

# ***Land Appreciation Gain Distribution in Collective Construction Land Marketization: Legal Basis and Institutional Improvement***

**Jiacheng Hu**

*Department of Public Management, Hebei University of Economics and Business, Shijiazhuang, China  
15933618970@163.com*

**Abstract.** That the land which is constructed and collectively operated enters the market is an important structure method which pushes the market work of land factors and breaks the city-country two-layer structure. The distribution of the increasing parts of land value has become a main controversial spot in this reform process. This research investigates the Government Adjustment System for Government Joining in Income Allocation under the situation of Collective-Run Building Land Going into the Market and gives an all-round summarization of the present system structure and its problems in running. This analysis carries out the research on the legal basis and the institutional limits of government's participating behavior. The outcomes have found out several clear problems inside the Adjustment Fund system, including obvious differences between regions on the Expropriation Norms, an unclear law division, and insufficient use limits and supervision systems. Through a theoretical analysis on the supportive, opposite, and compromising standpoints, this research puts forward that the government participation in profit distribution should not gain its justification only through land ownership, but must lay its foundation in the promotion of public value which is produced by planning control, public investment and institutional supply. Under this logic, the government has a limited and restricted supervision function. Through the utilization of the doctrine of Land Value Capture, the research constructs an explanation model of "Public Benefit---Restricted Redistribution---Redistribution Which Is Constrained by Rule of Law" and puts forward institution-related betterment methods.

**Keywords:** Collective-Operated Construction Land Entering the Market, Distribution of Land Appreciation Gains, Land Value Capture, Land Value Increment Adjustment Fund

## **1. Introduction**

The coming in of Collectively-Operated Construction Land going to the Market forms a key institutional arrangement for deepening the market-oriented work of land factors inside China. It also acts as one key step in breaking the city-countryside dual land structure and pushing a united building land market. Not alike State-Owned Construction Land, which is mainly distributed

according to state ownership, Collective-Operated Construction Land that goes into the market directly concerns the achievement of property rights on Rural Collective Land and the distribution structure of Land Appreciation Gains. Along with the deep going of the reform, a number of core problems have already come forth as big disputes. These include which people can obtain the Market Entry Revenue, how this revenue ought to be distributed, and whether---and to what degree---the government ought to carry out Government Participation in the distribution of revenue.

The property advantages which are got through the Market Circulation of the Right to Use Construction Land are not gotten only from the land itself. On the contrary, they have close connection with many kinds of factors, these include Usage Restriction, planning permission, Public Infrastructure provision, Market Environment establishment, and Government Regulation [1]. Therefore, as to whether government ought to take part in the distribution of Land Appreciation Gains, and the legal basis for this kind of participation, it has become a key problem which can not be evaded in both theory and practice [2].

From the angle of system development, the reformation of Collective-Run Building Land Going into Market in our China has walked along a step-by-step road. It has developed step by step from the local try projects to the formal law affirmation, and hence then to the unceasing deepening. In year 2015, the state has launched pilot reform works in 33 counties to explore the system that Collective-Operated Construction Land can enter the market. In year 2016, the ex-Ministry of Land and Resources and the Ministry of Finance together issued the Interim Measures for the Collection, Usage, and Management of the Land Value Increase Adjustment Fund. This document made clear that the government would take part in the distribution of Land Appreciation Gains through the collection of the Adjustment Fund. In year 2019, the revised Land Administration Law of People's Republic of China further eliminated legal obstacles to Collective-Operated Construction Land going into the market. In year 2024, the Decision which is made by the Central Committee of the Communist Party of China on Further Comprehensively Deepening Reform and Advancing Chinese Modernization, once again emphasized that the orderly advancement of this reform should be carried out.

These development situations show that Collective-Operated Construction Land which Enters the Market has already passed the stage of early pilot exploration. At present, this domain has already entered a new stage which is characterized by the deepening of institutions and the further perfecting of supervisory regulations.

However, the continuous pushing forward of reform has thus not solved the system disputes that exist around the distribution of Land Appreciation Gains. On the opposite side, these problems have already become more obvious in actual practice. Firstly, therefore, there exist obvious differences between different regions in the foundation of expropriation, expropriation norms, and distribution ways of the adjustment fund. The norm foundation for Government to join in income distribution has no consistent standard among different areas. This therefore has caused quite large differences in results of the reform. Current researches point out that cross-province disparities in the gathering rates of the Adjustment Fund may attain as high as 35% [3]. Second, the nowadays income distribution mechanism has not been able to properly strike the balance of interests between the government, Rural Collective Economic Organizations, and collective organization members. In certain areas, the ratio of Land Appreciation Gains that is actually got by collective members still keeps comparatively low. This, therefore, destroys the building of stable and clear anticipations about Market Entry Revenue [4]. Third, and more critically, the basic problem is existed in the legal basis of the government's regulation power. At present, it is still not clear whether the Adjustment Fund ought to be categorized as a tax, a fee, or one other kind of Public-Law Burden. The nowadays

system cannot give clear and consistent answers on its legal foundation, usage range, or Surveillance System in the Law Framework.

