

6 INFRASTRUCTURE PLANNING

PURPOSE OF INFRASTRUCTURE PLANNING

As part of this US-24 Corridor Management Plan, the participating government entities asked the consultant team to review the existing storm drainage, water distribution and sanitary sewer collection facilities surrounding the US-24 corridor and provide recommendations on infrastructure planning. During this review, the consultant team collected information from as-built plans, Geographic Information Systems (GIS) data and previously completed studies and plans from the participating governments. In addition, the consultant team met with utility representatives to develop a greater understanding of their system capacities and their visions for future infrastructure expansion and/or improvements. The team collected information, installed the data on aerial photography and considered the infrastructure needs in conjunction with the land use planning. The planned expansion of these future utilities could be completed as a part of future CIP projects or be coordinated with future developments as they occur. In addition, this utility information will be used to develop an understanding of what impact fees may be needed to improve or expand the service areas. No utility modeling was completed for this review.

STORM WATER DRAINAGE

The consultant team first reviewed storm drainage along the corridor as part of the infrastructure planning for the US-24 Corridor Management Plan. Certain areas reflected signs of inadequate drainage. The storm water drainage evaluation did not include a complete hydraulic analysis; rather it included collecting and combining data from the public, previous drainage studies, and field investigations. The consultant team then reviewed this data to determine deficiencies.

Data Collection

In reviewing the storm water drainage for the area, the consultant team gathered previously completed drainage studies conducted within the US-24 study area. The team used the following drainage reports for the review:

- City of Manhattan Storm Water Management Master Plan; May 1, 1995
- Manhattan East Side Drainage Study; October 18, 2006
- Heritage South Drainage Study; July 2006
- Heritage North Drainage Study; August 2006
- Wamego Storm Water Management Master Plan; November 2008

Information obtained from these reports was transferred into a GIS format that is provided in Appendix B.

To supplement this information, the consultant team completed a field investigation of all drainage structures along the US-24 corridor. The investigation included photographing drainage system features and linking the photos to pipe locations in GIS files. From these field investigations, the team determined the pipes were either adequate, marginal or inadequate, based on their conditions. Pipes that provided a lesser capacity of flow than from the time of their original installation were identified as inadequate, marginal or adequate unless there was evidence of an undersized pipe or structure. Pipes identified as inadequate were those that had significant damage to the end sections, were collapsed, or were silted in. Marginal pipes were those that had experienced minor restrictions to flow. Pipes that were in good condition were identified as adequate.

In addition to the above methods of storm drainage data collection, the team collected public input during the public meetings and outreach. This opportunity for open participation allowed users of the corridor, business owners and area residents opportunities to provide information about their drainage concerns. The consultant team reviewed the concerns to determine if future corridor improvement projects could assist in improving the drainage in inadequate locations. The public involvement process identified specific drainage issues at the following locations:

US-24 (Lake Elbo Road to Excel Road) – The public identified this location early in the process. The middle section of ground located north of US-24 in between Lake Elbo Road to Excel Road experiences significant flooding during a storm event. This problem exists because of the elevation of the property in relation to the elevation of the adjacent drainage ditch. Both appear to be extremely close in elevation. In addition, the longitudinal slope of the adjacent ditch is relatively flat. Therefore,



Ponding north of US-24, between Excel and Lake Elbo Road.



Ponding along Dempsey Road.



Drainage Structure under Limerick Lane.

the ditch does not drain at a rapid pace. In addition, slightly downstream is a Reinforced Concrete Box (RCB) structure that crosses Limerick Lane and appears to be significantly undersized. The RCB appears to be causing water to back up along the corridor. Improving drainage through this structure would improve the drainage along this section during an intense storm event. In order to solve the drainage problems at the flooding property, the consultant team recommends placing fill on this property to raise its elevation.

US-24 (Crown C Circle to Green Valley Road) – Drainage along the south side of this corridor section is poor. Currently, the ditches along the south side of US-24 have very little longitudinal slope, therefore preventing drainage from occurring at a preferred rate. In addition, the residential area directly south of the corridor to the Union Pacific Railroad Track is very flat. From field visits following a storm event, consultant team members determined significant storm water ponding occurs in this area. Because of the complexity of this drainage area, the team did not identify immediate solutions as part of the storm drainage review. However, the team does recommend conducting a comprehensive drainage study for this area to determine the best methods of storm water management.

US-24 & Kaw Valley Road Intersection – The consultant team learned that, during large storm events, storm water runoff crosses the road at this intersection and flows into a ditch and floods. The 2008 Wamego Storm Water Master Plan also identified this drainage deficiency. The Wamego Plan recommends making drainage improvements that include the removal of the existing structures and the construction of a 4-foot by 4-foot RCB beneath the intersection.

Through the storm water drainage review, the consultant team identified other deficient areas as follows:

McCall Road (Hayes Drive to US-24) – Several drainage issues were identified along McCall Road. In October 2006, the City of Manhattan finalized an Eastside Drainage Report that evaluated drainage on the east side of Manhattan, which included McCall Road. This study provided several recommendations for the troubled areas. The City has made significant drainage improvements along McCall Road from Tuttle Creek Boulevard to Hayes Drive. The City completed the improvements as a part of the commercial development that occurred in the Limey Point Addition.

Officials anticipate additional drainage improvements occurring at this section during the widening to McCall Road from Hayes Drive to the US-24 intersection. As indicated in the Eastside Drainage Study, the improvements involve constructing a storm sewer collection system consisting of a 5-foot by 3-foot RCB that connects to and expands into 2-5-foot by 3-foot RCBs directly west of the US-24 and McCall Road Intersection. This storm drainage would flow into another improved closed system that consists of 3-6-foot by 4-foot RCBs that cross US-24. This drainage would continue under the Union Pacific Railroad Tracks through a 96-inch Reinforced Concrete Pipe (RCP) and across the agricultural fields in front of the Manhattan Wastewater Treatment Facility. Next, the storm drainage travels through an 84-inch RCP that passes through the U.S. Army Corps of Engineers' Levee and outcrops into the Kansas River. The construction of this improvement should have a significant, positive influence on the corridor and relieve some of the drainage along the corridor.

Frontage Road along US-24 (Tuttle Creek Boulevard to McCall Road) – Based on information provided in the eastside drainage study, the team recommends other drainage improvements for the frontage road along US-24, including the removal and replacement of several existing cross road pipes with potential upgrades at specified locations. For additional information pertaining to this drainage structures, see the 2006 City of Manhattan Eastside Drainage Plan.

US-24 through Wamego – Based on information obtained from the 2008 Wamego Storm Water Master Plan, the consultant team identified the following drainage structures along the corridor as inadequate:

- Commercial Circle Drainage Structure (North of US-24) – This improvement shall include the removal of the existing pipe and the installation of a 42-inch RCP beneath Commercial Circle Drive.

- Lilac Lane Drainage Structure (South of US-24) – This improvement shall include removal of the existing pipe and the installation of a 60-inch RCP.
- US-24 and West Lincoln Street Drainage Structure – This improvement shall include the removal of existing pipe and the installation of 36-inch RCP across the intersection.
- US-24 and East Lincoln Street Drainage Improvements – This improvement shall include the removal of the existing pipe and the installation of a 24-inch RCP.

There was also consensus that officials needed to coordinate and plan both existing storm water drainage and future changes to ensure future successful drainage patterns.

WATER DISTRIBUTION SYSTEMS

Manhattan Service Area

The City of Manhattan has been proactive in growth planning caused by the reassignment of approximately 11,000 troops to Fort Riley. As a part of this growth planning, City representatives are currently in the final stages of design for improvements to the Manhattan Water Treatment plant that will expand its ultimate capacity from 20 million gallons per day (MGD) to 30 MGD. The total estimated cost for these improvements is \$20 million.

With these proposed upgrades, the City will have plenty of capacity to provide Manhattan with quality water service for many years into the future. Currently, there are several areas surrounding Manhattan that have inadequate fire flow and experience low peak pressure. The City envisions eventually providing wholesale water service to these areas, as the community grows. However, in this model, the responsibility for maintaining the existing distribution system infrastructure remains with the Timbercreek Water District or Pottawatomie Rural Water District #1

If the City of Manhattan were agreeable to providing additional water service along the corridor and to the Blue Township and Pottawatomie County service areas, following the rationale provided below, officials would need to complete significant infrastructure improvements. These improvements would include the extension of a 16-inch transmission water main from the existing Heritage Square extension up and along Excel Road, to a proposed 810,000 gallon elevated storage tank located along Harvest Road. The estimated cost for these improvements in 2003 was \$3.8 million. Currently, no water service or distribution issues have been identified along the US-24 corridor or McCall as it relates to the City of Manhattan.

Rural Water District #1

Rural Water District #1 was created in 1971 to provide water service to rural areas surrounding Manhattan, St. George and Wamego. As Manhattan has grown, the density of the development that has occurred in the Blue Township become more urbanized near Manhattan. This urbanization is currently providing a strain on the water service infrastructure system of Rural Water District #1. The existing system will reach its maximum capacity with the addition of approximately 300-400 residential units. Any additional commercial or industrial usage would further reduce the available capacity of the system. Water pressure issues already exist during peak times within the Green Valley area. Without significant improvements to the system, the level of this service will continue to decrease and ultimately fall below acceptable standards. A service map Rural Water District #1's Services pertaining to US-24 can be found in Appendix B.

