municipalities (OECD/UCLG, 2019[1], p. 534). States discipline their own system of government and territorial organization. Local governments belong to the states and, consequently, their organization varies according to state law (OECD/UCLG, 2019[1], p. 534). They do not constitute an autonomous order of government under the Constitution.

Even though there is no legal definition of land value capture, the starting point for policy-makers in this matter is the Takings Clause of the Fifth Amendment of the U.S. Constitution. Case law has further specified the principles of nexus and rough proportionality in order for exactions – a land value capture approach – to be applied.

States create the legal framework for land value capture. They are in charge of general building codes and land use planning legislation that defines, among other aspects, which land value capture instruments may be used (OECD, 2017, p. 220).

States typically delegate the authority to control land use to local governments. Under this scheme, local governments can enact local zoning laws and create land value capture tools. In practice, local governments have significant autonomy to control land use within their jurisdiction.

In all, the absence of a national definition and the significant autonomy of states and municipalities result in a high level of variation and diversity when it comes to land value capture instruments.

Infrastructure levy

Infrastructure levies have a long history of implementation in the country. In 1691, the state of New York deployed this tool to finance street and drain construction. In California, during the late 19th century and early 20th century, this instrument financed much of the basic infrastructure for suburban development.

Landowners whose property is benefitted by a certain public improvement should contribute financially to offset its costs. Traditionally, the instrument is well accepted when used to fund sewer lines and sidewalks. Since the 1980s, infrastructure levies have been deployed to fund a more diverse range of public purposes, such as public improvements within business districts, public parks and public transportation projects.

All the 50 states have their own enabling legislations of infrastructure levy. Within the parameters set by state legislation, each local government designs unique configurations. A well-known example is the *Mello-Roos Community Facilities Act* (1982) of the State of California, which authorizes local governments to create Community Facilities Districts to charge special fees to pay for public improvements and services. The national government does not interfere in the recovery of the land value increases.

Infrastructure levies in the US can be divided into two different models. Under the first model, a special assessment district collects fees from property owners and use this future revenue stream to borrow money upfront for large-scale infrastructure constructions. The future fees are used to service the debt. Under the second model, the district

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collects fees and then once a large lumpsum has been collected, it uses the fund for infrastructure construction, maintenance, and improvement. Ideally, the total of fees levied should equal the costs of public improvement.

Before a levy is imposed, local governments often carry out a consultation process with landowners. A specific number of landowners must manifest in favor of the public improvement. To illustrate, in the case of California's Communities Facilities District, two-thirds of the residents within the proposed district must vote in favor of its creation and of the associated public improvements, with their corresponding levy. In all, this consultation process can ensure that the levy is viable and will be met.

The main obstacles to implementation involve landowners, who frequently appeal against the fee in courts. Local governments have to demonstrate that a special benefit impacts specific landowners, which requires extensive technical calculation. In other occasions, landowners lack the financial resources to pay the fee, especially in areas where public improvements are most needed. Lastly, many municipalities lack the capacities to carry out the complex and highly technical procedure of assessing and levying the benefit.

Developer obligations

Local governments seek concessions and contributions from developers when they request approval for new development, development at higher density or exceptional zoning regulations. The developer contribution is intended to compensate part of the impacts that private developments force upon public local infrastructure. Local governments make frequent use of this instrument, which can help fund the construction or expansion of offsite capital improvements.

The developer contributions may be calculated using an established rule or be negotiated. The calculation rule takes into consideration costs of public improvements and the size, type and area of the proposed development. Depending on the type of development, the contributions may be paid in cash, through land dedication, direct improvements to the area, or a combination of all methods.

The charge is paid before or at the time the development receives approval. Exemptions to payment are often granted to developments that provide social benefits, e.g., social housing and green spaces, developments that are under a certain threshold, or those that occur in areas where higher building densities are encouraged.

Developer obligations vary considerably across local governments. To illustrate, there are 37 different types of developer obligations only in the city of San Francisco, California, depending on the location, type, and scale of development projects. For example, the “Transit Impact Development Fee” is a city-wide fee that developers have to be pay in cash, for the purpose of funding transit infrastructure, and whose values vary according to the type and size of development. The “Downtown Park Fund Child Care Impact Fee” applies only to projects located in the downtown area.

The main obstacle to implementation is the fact that developers consider the charge to be economically unfeasible and therefore resist payment, which generates administrative and judicial disputes.

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Charges for development rights

Developers pay charges or offer public amenities to build at higher density. They may opt to pay a charge in order to benefit from recent changes in density parameters made by local governments. Local governments frequently offer density and height bonuses and other regulatory reliefs in return for monetary contributions or in-kind provision of land, public utilities or social housing (denominated "public housing" in the US) units. This practice in the US is most often known as Incentive Zoning, Inclusionary Housing Ordinances, and Density Bonusing.

States can have specific legislations allowing local governments to adopt the charges. Many states do so by having a specific state statute that delineates the permissible boundaries of incentive zoning programs focused on the provision of affordable housing. In other states, the instrument is sanctioned indirectly through case law, special acts, or implicitly permitted under Home Rule power.

Under a typical Inclusionary Housing Ordinance, developers dedicate a share of units to affordable housing, in exchange for building at higher density. The share varies according to the zone or area. The affordable units must be comparable to market-rate units in terms of size, design standards and amenities. Beneficiaries are households with an income below a specific percentage of the area's median income level, as defined in local ordinances. Alternatively, developers may satisfy the requirement by paying a fee, whose funds are earmarked to finance government-built affordable housing.

These programs may combine with different building incentives, for instance, with bonuses for heritage protection or environmental preservation. Therefore, the government approves the development project as a package, which makes it difficult to distinguish which benefits determine which compensations.

If the charge is set in cash, the price varies according to the value of development rights to be obtained. The collected funds are earmarked for specific purposes. In some cases, the revenues must be spent within the neighborhood or district where the charge was levied. Local governments reinvest the funds in local infrastructure projects, such as of public utilities, public transportation and affordable housing units.

Developers and landowners frequently appeal against the requirement to pay the charge, showing resistance to implementation. In many municipalities, the demand for building at higher density is minor. In municipalities where the instrument is applied, there are no substantial challenges in terms of administrative capacities or policy coordination.

Strategic land management

The priority of strategic land management is to facilitate land consolidation and to reserve land for future urban renewal projects. Local governments, as well as special purpose bodies and corporations created by the government for strategic land management, often acquire land in advance of their needs and collect the revenues.

Land acquisition takes place via purchases at market price or through transfers from another government entity. After acquiring land, the government typically redevelops it, alone or in partnership with private actors. Local governments carry out basic physical preparation, provide public utilities and build administrative facilities and affordable and social housing units.

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Acquired land may be destined to another public entity, that will execute a project of public interest, for instance, of social housing. Governments also enter into partnerships with private developers for execution. If the land is not to be used for a public purpose, the government recovers investments through the sale or leasing of plots. If sold to the highest bidder, the main purpose is to generate revenues. If sold using criteria besides the financial aspect, there is a specific purpose, such as to address certain infrastructure needs.

Even though the government holds a substantial amount of land to lease, land leasing is less used than sales. Leases serve to generate public revenues, facilitate development with a public purposes and provide land for real estate development. Lease length depends on the intended uses. Exemptions and discounts to payments may be granted to public or nonprofit entities or if the land will be used for public purposes, notably for social housing.

In all, the main challenges to strategic land management are the lack of financing for land acquisition and the lack of coordination between public entities. The administrative costs to manage and develop land sometimes surpass the revenues raised from land sales, meaning that, from the viewpoint of spending, strategic land management is not always profitable to the government.

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