Therefore, the problem of the distribution of Land Appreciation Gains brought by Collective-Operated Construction Land which enters the market is already not just a problem of the coordination of interests. It has already developed into a standard question which talks about the legitimacy, boundaries, and system realization of Government Joining in Income Distribution.

Current academic researches already have different opinions on whether government ought to carry out Government Participation in Revenue Distribution for Land Appreciation Gains which come from Collective-Operated Construction Land Entering the Market [5]. One standpoint lays stress that the earnings from land value increment are not produced only by the holders of land rights. On the contrary, the government makes contribution to value forming by means of planning control, public infrastructure investment, public service supply, and the keeping of market order. On this foundation, it has the right to share one part of the profits through suitable institutional arrangements. One other viewpoint holds that the core goal of the reform is located in giving power to Rural Collective Land rights. The government's excessively many interventions into Primary Distribution, especially when through tools like the Adjustment Fund, can thereby weaken the effect that the reform has for strengthening land property rights. It also can damage the anticipative property benefits that collectives and their members should obtain.

Although the two viewpoints have many differences, therefore both of them finally gather together on one basic problem. The core question is whether the government participation in profit distribution should obtain justification from Property Rights Logic, financial considerations, or a restricted supervisory power that comes from Public Investment recoupment, planning profits reallocation, and the endeavor for social justice. If there does not exist a clear answer on the level of legal foundation, therefore, it is hard for us to build stable and enough legitimacy. This situation is applicable both to the confirmation of the legal attribute of the readjustment fund and to the formulation of concrete system rules for income distribution.

Under this background, this research regards the Government Supervision System in the distribution of Land Value-added Income from Collective-Operated Construction Land Going into the Market as its core analysis key point. It carries on the review to the operation difficulties of the present system framework and investigates the legal foundation and system boundaries of Government Participation in Income Distribution. This research also utilizes the Theory of Land Value Capture for the further explanation of these problems.

This research puts forward the view that the participation of government in profit distribution should not obtain justification only on the basis of land property right. On the contrary, it must have its foundation on the promotion of public value which is produced by planning regulation, public investment and institutional supply. On such a foundation, the government only has the right to hold a limited and restricted control power in regulation.

Under this precondition, therefore, it becomes possible to push forward the standardized rebuilding work of the Adjustment Fund system. This contains making clear its Juristic Character, polishing its Foundation for Requisitioning, and reinforcing using Limitation and the Surveillance System. Such promotions can protect the property rights of Rural Collective Land, meanwhile achieve the balance between Public Interest protection and the maintenance of reform process stability.

## 2. Current status of Government Participation in the distribution of Land Appreciation Gains from Collective-Operated Construction Land Entering the Market

According to the present system frame and pilot reform practice, Government Participation in Income Distribution is mainly achieved through collecting the Land Value Increase Adjustment Fund.

The Interim Measures for Collecting, Using, and Managing the Land Value Increment Adjustment Fund, which was jointly issued in 2016 by the Ministry of Finance and the previous Ministry of Land and Resources, give a direct system foundation for this kind of participation.

Under the provisions of these Measures, the related subjects must hand over a certain proportion of the Land Appreciation Gains as the Adjustment Fund, when the Collective-Operated Construction Land Entering the Market completes its first entering the market and also its later transfer transactions. The usable rate is normally fixed inside a scope from 20% to 50% [6].

From the perspective of calculation, what people call Land Appreciation Gains is usually defined as the net income which is obtained from market entrance or later transfers after the deduction of land obtaining costs and Land Development Expenditure. When the evaluation of cost is hard to get an accurate result, methods that are simplified can be utilized. These include the reference to the average regional expense of Land Expropriation or the utilization of a fixed proportion of the transaction price [7].

On the whole, the Adjustment Fund system already has become the main mechanism by which the government takes part in the distribution of Land Appreciation Gains. It also stands for a core organizational part of the present income distribution system.

From the angle of institution achievement, the Adjustment Fund system has partially solved the actual demand that the government interferes in income adjustment. It permits the government to take part in the distribution of Market Entry Income by Fiscal Methods, and it formally establishes a public supervisory system for this income.