The current well field for Rural Water District #1 is located east of the Flush Road and Elm Slough intersection. This well field has the capacity to produce approximately 300 gallons per minute, which is distributed to the Green Valley area through a 10-inch waterline. The water distribution lines within the urbanized areas range from 2½-inch to 8-inch diameters. Most of the service lines in this area appear to be undersized for urbanized development.

Rural Water District #1 has developed a current master plan to construct approximately \$6 million worth of infrastructure improvements. It envisions improvements to include constructing a reverse osmosis treatment facility, a water storage facility and an additional well and pumping system. In addition, Rural Water District #1 has acquired the necessary permits and water rights to increase its pumping capacity approximately 1.03 million gallons per year.

The difficulties of constructing and implementing these improvements are their financial investment and impacts on user rates. Rural Water District #1's current rates are \$25 per month plus \$1.60 per 1,000 gallons of usage. These proposed improvements would significantly increase those rates. Therefore, the water district has given serious consideration regarding the implementation of the proposed infrastructure improvements. The district's officials from the Rural Water District #1 have held preliminary discussions regarding the possibility of obtaining wholesale water from the City of Manhattan. This would eliminate the need for the proposed water well and water treatment facility, and would significantly improve the current capacity issues.

US-24 Corridor Management Plan

Completed by HWS, in association with: George Butler & Associates, Gould Evans, Richard Caplan & Associates and Stinson Morrison Hecker

Pottawatomie County

Pottawatomie County currently provides water service for the area known as Timber Creek in the Green Valley area. Timber Creek is primarily a residential area that began development in 1996 and now consists of more than 350 homes. Its water distribution system consists of water lines ranging from 2½ -inch to 6-inch in diameter and serviced by an eight-inch transmission line that connects to Well Number 1 and Well Number 2 located north of the Green Valley Industrial Park along Green Valley Road. Due to the water quality at the existing well, only chlorine is required for water treatment. Pottawatomie County has no plans to expand its water service infrastructure and its service limits, and ultimately envisions acquiring wholesale water from the City of Manhattan to service the Timber Creek Subdivisions.

St. George Service Area

The City of St. George currently provides water to the community from two wells located just north of US-24 along Rockenham Road. A chlorinated gas system treats the water from these wells, and the water is then pumped to a 100,000 gallon storage tank located along Rockenham Road, just inside the city limits. The trunk lines within the community are mostly 8-inches in diameter with other distribution lines in the community ranging from 2-inches to 6-inches in diameter. There are approximately 245 water meters on the existing system. The water distribution systems appears to have adequate pressure as there is currently a pressure-reducing device located on the trunk main that services the entire community.

With the location of the existing well, the City of St. George appears to be well positioned to provide the US-24 corridor with water services. Officials will require additional infrastructure in order to accommodate the future growth needs of the corridor and the community. The City currently does not have a formal Long Range Comprehensive Plan. With the significant amount of growth that has occurred and is expected to occur over the next 20 years, the consultant team recommends that the City investigate opportunities to complete this master planning task.

Wamego Service Area

The City of Wamego currently has the plant capacity to service additional growth in the community. Its primary issue is low water pressure during peak times due to undersized or aging waterlines. The City has hired a consultant and is currently in the process of completing the final design of a new water tower, with construction imminent. The new tower will be located along US-24 near the intersection of Columbian Road and will connect to the 12-inch water main that runs adjacent to US-24. While

this will improve the water pressure issues in the area, due to the terrain it will not be capable of servicing any future growth that may occur west of Salzer Road. Therefore, an additional water tower will be needed as future development begins occurring along US-24 west of Salzer Road.

Currently, the Prairie Ridge Subdivision located directly north of US-24 and west of Columbian Road experiences water pressure issues. This development owns their own water distribution system that currently does not meet city standards. Therefore, future development will be restricted in this area until these water issues can be resolved.

The Wamego Industrial Park located along US-24 is serviced by 12-inch loop. Therefore, the city has adequate water infrastructure to support future industrial development. Other areas along the US-24 corridor appear to be adequately serviced.

SANITARY SEWER COLLECTION SYSTEMS

Manhattan Service Area

The City of Manhattan has taken a proactive approach to providing sanitary sewer services to its citizens and to some of the non-annexed areas surrounding Manhattan. Currently, the City is in the final design stage on improvements to their existing wastewater treatment facility, which will expand its current capacity of 8.7 MGD to 16.0 MGD. This major infrastructure improvement has an estimated total cost of \$40 million. Based on conversations with City staff and a review of the existing and updated sanitary sewer collection systems, there appear to no significant sanitary sewer collection or treatment issues within the US-24 study area. The City of Manhattan, following the construction of its proposed upgrades, would have adequate capacity through the projected year of 2030.

Pottawatomie County

Blue Township Sewer District currently provides only sanitary sewer services to the Green Valley area in Pottawatomie County. Plans exist for Pottawatomie County to move away from the existing .2 MGD treatment facility located along Fielding Road south of US-24 to a future pump station that will pump this waste to the Manhattan Wastewater Treatment Facility. Under this scenario, the County would continue to maintain the existing collection system, with the City of Manhattan charging Pottawatomie County for sewage treatment services. This project is more formally referred to as the Blue Township Sewer Improvements in the City of Manhattan Sanitary Sewer Collection System Master Plan's 2009 update. The project

envisions installing approximately 15,700 linear feet of force main and implementing a new lift station directly south of the Union Pacific Railroad Tracks along Excel Road. The force main would be located along the north edge of the Blue River and cross at a connection point near the Manhattan Wastewater Treatment Facility. The total estimated cost of this improvement is approximately \$5.3 million. The City of Manhattan has agreed to provide the County with .6 MGD of wastewater treatment as a part of this improvement, which is currently three times greater than its current treatment capabilities. This additional .6 MGD will provide the county with adequate capacity for the area's future projected growth.

St. George Service Area

The City of St. George also has a keen understanding of the importance of utility infrastructure as it relates to residential and commercial development. St. George is currently in the process of designing a new wastewater treatment facility with expected construction completed by late 2012. St. George will construct this facility adjacent to its existing facility near the Kansas River. This treatment facility will boost their current treatment capacity from 60,000 gallons per day to 160,000 gallons per day. With this expansion, the St. George Community anticipates that new infrastructure can be added to the existing system that will extend sanitary sewer service up to and along the US-24 Corridor from Flush Road to Blackjack Road. Existing developers and landowner along the corridor have recently expressed interests in these potential connections and have verbally agreed to participate in a percentage of the associated costs of the improvements. As indicated in the water distribution section, the City of St. George needs to investigate funding opportunities to complete a Long Range Comprehensive Plan for their community. They have seen—and will continue to see—significant growth as the US-24 corridor and its surrounding communities continue to expand.

Wamego Service Area

In 2004, The City of Wamego and Pottawatomie County completed a comprehensive study of their Sanitary Sewer Collection System. The existing collection system consists of over 127,500 feet of sewer lines, 435 manholes and two pump stations. The existing wastewater treatment plant is located south of Valley Road near the Kansas River. One of the main problems identified in this study is related to the inflow and infiltration of storm water into the existing collection system. Resolving this problem will only provide improved performance to the plant during peak operations. The comprehensive study also recommended improvements throughout the community for parallel lines or piping network upgrades. Based on the team's discussion with City staff, it appears the City of Wamego is well positioned to handle additional capacity at its wastewater treatment plant. Therefore, the City need only require that, as new development occurs, the future sanitary sewer connection infrastructure will need to connect to existing piping networks.

COST OF FUTURE INFRASTRUCTURE

As a part of this infrastructure planning effort, the consultant team was asked to review potential funding mechanisms for financing the proposed infrastructure improvements related to the projected US-24 growth. See Section III of Chapter 7: Implementation for details on financing strategies. From this review, the following project financing strategies would be the most useful.

K. S. A 12-6a Improvement Districts

Improvement Districts are the Kansas form of a traditional benefit district; a financing and development tool whereby cities and counties can establish a district, construct improvements and then issue general obligation bonds for construction of public improvements and assess the cost to those properties that are specifically benefited by the improvement. The bonds are then retired through payment of special assessments that are paid along with the benefited property owner's ad valorem property taxes by these benefiting properties. There is a very specific statutory process that must be followed to effectively utilize this strategy.

Improvement Districts are used by cities and counties to assist in development of arterial roadways (usually associated with section line roads), water lines and sanitary sewers, among other public improvements. It is a responsible and fair method available to communities in Kansas to pay for the roads and infrastructure associated with new development, though its use is not limited to improvements to support only new development. For example, it is often used as the financing mechanism for the construction of new sidewalks in existing developments. However, the method can be effectively used to ensure that existing property owners do not pay for improvements from which they do not receive a special benefit.

With the number of roadway, sanitary sewers and water line improvements throughout a community, if the community did not utilize improvement districts, either the improvements would not be made or property owner's ad valorem property taxes would need to be raised to allow for the construction of these necessary improvements. Developers have the option to build the improvements in front of their land to meet city specifications, but in so doing, a hodge-podge of improvements would occur, and the improvements could be under construction at different times and cause much more disruption than the orderly process afforded by the creation and administration of Improvement Districts.

Main Trafficways

K.S.A. 12-685 et seq. authorizes cities to designate by ordinance any existing or proposed street, boulevard, avenue or part thereof, within its jurisdictional boundaries as a main trafficway, if the primary function of the street is the movement of traffic between areas of concentrated activity within or outside the city. Once designated a main trafficway, the city is authorized to acquire by purchase or condemnation the necessary right of way for that facility and to improve or re-improve that trafficway. Virtually all aspects of the construction of these trafficways is authorized, including bridges, viaducts, overpasses, underpasses, culverts and drainage, trafficway illumination, traffic control devices and pedestrian ways. The cost for these improvements, including acquisition, can be paid for from the city's general improvement fund, internal improvement fund or any other available funds or by the issuance of general obligation bonds. No vote of the public is required for issuance of bonds for these purposes. This method is often used in conjunction with the improvement district statute for street improvements.

Capital Improvement Program

A Capital Improvement Program, or CIP, is a short-range plan, usually four to six years, which identifies capital projects and equipment purchases, provides a planning schedule and identifies options for financing. Essentially, the CIP provides a link between a municipality, school district, or other local government entities, and an entity's comprehensive / strategic plan and annual budgets. CIP projects can be funded through a variety of funding sources, such as bonding, revolving loan programs, assessment fees, transportation development districts (TDD), as well as other governmental funding mechanisms.

Impact Fees

An impact fee is a fee that is implemented by a local government on a new or proposed development to help assist or pay for a portion of the costs that the new development may generate in public services necessary to serve that new development. See Section III, Chapter 7: Implementation Chapter for a full discussion of impact fees. They are considered to be a charge on new development to help fund and pay for the construction or needed expansion of offsite capital improvements. These fees are usually implemented to help reduce the economic burden on local jurisdictions that are trying to deal with population growth within the area.

Impact fees have become the most important method in infrastructure financing and an essential part of local governments' funding for infrastructure or public services. Impact fees may help to assist in the development of needed streets, parks, schools, roads, sewer, water treatment, utilities, libraries, trails and pedestrian ways and public safety buildings to the newly developed area. In most cases, impact fees are used in new development. For example, when a new neighborhood or commercial development is constructed, the developer may be required – as a condition of the approval of a new plat or building permit – to pay the developer's proportionate share of the cost of new infrastructure due to the demand the new development generates. Generally, this fee is passed on by the developer to the future property owners.

Developer-Incurred Costs

This funding process places the burden of costs for infrastructure projects related to a new development upon the developer. In turn, the developer would ultimately pass on these costs to the individuals who purchase property within the new development.

7 IMPLEMENTATION

INTRODUCTION

Substantial effort and expense has been put into the development of this US-24 Corridor Management Plan. All of the parties have invested significant resources to:

- collect and analyze all available, relevant background information on the land area included within the corridor study area to fully understand current conditions;
- study and extrapolate projections from the current plans adopted and being prepared by the parties and other entities whose plans may have an impact on development within the corridor to identify trends and prepare alternative scenarios of how future development may and can progress;
- prepare market projections on development opportunities and constraints that will either positively or adversely affect development potentials;
- reach out to all interested stakeholders to obtain input and guidance on what has occurred, what exists and what they feel should be the vision for this corridor into the future; and
- forge a consensus among KDOT, the community partners and interested stakeholders on a plan that captures this shared vision for enhancements to the mainline highway and adjacent local street network and the interface between the two, including the type and location of points of access, as well as land uses and densities and intensities of development within the corridor.

IMPLEMENTATION TOOLBOX

Successfully completing this planning effort is a major accomplishment in and of itself. The dividends which will flow to the parties from having achieved this goal are inestimable. That being said, this Corridor Management Plan is just that: A PLAN. The real purpose for doing a plan is to, through comprehensive and thorough analysis, create a decision-making guide for all the interested parties, so that the vision and, as much as possible, the details of the Plan can become reality.

To make this vision a reality, KDOT and each of the local communities within the corridor must take action to implement the US-24 Corridor Management Plan. This chapter describes a series of techniques – a “toolbox” – that partners can use to help turn the maps, illustrations, policies, goals, strategies and recommendations into the actual facility improvements and the associated development patterns envisioned by the Plan. The tools, when

put into place, have the supplemental benefit of establishing additional criterion against which state, county, municipal and utility improvement plans and private development proposals can be evaluated, as each is brought forward through time. Having this supplemental criterion in place will give all parties greater assurance that all the resources the parties put toward creation of this Corridor Management Plan are realized upon and that the vision for this corridor becomes a well-functioning component of each community.

The toolbox of techniques is divided into three categories:

- Corridor Preservation Strategies
- Access Management Strategies
- Financing Strategies

CORRIDOR PRESERVATION STRATEGIES

Corridor preservation is achieved through planning and the implementation of those resulting plans using a variety of regulatory strategies, including zoning, subdivision regulations, access management and exercise of the police power. One primary goal is to control or protect areas identified in the Plan that will be necessary for future enhancement to the mainline of the highway as well as for improvements to the local street network within the corridor. An equally important goal is to preserve and, wherever possible, enhance opportunities for development at locations within the corridor that maximize the economic potential of the corridor, while simultaneously preserving the functionality of the mainline highway, its access points and the interfacing adjacent local street network. Benefits of corridor preservation include:

- preventing incompatible development;
- minimizing adverse environmental/ social /economic impacts; reducing displacements;
- establishing the location of transportation facilities which allows communities increased opportunities to achieve orderly development through future planning; and
- reducing future project costs.

Close coordination between KDOT and the local communities is essential since authority for some preservation tools are vested in the state and the authority for others is vested in the local governments.

Planning Tools

Comprehensive Planning - To help ensure that the land development decisions are consistent with and are made in accordance with the recommendations of the Corridor Management Plan, each community should adopt the Corridor Management Plan, including the Future Land Use Maps, as a part of their respective comprehensive plans. K.S.A. 12-747 authorizes city and county planning agencies to make or cause to be made a comprehensive plan for the development of that community. There is specific authority to adopt area or sector plans covering only a portion of the area within a community’s jurisdictional boundaries. The Plan must show the commission’s recommendation for the development or redevelopment of the territory included in the portion of the Plan prepared. The planning commission must hold a hearing on the adoption of the Corridor Management Plan and make a recommendation to the governing body on its adoption. The plan does not become effective unless approved by the governing body. *Jurisdiction:* Local.

Official Maps – An official map is a legally adopted map that conclusively shows the location and width of proposed roads or streets, public facilities and public areas and drainage rights-of-way. It is also commonly referred to as a major street plan. Although the Kansas statutes do not specifically authorize cities or counties to adopt an official map, K.S.A. 12-747, in its description of the elements that should be covered in a comprehensive plan, clearly contemplates that the plan include the type of information that is traditionally included in an official map. It goes without saying that the lack of specific statutory authority to adopt an official map in no way precludes a city or county from acting pursuant to their home rule authority to do so. In addition, K.S.A. 12-765, discussed below, granting authority to cities and counties to establish building or setback lines, does authorize cities doing so to incorporate by reference an official map in the ordinance or resolution, as the case may be. The adoption of an official map as a part of the community’s comprehensive plan or as a standalone document gives that community one additional point of reference and source of guidance when considering development applications relating to land that lies within the corridor to determine whether the development proposed will have an impact on the improvements contemplated by the Corridor Management Plan. *Jurisdiction:* KDOT/Local.

Plan Consistency – To help ensure that the community’s comprehensive plan is internally consistent and therefore effectively serves as a comprehensive guide to development within the community, upon adoption or in conjunction with the adoption of the Corridor Management Plan, the community should review its existing comprehensive plan to assure that other portions of the plan support and are not in conflict with the recommendations of the Corridor Management Plan. If the community identifies inconsistencies, it should revise and readopt the comprehensive plan with revisions designed to eliminate those inconsistencies using the procedures outlined for the adoption of a comprehensive plan. *Jurisdiction:* Local.

Utility Planning – Utilities necessary to support development will be constructed within the corridor. It is critical that these utilities be located at places that are consistent with the Corridor Management Plan, so they will not have to be relocated upon construction of enhancements to the mainline highway at future dates. Each community within the corridor should, in coordination with all providers of utility services within its corporate boundaries, prepare and continually update a master utility plan. These utility master plans must be carefully coordinated with the Corridor Management Plan to ensure consistency between the two. KDOT and communities within the corridor should carefully evaluate the Corridor Management Plan, when making decisions about the location of new utilities and related easements. In addition, KDOT and each community should establish a regular point of interface with each utility provider to ensure coordination between the parties in ongoing planning efforts and land acquisition and placement decisions. *Jurisdiction:* KDOT/Local.