But, along with pilot reforms that go on pushing forward, the deficiencies of the present system have more and more come into view. These shortcomings are embodied in non-uniform Expropriation Norms, uncertainty in Juristic Character, and not enough arrangements for Using Limitation and the Monitoring System.

Therefore, the institutional construction that Government participates in income distribution is still at the limited stage. The current framework has not yet been developed into a stable, coherent, unified operation system.

### 2.1. Significant regional disparities in Adjustment Fund collection standards

The Temporary Rules for Gathering, Utilizing, and Managing of the Land Value Increase Adjustment Fund stipulate that the gathering rate should as a rule lie between 20% and 50% [6]. But, the data gotten from trial areas displays that there are big differences in the actual carrying out of the Adjustment Fund [8].

This kind of variation is on some degree understandable. Differences which exist in resource gifts, development levels of economy, conditions of land supply, and historical backgrounds can explain that a certain degree of flexibility is reasonable when people set collection rates.

Nevertheless, within certain pilot areas, the difference on rates has gone beyond a reasonable scope of policy independent choice. Take for instance, the lowest gathering rate is fixed at 5 percent in Changyuan County which belongs to Henan Province, hence it is merely 3 percent in Helingeer County of the Inner Mongolia Autonomous Region [9].

Overmuch differences in gathering ratios not only bring about great variations in the distribution results of Land Appreciation Gains among different regions, but also have the risk of damaging public views on the fairness of policy [10].

Further analysis that is carried out by us indicates that the degree of the Adjustment Fund's collection rate directly molds the interest distribution among related parties. A higher proportion may lower the portion of Land Appreciation Gains that can be obtained by Rural Collective Economic Organizations and their members, therefore weakening the incentive functions of the reform [11].

## **2.2. Ambiguity in the legal nature of the Adjustment Fund**

When we compare with regional differences in gathering speeds, the not clear legal classification of the Adjustment Fund is a more basic problem. In current time, as one special fiscal tool, its categorization has not yet got clear definition inside the current rule system.

Article 15 in the Interim Measures says the Adjustment Fund must be collected and managed as Non-Tax Revenue. This shows that it does not naturally belong to the classification of taxation. However, the entities which pay the Adjustment Fund can not obtain specific, direct Public Services as the repayment. Hence, it is not able to be easily put into the category of a traditional charge [2].

Because the central management framework has not made clear definition to its Legal Nature, therefore local governments have used different explanations on institutional design and rule usage [12]. This condition, in some specific situations, has caused the inconsistencies and conflicts which are with the already existing tax and fee systems.

## **2.3. Inadequate management of fund utilization and supervision mechanisms**

Besides problems which are about collection standards and legal nature, obvious deficiencies also have place in the management and supervision of the use of the Land Value Increment Adjustment Fund. The Interim Measures have not given sufficiently detailed or clear rules about what legal nature the Fund has, what is the scope of its use, and what are the supervisory duties.

In actual work, the majority of localities abide by the principle of "obtained from land and utilized for rural regions" when they allocate the Adjustment Fund. As an example, Haicheng which lies in Liaoning Province mainly utilizes the Fund for public infrastructure, public welfare projects, as well as land development. Wujin of Jiangsu Province allocates this fund to farmer security projects and rural ecological compensation.

## **3. Legal foundation for Government Participation in the distribution of Land Appreciation Gains from Collective-Operated Construction Land Entering the Market**

The academic discussion about whether local governments ought to participate in the Government Participation in Revenue Distribution of Land Appreciation Gains from Collective-Operated Construction Land Entering the Market has on the whole produced three representative standpoints: agreement, disagreement, and a compromising viewpoint [13].

I. Supportive View: Government Entitled to Participate in Revenue Distribution Based on Public Investment and Regulatory Contributions

The view that supports this mainly builds its foundation on the "Public Seizure of Price Rise" theory. It is emphasized by this paper that the income brought by land value rising do not only come

from the individual devotion of land right holders, but thus they have the close connection with the whole society development, public policy support, and government control behavior [14].

## II. Opposing View: Initial Attribution of Revenue Should Center on Collective Land Rights Holders

As against the supporting standpoint, the opposite standpoint is founded mainly upon the "Private Seizure of Price Rise" theory or a Property Rights Logical Framework. This text argues that the land value increment income brought by collective construction land entering the market ought in principle to belong to the original collective land owners, that is, rural collective organizations, and that the government ought not to directly take part in the primary distribution of this income.