Conformity of Public Improvements – K.S.A. 12-748 provides that whenever a planning commission has adopted a comprehensive plan for an area, no “public improvement, public facility or public utility,” of a type covered by the recommendations of that plan, may be constructed without first being submitted to and approved by the planning commission as being in conformity with the plan. Public entities with plans for construction of these improvements, facilities and utilities should consult with the representative of cities and counties with adopted comprehensive plans early in that entity’s decision-making process and timely submit those plans to the appropriate planning commissions for this determination. This requirement

applies to any public entity that is intending to do this type of construction within the jurisdictional boundaries of a city or county. This is an important way to ensure due consideration is given to the recommendations of the Management Plan, once it is made a part of a community’s comprehensive plan. Cities and counties that learn of plans for construction of this type, by another public entity within their boundaries, should be diligent in contacting the entity to make sure they are aware of this obligation and then to facilitate the contemplated review, thereby helping to ensure the Plan is fully considered in these situations. It is important to note that the governing body of the entity proposing this construction can over-ride a negative recommendation of a local community planning commission, but even in that instance, an important opportunity for review of the consistency between the proposed construction and the Management Plan by the parties is captured. *Jurisdiction:* KDOT/Local.

Regulatory Tools

Development Moratoria – A public sector entity may, through passage of a development moratorium, temporarily halt the processing of applications for all or a specified type of development until a governmental activity is completed, such as the adoption of a plan or the passage of a revised ordinance on a specified subject. The Supreme Court recently held that a reasonable moratorium fulfills a legitimate public purpose and is not per se a taking.

As vigilant as the partners may be in incorporating the US-24 Corridor Management Plan into local comprehensive plans and utilizing the regulatory strategies to implement the Plan, situations are bound to arise where development pressures overtake the local professional staff’s ability to effectively manage those pressures. In those situations, development moratoria are a very effective tool to help stem those pressures while the community determines what approach will be most effective; be it an amendment to the comprehensive plan or passage of an ordinance/resolution establishing a new or updated regulatory implementation technique, such as an overlay district.

The moratorium ceases the processing of applications during a legislatively established period of time needed to prepare and adopt strategies the community determines will best address the circumstance. It is important to note that adoption of moratoria is generally considered to be a zoning

action. Accordingly, that ordinance/resolution must be passed pursuant to the hearing and notice requirement of Article 7 of the Kansas Statutes. For that reason, it is critical that communities act quickly to get a moratorium in place once a situation calling for a “time out” is identified. One way to close the window on the rush of applications that might result from notice of the consideration of a moratorium ordinance is for the community’s governing body to adopt a resolution directing staff to stop accepting applications until the moratorium ordinance takes effect. The authority for adoption of a resolution of this type is found in the “pending ordinance” doctrine, which has been accepted by the courts of most states. *Jurisdiction:* Local.

Zoning – Zoning is one of the most prevalent and effective mechanisms for implementing a comprehensive plan. Zoning is a process utilized by local governments to classify land into areas and districts. These areas are generally referred to as “zones,” and impose, in each area and district, restrictions related to building and structure designs, building and structure placement, and uses to which land, buildings, and structures within these districts may be put, including setbacks and height, lot coverage, and impervious cover restrictions. Zoning ordinances may also make provisions for certain uses to be established community-wide or in individual zones only by issuance of a special or conditional use permit. Rezoning of parcels that have been previously zoned may be initiated by the local community or by a property owner. *Jurisdiction:* Local.

Through the adoption of zoning ordinances, which are carefully tailored to implement the strategies and policies of the Corridor Management Plan, development within the corridor can be effectively managed to ensure successful implementation of that Plan. K.S.A. 12-755 and 12-756 authorize both cities and counties to adopt original zoning ordinances, and K.S.A. 12-757 authorizes the rezoning of properties in those instances where changing a property’s zoning classification is advisable or necessary to adapt original zoning to current situations. K.S.A. 12-715b authorizes cities, with a couple of exceptions and under certain conditions, to adopt zoning regulations applicable to land located outside of its corporate limits, but only within three miles of those limits and only if the county has not adopted zoning regulations applicable to that area of the county. Written notice of a city’s intent to adopt zoning outside its limits must be provided to the appropriate board of county commissioners. Similarly, each county that proposes to adopt zoning regulations affecting property within three miles of the corporate limits of a city must give written notice of its intent to that city’s governing body.

Zoning Approval Criteria – Arguably, the most important Kansas Supreme Court case dealing with zoning is *Golden v. the City of Overland Park*. Golden sets out a set of factors that planning commissions and governing bodies may consider when deciding whether to approve or deny a zoning application. One of those factors is consistency with the comprehensive plan. Each community along the corridor, when acting on a development application related to land that lies within the corridor, should consider whether the development proposed by that application is consistent with the Corridor Management Plan, as adopted into its comprehensive plan.

Overlay Districts – One of the most effective plan implementation zoning techniques is overlay districts. An overlay district can be either mapped or narratively described to be mapped at some later point in time (floating). An overlay district superimposes certain additional restrictions that modify or supplement the restrictions of the underlying zoning district or districts, in recognition that distinguishing circumstances exist within the area that must be regulated in a manner different from the regulations of the underlying district. One misunderstanding about the term overlay district is that communities think there is a model that can be pulled off the shelf and adopted to serve as its overlay district. While it might be accurate to say that a model procedural framework might exist, nothing could be farther from the truth when talking about the real implementation aspects of the overlay district. The whole goal behind adoption of an overlay district is to address special and unique circumstances and considerations that affect a specific geographic area of the jurisdiction differently than other areas of the jurisdiction. Thus, the objective is to identify those circumstances and considerations; articulate visions for how that particular area should develop over time (while both accommodating and capitalizing on opportunities presented by those considerations, and then develop regulations, restrictions and incentives to guide development to effectively realize that vision.

Overlay ordinances are generally composed mainly of design and performance guidelines and standards, and are filled with illustrations and graphics. They are carefully prepared to effectuate the plan for that specific area. In this instance, the Corridor Management Plan has created the vision, or at least, the superstructure of that vision. An overlay district is crafted to implement that Plan. It is also common for people to believe that the community could prepare one overlay district, and that it would apply to all land in its jurisdiction within the corridor. For the very reasons stated above, that notion is incorrect also. Because the Plan identifies development scenarios that are unique to each different location within the corridor, the

idea that one set of regulations and incentives could be prepared to guide development along an entire length of a corridor is flawed. Each one of those locations should have its own overlay district with carefully chosen implementation techniques employed to achieve Plan objectives. Potentially, one overlay district could be prepared for each jurisdiction along the corridor, but for it to have any real usefulness; it would have to break the corridor into distinct segments with a separate set of standards created for each segment.

Planned Districts – Conventional zoning allows for an amendment of the zoning classification of land upon application of the governing body or the planning commission. If the proposed amendment affects specific property, the landowner many make application. The procedures set forth above govern the consideration of and action on zoning amendments, generally called rezoning. So long as the decision to rezone is reasonable, in light of the Golden criteria, the rezoning may take place at any point in time. Most commonly, a rezoning is applied for just in advance of development of that property or when a change of use is contemplated as a part of redevelopment of the property. Nothing, however, requires that there be pending development for a rezoning of a particular property to be reasonable. Sometimes properties are rezoned well in advance of any potential development or redevelopment activity. There may be a very valid public purpose for rezoning land substantially before it is ripe for development or redevelopment, and in those instances, the application should be made by the governing body or planning commission. It is generally good planning, however, not to prematurely rezone land to a zoning category other than one that allows its current use or to a use that is imminent. A community can successfully illustrate its vision of how land should be developed, in terms of general uses, through the future land use map of its comprehensive plan. It really does not need to zone land to an anticipated land use well in advance of development to make its community vision for land use known.

Generally, a community's development objectives can best be served if it has as much information about contemplated uses, proposed site terrain, location and type of infrastructure being proposed, building arrangement, architectural design and other features of development, as is possible, when it considers a rezoning application. Planned districts are an excellent tool to help in achieving this objective. A community's zoning ordinance can provide that all its zoning districts are planned districts, it can provide

a parallel planned district for each or any number of its conventional districts (such as C-1 and C-1/P) or it can create separate planned districts for certain types of development or for development in certain locations.

The planned district process ensures this type of information is available to the planning commission and governing body by converting the traditional rezoning process into a two step process. The applicant submits two separate plans to the community at different points in the approval process. The plan contains an increasing level of detail commensurate with the stage at which the property is in development process. These plans are generally called development plans; one a preliminary and the other a final development plan. Although what the submittal is called is without significance. The preliminary development plan is submitted along with the application for rezoning.

The amount of information that is included in the preliminary plan can and should vary from community to community, but in any event should include enough to allow decisions makers to understand the nature and quality of the development being proposed. The following type of information would generally be included: topography, locations of building and other structures, dimensions portraying relationships between buildings and to property and setback/build to lines, on site and adjacent area circulation, storm water management approach, preliminary sketches depicting the general style, size and exterior construction materials of proposed structures and evidence of adequate public facilities. Both the planning commission and the governing body consider and act on the preliminary plan at the same meeting they consider the rezoning application.

No rezoning application may be approved until and unless a preliminary plan for that property is approved. This helps ensure that the decision makers fully understand what is going to be developed on that property when the rezoning is approved. An applicant may opt to combine the two plans into one and submit the combined plan with the rezoning application. It is just necessary that all the submission requirements of the two plans are incorporated in the submitted plan.

Typically, the approved preliminary plan stays in effect for a set period of time; most commonly two years, with the possibility of an extension if justified and applied for before the expiration of the approval. This process can be easily adapted to phrased projects.

The second step in the planned district approval process is the submission of a final development plan. This occurs after engineering drawings have been approved, but before any building permit may be issued. The final plan must be substantially consistent with the approved preliminary plan or be approved using the same process for preliminary plan approval. The final plan contains much more information than the preliminary, as, of course, the developer has moved farther along in designing the development, so more information is available to provide additional assurance to the community that the development proposed is appropriate for that location. These final plans, when consistent with the preliminary, can be approved administratively or legislatively or through a combination of the two. Once the plan is approved, it is filed of record with the county register of deeds. All development at the location covered by the rezoning and development plan application must then be constructed in accordance with the plan or risk stop work orders and zoning ordinance violations

Site Plans – Although a site plan itself is very similar to the development plans discussed above in the description of Planned Districts, the term is used here to describe a plan submitted during the course of the development approval process when the community does not employ a planned district process. It is designed as a mechanism to inform the decision makers of the applicant’s proposal for development of a property. Unlike the Planned District process, which is traditionally a two step plan submittal process undertaken in conjunction with a rezoning of land, the site planning process is generally a one step process that is required of developers that are not required to rezone their property prior to the issuance of a building permit necessary for the start of construction on the proposed development. To institute this mechanism, the community would need to revise its land development codes to require that, in instances of proposed developments, where some other plan approval process is not required prior to issuance of a building permit, the applicant must submit a site plan for review and approval prior to building permit issuance. It would be common for certain types of development to be excluded from the site plan approval process, such as development of a single family house or similar smaller type developments that will have a minimal impact on facilities and services or on the landscape.

The usual site plan would be described as a plan for one or more lots on which is shown the existing and proposed conditions of the lot, including topography, vegetation, drainage, floodplains, wetlands, and waterways; landscaping and open spaces; walkways; means of ingress and egress; circulation; utility services; structures and buildings; signs and lighting; berms, buffers, and screening devices; surrounding development; and any other information that reasonably may be required for an informed decision to be made by the approving authority.

Plan Administration – It is not uncommon for the site planning process to be divided formally or informally into two parts, and for that matter, for the planned district two step process to be modified to add a third step. In this circumstance, an initial submittal, often called a concept plan, is made to the technical staff for informal review. The applicant and its consultant sit down with the approving authority’s technical staff to discuss the plan and exchange views on what the applicant is proposing and what the technical staff believes will be acceptable to the approving authority; an opportunity to fine-tune the plan for formal submittal. Once that process is complete, a formal site plan, as described above, or a preliminary development plan is submitted for staff review and report.

The nature of the approval required for a site plan can vary greatly, depending on the expertise of staff and the appetite of the community to delegate approval authority to an administrative official. So, for example, a community could decide to vest plan approval authority for some categories of development in an administrative official, other categories of development in its planning commission and retain to the governing body still another category of development approvals. One would expect that administrative approval would be available for those categories of development that are determined to be of the least potential community impact, moving up to governing body approval on those that could have far reaching impacts, such as development at certain locations (key intersections) along the corridor.

Another excellent way to approach site planning is to combine site plan review with an overlay district. The site plan is then used to evaluate the extent to which the design and performance guidelines of the overlay district are met by the proposed development. Going a step further, the overlay district could set forth certain guidelines that are mandatory, others that are encouraged and a last tier that are desirable, or some variance of this approach. The nature of the approval could then be tied to the degree to which the different tiers of guidelines are achieved. For example, all

proposals that achieve all the mandatory and encouraged guidelines can be approved administratively. If the staff determines that the proposals does not achieve the guidelines in both tiers, the site plan must be considered by the planning commission or governing body. The variants that can be employed here are nearly endless.

Subdivision Regulation – The subdivision of land through platting is the second most common method used by communities to manage the development of property within its jurisdiction. The control of the division of a parcel of land is effectuated by adopting subdivision regulations by ordinance or resolution that requires development be in accordance with set design standards and procedures adopted locally. It is through this mechanism that communities are able to require that the layout of building lots and the public improvements associated with those lots conform to locally established standards. In some locations, subdivision regulation and plat approval may actually be the most significant regulatory tool for managing development. In some more rural area, it is more common for counties to have adopted subdivision regulations than to have adopted zoning. In those unincorporated areas, there would be no local legislative authority to manage development through zoning restrictions. Accordingly, subdivision regulation would be those counties’ primary land management tool.

Subdivision regulations usually specify what improvements the subdivider will be required to provide and the standards to which the improvements need to be constructed. A plat is a map prepared by a registered civil engineer or licensed land surveyor showing the boundaries and locations of individual properties and the streets of the proposed subdivision. The plat generally also shows land to be dedicated to a public sector entity for streets and easements for public utilities. K.S.A. 12-749 authorizes a planning commission to adopt and amend regulations regarding the subdivision of land, including payment of a fee in lieu of dedication of land. This same section also authorizes a county planning commission to establish subdivision regulations. Much like zoning, a city may adopt subdivision regulations that control the subdivision of land outside of its corporate boundaries, but only within three miles of that limit or one half the distance between two cities, whichever is less. Similar written notice requirements apply. The regulations must be considered by the planning commission at a public hearing, and the commission must forward its recommendation to the governing body for its approval. K.S.A. 12-750 lays out a process that must be followed where a city desires to adopt extraterritorial subdivision regulations and the county has its own regulations in effect as to that area. That process can result in the creation of a joint city/county committee for subdivision regulation.

K.S.A. 12-752 establishes the procedure for the consideration of and action on plats. Each plat must be submitted to the planning commission, which determines if the plat conforms to the subdivision regulations. If it finds that it does, it notifies the owners of that fact and endorses that fact on the plat. A dedication of land for public purposes must be accepted by the governing body before it takes effect.

See Section C.3 below, of this Chapter, regarding notices that should be placed on plats prior to their recording with Registers of Deeds to help ensure that prospective purchasers of properties, which are included in the geographic area covered by the Management Plan, are informed of the ramifications on those properties of being within an the area covered by the Management Plan. *Jurisdiction:* Local.

Building Permits – The same section of Kansas Statutes discussed immediately above, prohibits the issuance of a building permit for the use or construction of any structure on any platted lot in an area governed by subdivision regulations, except in the manner provided by that section. It further authorizes subdivision regulations adopted by cities and counties to provide a procedure for the issuance of building permits that takes into account the need for adequate street rights-of-way, easements, improvements of public facilities and zoning regulations, if in existence.

The issuance of a building permit is obviously the last step in the typical development approval process. Although courts hold that a building permit must be issued upon submission of a complete application, if all code provisions governing the process for building permit issuance have been fulfilled, this does not mean that communities cannot creatively incorporate building permit requirements into their governing code provisions. For example, it is common for the issuance of a building permit to be conditional upon the payment of a legislatively imposed fee, such as an impact fee.

In cities or counties that have not adopted zoning or subdivision regulations, local regulations governing the issuance of building permits may not only be the last step, but also the first step in the development approval process, thus markedly increasing the importance of this tool in the arsenal of techniques a community may employ to effectively manage land development. Even in communities that have adopted one or both regulatory tools, the procedure for the issuance of building permits still may play a very a critical role. See subsection B.3 above, of this Chapter, on Site Plans for a description of how that technique can be used to

more effectively manage the development of land in jurisdictions where either zoning or subdivision regulations have not been enacted. K.S.A. 12-751 authorizes cities to adopt and enforce building codes outside that city's limits and allows compliance with subdivision regulations to be a condition of the issuance of a building permit. *Jurisdiction:* Local.

Transfer of Development Rights and Density Transfers - Some locations along the corridor, for a variety of reasons, including availability of access, are best developed with more intense and/or dense uses. Other locations along the corridor, for other reasons, including the lack of direct access, are best suited for less intense or dense development. One way communities along the corridor can help ensure that property owners are afforded the maximum opportunity to develop their property to its most reasonable and economic potential is to establish a system of density incentives and transfers to encourage more intense development in areas designated on the Plan for such development. This system provides those landowners whose land is designated for less intense development the ability to transfer some or all of their development rights to locations where more intense development is planned, through a sale of those rights to landowners at those intense locations. These systems involve the transfer of all or a part of the permitted density on one parcel to another parcel or to another portion of that same parcel, thus allowing higher density at that location than would be allowed under the existing zoning regulations.

The transfer or removal of the right to develop or build is expressed in units per acre or floor area ratio. This transfer generally occurs in accordance with a legislative established program that allows the shifting of development potential from areas where more intense land uses are considered undesirable (the donor site or sending zone), such as at locations which are a distance from the location where mainline interchanges are to be constructed, to other areas (receiving zones) chosen on the basis of its ability to accommodate development that is more dense or intense, such as areas adjacent to proposed interchanges. For example, developers can buy development rights from properties targeted for public open space and transfer the additional density to the base number of units permitted in the zone in which they propose to develop.