## III. Compromise View: Government Participation Should Be Determined by the Revenue Formation Mechanism

Being different from the two-side stances of supporting and opposing opinions, the compromise stance lays stress on distinguishing kinds of Land Appreciation Gains and therefore assessing government participation on this basis.

## IV. Position of This Study: Government Holds Limited and Constrained Regulatory Authority over public value enhancement

A comprehensive integration of the above viewpoints shows that, though the supporting, against, and middle-of-the-road opinions get different results, they all talk about a core proposition in the distribution of Land Appreciation Gains from Collective-Operated Construction Land that Enters the Market: these gains are not come from a lone origin.

## 4. Coupling Land Value Capture theory with legal theory: from economic process to regulatory consequences

Land Value Capture originally emerged as an analytical framework within urban economics, public finance, and land policy studies. Its central proposition is that when increases in land value do not primarily result from the rights holders' own labor or capital investment, but rather from Public Investment, planning adjustments, changes in Usage Restrictions, or other government actions, the resulting Land Appreciation Gains should not be entirely appropriated by private actors. Instead, the public sector has the right to recover a portion through institutional mechanisms and reinvest it for Public Benefit [15].

Research by the OECD and the Lincoln Institute summarizes this as the institutional logic that "public action should generate public returns." This logic is operationalized through taxation, special levies, development rights charges, or value-sharing mechanisms, ensuring that land value increases arising from public action are redirected into public finance or governance systems.

From an economic mechanism perspective, the validity of Land Value Capture theory depends on distinguishing the sources of land appreciation [16]. Rising land prices are not always a natural outcome of the land rights holders' independent management, continuous investment, or market transaction capacity. A substantial portion of appreciation derives from improvements in external conditions. For example, construction of transportation infrastructure, investment in education and healthcare, urban renewal programs, changes in land use, increased Floor Area Ratio, enhanced location expectations, and relaxed institutional access can significantly improve land accessibility, development potential, and market expectations, leading to substantial price increases. In this sense, land appreciation is not purely a product of private gain; it exhibits clear characteristics of Public Benefit. Consequently, Land Value Capture theory does not advocate indiscriminate appropriation of all land gains. Instead, it emphasizes establishing recovery and redistribution mechanisms

specifically for the portion of Land Appreciation Gains induced by public investment and government decisions.

However, the concept of "capture" in economics cannot be directly equated with "legitimacy" in legal terms. Economics focuses on efficiency, cost recovery, fiscal sustainability, and the internalization of externalities. Law, however, must address further questions: on what legal basis can the public sector intervene in land appreciation gains that are either realized or anticipated by private parties? What are the boundaries of such intervention? Is its legal nature a tax, fee, special burden, or an independent public-law mechanism for regulating gains? Therefore, to meaningfully apply the theory of Land Value Capture to the legal analysis of revenue distribution from Collective-Operated Construction Land Entering the Market, one cannot rely solely on the intuitive reasoning that "public investment increases land prices, so the government should share in the gains." Instead, it requires translating the economic mechanism into its normative implications. In other words, the critical issue is not whether the fiscal technique of Land Value Capture exists, but whether it can be interpreted as a rights allocation and public-burden arrangement consistent with the rule of law.

Within the legal context, the theory of Land Value Capture can be translated into at least three normative propositions. First, the proposition of distinguishing the sources of appreciation. Not all land appreciation gains should automatically belong to the same rights holder. Gains should be classified according to their revenue formation mechanism. Gains primarily generated through private investment, operational improvements, or ordinary market transactions should be primarily protected under property rights. In contrast, gains mainly arising from public investment, planning approvals, adjustments in land-use restrictions, or institutional empowerment possess stronger public attributes. Legally, these can be regulated by the state or local government through appropriate institutional arrangements. Second, the proposition of recoverability of public investment. When a specific increase in land value is clearly linked to public fiscal inputs, the public sector does not claim rights as the landowner. Instead, it may request limited recovery of the corresponding gains in its role as the contributor of public investment, provider of institutional arrangements, and guardian of public order. Third, the proposition of redistributing for public interest. Captured land appreciation gains should not be treated as general fiscal extraction. They must be subject to usage restrictions, procedural constraints, and proportional limits, and redirected to areas with public-interest objectives. These include public infrastructure development, provision of rural public services, ecological compensation, and protection for collective members. Only when these three propositions are fulfilled can Land Value Capture evolve from a mere fiscal instrument into a legally justifiable mechanism recognized by law.