Density Incentives – This technique is an additional method of increasing density at locations designated by the Plan, and thereby maximizing the economic potential of the corridor without sacrificing the functionality of the mainline highway and the adjacent local street network. It involves identifying areas, such as areas near interchanges or other access points,

which are shown on the Management Plan as more appropriate for dense or intense development than other areas within the corridor and providing incentives that will encourage developers to propose a form of development at those locations that conform to the density or intensity levels contemplated by the Plan. The most common incentive is to allow for a streamlined development approval process for applications that propose developments which exceed the density thresholds established by the local community through the restrictions of the underlying zoning district regulations. This is generally achieved by allowing for administrative, rather than legislative, approvals during the application review process. To be legally valid, the legislation establishing the program must include specific standards to guide the administrative official in decisions on when an application qualifies for streamlined review and when the application approval criteria are met. There are few limits to the innovation that can be used in creating incentives to lure more dense development. The Management Plan should serve as a good source of inspiration on potential incentives. *Jurisdiction:* Local.

Cluster Development – This technique is yet another tool to help achieve Plan goals of ensuring denser development at locations where the Plan calls for it, while simultaneously keeping development away from or at very minimal levels at locations where it will have an adverse impact on Plan goals. A good example would be to preserve and protect critical environment or cultural resources. This technique is generally authorized by specific district regulations, such as a cluster subdivision. It is a development design technique that concentrates buildings in specific areas on a site to allow the remaining land to be used for recreational, common open space or preservation of historically or environmentally sensitive areas. Through the employment of this technique, property owners are able to achieve an acceptable average density for the entire parcel, and both the public and private sector participants are able to effectively protect key community resources. This technique is intended to allow for significant creativity in site layout and planning, generally resulting in added value to development areas as a result of access to permanent open space and recreational opportunities. *Jurisdiction:* Local.

Setback Ordinances – One of the keys to successful implementation of the Corridor Management Plan is ensuring that development does not encroach on right-of-way that would be necessary for highway and interchange improvements as the corridor develops. One very effective way to achieve this objective is through the adoption of a building or setback line. This tool preserves projected rights-of-way and reduces acquisition costs: both over-riding goals of the Management Plan. K.S.A. 12 765 authorizes cities or counties, which have adopted a plan for a major street or highway system (which would include the Corridor Management Plan), as a part of its comprehensive plan, to adopt building setback lines.

After consultation with the Secretary of Transportation, the county engineer and any planning commission of a county or counties within which that highway system lies, the governing body may establish, by ordinance or resolution, a building or setback line along proposed major streets or highways. This enactment includes a prohibition on the location of buildings in front of that setback line. The enacting ordinance or resolution may incorporate by reference an official map showing with survey accuracy the location and width of existing or proposed major streets or highways and any setback or building line.

A building or setback line cannot be enforced until a certified copy of the map and any adopting ordinance or resolution is filed with the register of deeds of each county. The key to the enforceability of the setback line is a careful evaluation of the impact of the line, and its attendant prohibition on adjacent landowners. The restriction on development must leave these owners with viable economic uses for their commonly owned contiguous parcels of land. As a safety valve, the local board of zoning appeals is vested by statute with the power to modify any building restrictions to address unwarranted hardships that constitute a complete deprivation of use. Building setback lines, like build-to lines, can also be established as a part of zoning district restrictions and as a design guideline in an overlay district. *Jurisdiction:* KDOT/Local.

4(f) Uses – Federal statute places significant restrictions on the authority of the United States Secretary of Transportation to approve a transportation program requiring use of publicly-owned land, a public park, recreation area or wildlife refuges or land of a historic site. Because state transportation programs or projects often involve federal funds, the Secretary's approval is commonly required. Accordingly, it is important that these uses not be located within the corridor unless no other viable

option is available. This imperative makes it critical that communities avoid locating or approving development applications seeking to establish public parks, recreation areas or wildlife refuges and historic sites, also known as 4(f) uses, in the areas shown on the Plan footprint map as right-of-way for the mainline or of any portion of the local street network. The moniker 4(f) comes from the United States Code provision that limits the Secretary's authority. *Jurisdiction:* KDOT/Local.

Variations – Communities in Kansas have authority to grant variances from the specific terms of the zoning restriction whenever doing so is not contrary to the public interest and where, due to special conditions, local enforcement of the provisions of the regulations in an individual case results in unnecessary hardship. K.S.A. 12-759. The board of zoning appeals has the authority to grant a variance to area and setback regulations applicable to that property.

The grant of a variance from district restrictions, such as parking requirements and impervious cover requirements, may be an effective way to allow an important development proposal to proceed with minor modifications that keep it out of necessary rights-of-way and behind setback lines. At the same time, the grant of some variances could adversely impact the recommendations of the Plan. Therefore, it is recommended that the board of zoning appeals consult the Corridor Management Plan, as incorporated into its comprehensive plan, when considering any request for a variance to ensure that the variance decision supports the recommendations of the Plan. *Jurisdiction:* Local.

Administrative Tools

Accessibility of the Comprehensive Plan - The goal of a comprehensive plan is not only to serve as a guide to development for the planning commission and the governing body but also to owners and potential owners of property within the community's jurisdictional boundaries. That being the case, it is recommended that the amended comprehensive plan be posted on the city's website and at all other appropriate locations to assist in assuring that all interested parties are informed of the recommendations of the Corridor Management Plan for areas included in its footprint map. *Jurisdiction:* Local.

Notice of Applicability of Plan – One tool to help ensure that individuals who own property within the corridor and who are considering purchase and/or development of that property are aware that the land is included in the area covered by the Corridor Management Plan is for all counties and

cities that are partners in the development of a Corridor Management Plan to require that all plats approved by them contain a statement, similar to the following, placed in the dedication section of each approved plat.

“The property shown on and described in this plat is and shall hereinafter perpetually be subject to that certain US-24 Corridor Management Plan, adopted by the Kansas Department of Transportation on _____, the City of _____, Kansas on _____, ____ and _____ County, Kansas on _____, ____, recorded in the Register of Deeds for _____ County, Kansas, in Book _____, at Page _____.”

Another way to help ensure that those interested in developing areas of land covered by the Management Plan are aware of the Plan is for communities within the corridor to amend all their development applications to highlight the existence of special planning areas in the city or county, including the areas covered by the Corridor Management Plan. This could be accomplished informally through an internal process established wherein all individuals who request a development application are routinely asked by staff the location of the subject property that will be the subject of the application to allow the staff member to inform the potential applicant when the area to be developed is included in an areas covered by a special area plan. Alternately, it could be handled more formally by inserting a line on all applications with a space to be filled in identifying parcels covered by special plan areas. The latter is the recommended approach, as it avoids reliance on, what could be revolving staff to ensure that knowledge of the relevance of areas plans is consistently imparted to applicants. That being said, development application forms cannot always be changed immediately, so the informal process may be employed until the opportunity arises to make the formal change.

Entities or persons interested in developing at locations within the corridor may also become informed of the existence of the Plan as a result of the requisite filing of the Interlocal Cooperation Agreement (entered into among all parties to the Study that resulted in the Corridor Management Plan) in the register of deeds office in the county where that property is located. It should be noted that upon its filing the Interlocal Agreement will not be filed in the grantor/grantee index, so it would not typically show up on a title search. The agreement is filed under the names of the parties to the agreement. More information on interlocal agreements is provided at the end of this chapter. *Jurisdiction:* Local.

Notice and Opportunity to Provide Input – Since the Corridor Management Plan is a joint cooperative effort between the Kansas Department of Transportation and communities along the corridor to create a vision for development of that corridor and provide a guide to development decisions made by each community within that corridor, all parties with an interest in potential development along the corridor should be afforded an opportunity to provide input on that decision-making process during the requisite application and consideration procedures utilized by that community. Accordingly, each community should provide KDOT with appropriate notice of any development application or hearing on an amendment to that community’s comprehensive plan, if either could reasonably be expected to have the potential to adversely impact the corridor. In addition, each community should provide KDOT with advance copies of the proposed plan amendment or development application and any related staff report. *Jurisdiction:* KDOT/Local.

Notice of Land Marketed for Sale – Success in being able to acquire property necessary for right-of-way for the mainline highway at the earliest time possible is critical to the successful implementation of the Corridor Management Plan. The ability to act quickly when an opportunity arises is key to this success. If KDOT has prompt notice of properties that become available for purchase within areas shown as future right-of-way in the Corridor Management Plan, it will be in a better position to timely coordinate with local governments on the acquisition of necessary rights-of-way. Cities and counties within the corridor should employ whatever means are available and identify additional means by which they can keep apprised of land purchase opportunities as they arise within the corridor. *Jurisdiction:* KDOT/Local.

Economic Incentive Policy – As discussed below, city and county economic incentives can effectively be focused to increase the amount of revenues they generate to pay for the cost of acquisition of land needed for transportation facilities and for the actual construction of the facilities shown on the Plan, as well as to encourage dedications of land for facility rights-of-way. Many cities and counties have adopted policies to guide governing body decisions on when to grant incentives and the level of incentives that will be available. If a community along the corridor has adopted or is considering the adoption of an economic incentive policy, that policy should be revised or adopted to encourage the use of economic incentives to implement the recommendations of the Corridor Management Plan. *Jurisdiction:* Local.

Acquisition Tools

Land Acquisition – Public sector entities have the authority to acquire land for public improvements, including state highways and local roads and streets by gift, purchase, or condemnation. (K.S.A. 19-101 et seq., Article 12, Section 5 of the Kansas Constitution, K.S.A. 68-404) Sufficient land may be acquired to accommodate immediate construction needs, as well as for future needs. In appropriate circumstances, public sector entities can acquire interests in land for public improvements in advance of the date of the start of construction. Timely acquisition of necessary rights-of-way preserves opportunities to fully implement the goals of the Corridor Plan and helps reduce the cost of full implementation. The primary objective of all the partners in implementing the Plan must be to continually coordinate with one another to identify opportunities to acquire the interests in land necessary to construct the transportation improvements envisioned by the Plan. Continuing coordination is critical, but it means nothing if the partners are not equally devoted to cooperation with one another in the identification of traditional and innovative new sources of revenue and in creative partnering on acquisition strategies. *Jurisdiction:* KDOT/Local.

Access Acquisition – Existing access points that are not consistent with the Corridor Management Plan can often be eliminated through the KDOT’s, city’s or county’s exercise of their police power. For that exercise to be appropriate however, adjacent landowners must be left with “reasonable” access after the inconsistent access point is removed. A private property owner does not have a legal right to direct access to the highway or to a particular local street. It is only required that a reasonable access is available to a property owner through some alternative means, such as access to a frontage or reverse frontage road, in the case of a highway or from some other adjacent street. That being said, situations will arise where this objective of reasonable access cannot be achieved solely through exercise of a public entity’s police power. Situations will also exist where it is desirable to eliminate one or more existing access points to a particular parcel to achieve the access management objectives of the Plan, while still leaving that property owner with a point of direct access that is consistent with the Plan. In those, and in other instances, it may be advisable or even necessary to acquire inconsistent points of access through traditional negotiation or condemnation processes.

The authority to acquire land referenced above is also the source of KDOT’s, cities’ and counties’ authority to acquire access. Acquisition of access rights can be applied to:

- limit access to designated locations or side streets;
- control access and sight distance at intersections or interchanges;
- introduce long term or permanent access control; and/or
- control traffic and turning movements at locations with high numbers of conflicting movements occur.

Land Dedication and In-Lieu Fees – One of the most, if not the most, critical recommendation of the Corridor Management Plan is that both KDOT and the communities along the corridor do everything within their power to preserve and acquire the right-of-way necessary to construct the enhancements to the highway mainline and to the adjacent and interfacing local street network. One of the goals of the plan is to maximize economic opportunities for both landowners and communities along the corridor while, at the same time, minimizing development of land at locations of a nature, and of an intensity that impedes the partners’ ability to ensure that the mainline highway and the local street network function as envisioned by the Corridor Management Plan. New development that takes place within the corridor, in most instances, will create a need for new transportation network facilities to accommodate the vehicle trips it generates.

Both federal and state law authorize the communities along the corridor to require, as a condition of development approval, that the landowner dedicate rights-of-way needed for network improvements in an amount that is roughly proportionate to the need for facilities generated by that development. A carefully calculated system of fees in lieu of dedication also can be effectively utilized to ensure the timely purchase of sufficient rights-of-way. These in-lieu fees are authorized by K.S.A. 12-749. If each community along the corridor adopts a well-designed, legally defensible right-of-way dedication and/or in-lieu fee program, the significant costs of acquiring the right-of-way contemplated by the Corridor Management Plan can be greatly minimized, thereby helping to ensure successful implementation of the Plan. *Jurisdiction:* Local.

ACCESS MANAGEMENT STRATEGIES

KDOT and local communities can undertake access management activities through their “governmental police powers,” which is the authority to take action to protect the well-being, safety and health of the public, and through their authority to acquire interests in land. These management strategies can be designed to apply equally to all parts of the transportation network within the corridor. Alternatively, access management tools and regulations can be imposed as an overlay district and don’t have to be city or county-wide, but can be tailored to accomplish specific objectives in defined areas. A component of access management is known as regulation of traffic flow. Regulation of traffic flow could include several actions listed in the access management tools described below or be as simple as prohibiting left turns, prescribing one-way traffic, or restricting speed. Managing access is complicated and requires careful consideration, but it can be done while still allowing the property owner reasonable access to their property and to the surrounding street network. It is important to understand the differences between access (connection with surrounding roadways) and routing (direction of flows between properties and surrounding roadways).

The following are several action steps the corridor partners can take in the area of access management to help assure successful implementation of this Management Plan.

Closing of Access – While the ultimate objective of conversion of an existing route to an access controlled facility generally may not be realized immediately, KDOT and the communities need to constantly be looking for and acting on opportunities to eliminate access at locations other than those interchanges and access locations designated in the Plan. Access management is necessary to protect safety for the motoring public and the operational efficiency of the corridor. Effective access management also protects public investments and facilitates the continued economic vitality of the corridor. In contrast, uncontrolled access generally impedes development and produces high costs when and if retrofits are needed. *Jurisdiction:* KDOT/Local.

Approval of Access – As stated above, the authority to allow access to a state highway or city connecting links is vested in KDOT. A request for access is approved and controlled through issuance of a Highway Permit. The Permit is the legal document that establishes the relationship between the landowner and KDOT. All points of access to the state highway system must be the subject of a Highway Permit. This includes when access connections or local streets and intersections are installed, relocated, improved, removed, or replaced on or along state highway system right-of-way. The permit will specify such things as the location of the point of access, issues related to the construction of the access, type of use allowed at the access point and other conditions and limitations of access at that point. The KDOT District Engineer has been delegated the authority to approve Highway Permits. A request for a Highway Permit must be made with the appropriate KDOT Area Office.

With respect to access to local streets within the corridor, the authority to approve that access is vested in either the city or county that has jurisdiction at the requested location. This authority is derived from the government’s inherent police power. The actual procedure for obtaining access will vary from community to community. Some communities may have adopted an access management policy that governs the location and other aspects of access to the public streets and road. In other instances, regulations governing access points may be located in the community’s zoning district regulations or its subdivision regulations. Provisions on access should be included in any overlay district created for an area with the corridor. On City Connecting Links, a Highway permit must be obtained for work in the right-of-way. Executed copies of the permit, approved by KDOT and the city or county will be provided to the property owner.

Input to KDOT on Access/ Coordination of Access Management – Because of the importance of access management on the mainline highway, and on the road and street network within the corridor, and because the authority to permit and close access to the state highway system and its connecting links is vested exclusively in KDOT, (K.S.A. 68-413 and K.S.A. 68 404(a)), it is critical that communities along the corridor confer with KDOT respecting development applications that propose access points on the mainline highway and on portions of the local street network that are included in the Corridor Management Plan, particularly if that access is not consistent with points shown on the Corridor Management Plan as future points of access. *Jurisdiction:* KDOT/Local.

Coordination with KDOT – The Corridor Management Plan identifies existing access points on the highway that should be closed over time, as appropriate circumstances present themselves, to achieve access management objectives. Accordingly, each community along the corridor should cooperate with KDOT in identifying existing access points along the mainline and in closing those points, where doing so, will implement the access management goals of the Corridor Management Plan. Each local government partner should establish points of contact with KDOT to facilitate the ability to quickly capitalize on opportunities as they arise. *Jurisdiction:* KDOT/Local.

Shared Access – One meaningful way to help ensure that all property owners are afforded reasonable access to the mainline and to the local street network consistent with the full functionality of that network, is to encourage that joint access to that network by adjacent property owners be utilized to the maximum extent possible. Therefore, communities, when reviewing development applications should consider, as a condition of approval of that application, the grant of a recorded easement by the applicant to adjoining property owners or such other conditions as are appropriate to further the corridor access management objectives. *Jurisdiction:* Local.

A list of common access management tools is provided below. Each tool is explained in Table 7.A.