Applying this theory to the context of Collective-Operated Construction Land Entering the Market highlights its explanatory power. The market entry of collective land is not a spontaneous process. Instead, it is an institutional outcome shaped by the state through legal amendments, policy pilots, relaxation of land-use restrictions, transaction rule design, improved registration systems, and strengthened market supervision. Without confirmation of market entry paths under the Land Administration Law, the establishment of land-use boundaries in territorial planning, or the organization of transactions, land valuation, deal recordation, and ownership registration by competent authorities, the eligibility for exchange, development intensity, and market expectations of the relevant land could not take shape. In this sense, market entry itself constitutes a value reassessment process facilitated by institutional empowerment. Consequently, a portion of the Land Appreciation Gains from Collective-Operated Construction Land Entering the Market does not arise from the land's inherent rights. Instead, it stems from the combined effects of state-provided institutional arrangements, local government public investment, and market governance, resulting in

Public Value Appreciation. For this portion of gains, limited government regulation does not automatically amount to an infringement of collective land property rights. Rather, it may have a valid jurisprudential basis.

It is important to recognize, however, that the theory of Land Value Capture does not automatically justify the conclusion that the government has an inherent right to distribute Market Entry Revenue. First, the scope of capture must be limited to the portion of Land Appreciation Gains with a clear public origin. Market gains, investment-driven gains, or realized rights gains cannot all be treated as publicly available benefits. Second, the method of capture must have an explicit legal basis and comply with the rule-of-law requirements of proportionality, procedural fairness, and oversight of use. Third, the use of captured gains should be directed toward returning benefits to the public rather than general fiscal expansion; otherwise, the legitimacy of the intervention is weakened. For this reason, the true value of Land Value Capture in this context lies not in providing the government with an open-ended theoretical claim to participate in revenue distribution. Rather, it helps establish a refined legal framework: the government does not share in gains based on land ownership, but possesses a limited and constrained regulatory authority over the portion of gains generated by public action. This conclusion distinguishes itself from a blanket notion of Public Capture of Price Increase and also from an absolutist view of Private Capture of Price Increase. It aligns instead with the institutional structure of the Collective-Operated Construction Land Entering the Market reform, which simultaneously empowers rights holders and safeguards Public Interest. Furthermore, if the theory of Land Value Capture is restated in legal terms, its normative core can be summarized as "Public Benefit—Limited Return—Redistribution under Rule-of-Law Constraints." "Public Benefit" refers to Land Appreciation Gains that originate from public investment, institutional liberalization, and administrative regulation. "Limited Return" means that the public sector may claim adjustment only for the portion of gains substantially linked to its actions, without undermining the priority entitlement of collective land rights holders over the remaining gains. "Redistribution under Rule-of-Law Constraints" requires that such adjustment be based on clear legal authority, stable calculation rules, designated usage restrictions, and effective supervision mechanisms.

Through this framework, the theory of Land Value Capture completes the transformation from economic "value recovery" to legal "public-law revenue adjustment." It also provides a more restrained, precise, and legally coherent explanation for government participation in the distribution of Market Entry Revenue from Collective-Operated Construction Land, surpassing the simplistic notion of Public Capture of Price Increase.

## **5. Refining the rules for Government Participation in the distribution of market entry revenue from Collective-Operated Construction Land**

### **5.1. Clarifying the legal nature of the Adjustment Fund**

At the present stage, the Interim Measures for the Collection, Employment, and Management of the Land Value Increment Adjustment Fund which belongs to the Rural Collective-Operated Construction Land regard the Adjustment Fund as one kind of Non-Tax Revenue. This kind of arrangement was comparatively reasonable and practical in the period of pilot reform, hence it gave local governments the flexibility to carry out experimentations.

## 5.2. Improving the mechanism for determining the collection ratio of the Adjustment Fund

The collection proportion of the Adjustment Fund directly has influence on the benefit distribution among the government, rural collective economic organizations, and collective members. It is moreover a key element that is used to decide the fairness and acceptability of this system.

## 5.3. Improving the usage and supervision mechanisms of the Adjustment Fund

The legitimacy of the Adjustment Fund system is not only dependent on clear legal bases for gathering and reasonable gathering proportions but also depends on whether post-gathering employment truly manifests a Public Benefit direction.

## 6. Conclusion

This research discovers that the present system of allocating land increment benefits from collectively managed construction land—with the Adjustment Fund as the core—confronts key problems, including regional differences, ambiguous legal attribute, and insufficient supervision. This paper argues that government participation should obtain justification through public value creation instead of property rights, and therefore must be restricted within a rule-of-law framework. Therefore, this paper puts forward that we should make clear the fund's legal position, perfect collection mechanisms, and strengthen supervision work, hence emphasizing that a balanced, law-based institution method is necessary for guaranteeing fairness, efficiency, and validity in the reform process.

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