Access Management Tools:

- 1) Close median breaks
- 2) Consolidate mainline driveways
- 3) Eliminate mainline driveways/side road access
- 4) Eliminate public road connections to mainline, reconnect to frontage roads
- 5) Eliminate private driveways, reconnect to frontage roads
- 6) Intersection consolidation
- 7) Convert major intersections to interchanges
- 8) Advanced right-of-way acquisition
- 9) Interim intersection upgrades
(traffic signals, turn-lanes and acceleration lanes)

TABLE 7.A Access Management Tools			
TOOL	DESCRIPTION	JURISDICTION	IMPLEMENTATION AND COMPENSATION REQUIREMENTS
Close Mainline Median Breaks	Eliminate existing median breaks to prohibit left turns to/from mainline and abutting properties.	KDOT	Administrative action under police power to regulate traffic flow. No private property right exists in traffic flow (turning movements) and therefore no compensation due abutting property owners.
Consolidate Private Driveways	Eliminate redundant driveway connections to mainline into single driveway connection, either within an individual tract or at property line of contiguous tracts.	KDOT/LOCAL	If “reasonable” access to the property will remain after consolidation, can potentially be accomplished by KDOT regulation of driveway permits under police power without payment of compensation to affected property owners. More typically, existing access control breaks allowing private driveways to mainline are acquired through traditional negotiation or condemnation processes. If abutting property owner submits a re-zoning or development proposal to local government, driveway locations are subject to regulation under zoning authority without payment of compensation as condition of zoning or development plan approval.
Eliminate Private Driveways/Side-Road Access	Where property owner has frontage on both mainline and side-road, eliminate mainline driveway and restrict access to side road.	KDOT/LOCAL	If “reasonable” access to the property will remain after consolidation, can potentially be accomplished by KDOT regulation of driveway permits under police power without payment of compensation to affected property owners. More typically, existing access control breaks allowing private driveways to mainline are acquired through traditional negotiation or condemnation processes. If abutting property owner submits a re-zoning or development proposal to local government, driveway locations are subject to regulation under zoning authority without payment of compensation as condition of zoning or development plan approval.
Eliminate Public Road Connections to Mainline, Re-Connect to Frontage Road	Where local roads connect to mainline at locations other than mile roads, eliminate connection between mainline and local cross-road, re-connecting cross road to newly installed frontage or reverse frontage road.	KDOT/LOCAL	KDOT may regulate location where public roads connect to mainline under general statutory authority to establish and maintain state system and its police power. No public “property right” in location where local roads connect to mainline. Therefore, local governments cannot enjoin closure of mainline connections nor can abut property owners seek compensation for resulting re-routing along local roads to mainline. More typically, KDOT and local governments will jointly undertake coordinated road improvement projects pursuant to their respective general statutory powers to establish and maintain public roadways. Such a project would include closing cross-road intersections with mainline and reconnecting cross-roads to frontage or reverse-frontage roads which connect to mile-roads and mainline interchanges. If abutting property owner submits a re-zoning or development proposal to local government, location of abutting public or private streets are subject to regulation under zoning authority without payment of compensation as condition of zoning or development plan approval.
Eliminate Private Driveways, Re-Connect to Frontage Road	Where private driveways connect directly to mainline, eliminate private driveways and re-connect to newly installed frontage or reverse road.	KDOT/LOCAL	Acquire existing access control breaks through negotiation or condemnation, stipulating property remaining will be connected to a newly installed frontage or reverse frontage road. If abutting property owner submits a re-zoning or development proposal to local government, driveway locations are subject to regulation under zoning authority without payment of compensation as condition of zoning or development plan approval.
Intersection Consolidation	Consolidate redundant, at-grade local road intersections into single intersection by establishing local road network to facilitate connection to single remaining at-grade intersection.	KDOT/LOCAL	KDOT may regulate location where public roads connect to mainline under general statutory authority to establish and maintain state system and its police power. No public “property right” in location where local roads connect to mainline. Therefore, local governments cannot enjoin closure of mainline connections nor can abut property owners seek compensation for resulting re-routing along local roads to mainline. More typically, KDOT and local governments will jointly undertake coordinated road improvement projects pursuant to their respective general statutory powers to establish and maintain public roadways. Such a project would include consolidating redundant, at-grade local road intersections with local road network to facilitate connection to single remaining at-grade intersection. If abutting property owner submits a re-zoning or development proposal to local government, intersection location is subject to regulation under zoning authority without payment of compensation as condition of zoning or development plan approval.
Interchanges at Major Roads	Replace major road at-grade intersections with grade-separated interchanges	KDOT	KDOT may install interchanges under general statutory authority to establish and maintain state system. Acquire necessary right of way through traditional negotiation and condemnation processes.
Advance ROW Acquisition	Identify and prioritize critical parcels most vulnerable to development or other market forces.	KDOT/LOCAL	After identifying and prioritizing critical parcels most vulnerable to development or other market forces which would make acquisition at time of future project physically impossible or unnecessarily expensive. KDOT or local government may acquire necessary right of way as funding is available through traditional negotiation and condemnation processes.

GAP ANALYSIS NOTES: Pottawatomie County

P-1. See Manhattan Zoning Ordinance section 3-412 for an example of a detailed process for review of all public improvements for conformance with a comprehensive plan.

P-2. Some applications have more specific criteria than others. For example, Article 3, Section 101-3 has the required findings for a conditional use approval. However more routine applications such as re-zoning approvals have no criteria other than the assumption that it meet all of the standards.

P-3. The variance criteria follow all the state statute criteria. However there is no explicit reference that the applicant or BZA should consider the comprehensive plan policies in goals in making a determination on these criteria.

P-4. Not all districts have these standards, but for classes of zoning districts that allow more development options or innovative applications, the site design standards are elevated. (i.e. the PCD district begins to address urban design elements that are not included in the basic commercial districts.) However, none of the site design standards are specifically geared towards more compact or concentrated development that could minimize impacts on the US-24 corridor. The planned districts or new overlay districts could be used to accomplish this in the absence of specific criteria. (See Implementation section of the US-24 Corridor Management Plan.)

P-5. Article 4, Section 105.E references connectivity standards, but in general there are no standards for street networks, connectivity, or different street design types.

P-6. See above comment P-5.

P-7. There are no specific standards for the layout and arrangement of blocks and lots, but the platting procedures do have general objectives for the layout for divisions of land. This more permissive and objective-oriented approach may be more appropriate for the anticipated level of development in the unincorporated county, but it also would be more difficult for denying proposed applications on these criteria. (Article 4, Section 105.G.)

P-8. The UDC has a PURD and PUD zoning districts for this purpose, which also triggers alteration of applicable subdivision standards based on the plan.

Manhattan

M-1. The Manhattan PUD District (9-901) has good objectives and criteria that tie its application to sound long-range planning policies. However the district has very low area thresholds (i.e. ½ acre for residential and commercial.) This does not result in areas capable of being “planned” at a scale to meet many of these objectives and the district may be used simply to plan specific sites rather than use the flexibility to meet broader planning policies stated in the Purpose and Objectives and Criteria sections of the ordinance.

M-2. Most districts have a brief description at the beginning of the district, but none of them draw explicit relationships to general land use categories or development patterns in the comprehensive plan. They also do not include relationships to other supportive or compatible districts that could tie application of zoning for specific sites to long-range planning policies. The planned overlay districts have the most complete intent statements, but still do not specifically link to long range planning policies of the comprehensive plan. The following is an example of a more comprehensive intent statement from another jurisdiction's zoning ordinance: *The NB District is intended for Retail, Employment, Service and Civic uses to support adjacent residential neighborhoods in meeting most of the daily needs of residents within close proximity to dwellings. The district regulations are designed to promote small-scale business uses tightly integrated with surrounding residential uses with a walkable urban design and character. The NB District is applicable to any area where small scale retail and services are desired to support adjacent residential uses, specifically the Neighborhood Business Centers and smaller Mixed-use Commercial Activity Centers in the comprehensive plan. The total area of the district typically entails no more than 5 to 20 acres (2 to 8 blocks) in its entirety, without transitioning to the adjacent and supportive uses, and zoning districts (individual applications may be smaller).*

M-3. The variance criteria follow all the state statute criteria. However there is no explicit reference that the applicant or BZA should consider the comprehensive plan policies in goals in making a determination on these criteria.

M-4. Except for special districts (i.e. PUD or TNO), these standards typically only address signs, parking, and screening for parking areas and do not have a great deal of guidance for different urban design or site design strategies that may be appropriate for various zoning districts. However, none of the site design standards are specifically geared towards more compact or concentrated development that could minimize impacts on the US-24 corridor. The planned districts or new overlay districts could be used to accomplish this in the absence of specific criteria. (See Implementation section of the US-24 Corridor Management Plan.)

M-5. 10-202 and 10-203 make the street networks and designs a significant portion of the submittals, but they do not have any specific standards other than to reference other plans or policies for street networks or designs and the generic functional classification standards. To the extent that these other plans or policies do not include specific information (preferably altered to different contexts of application), it may be difficult to ensure that multiple independent plats execute these plans in a coordinated manner. More specific design and connectivity criteria could make it easier for applicants and reviewers to identify critical issues with respect to applying these policies to plat applications.

M-6. See above comment M-5. Also, section 10-301(B) has the only specific connectivity standard which has a very large and general maximum block length requirement. It may be appropriate for very low density residential standards, but does not ensure a sufficient level of street network connections for other situations. Development that merely meets

this maximum connectivity requirement can tend to overtax collector and arterial streets by forcing them to accommodate even the most routine of local vehicle trips.

M-7. See above comments M-5 and M-6. Section 10-401 has standards only for lots, and there are no community planning or design standards for proper arrangements of blocks and lots for a variety of different contexts.

M-8. The review criteria and Section 10-801 note that open space systems and “community assets” are an important component of planning and plat approvals but other than references to parks and trails plans and policies there are not standards for the various types of open spaces that could be incorporated into plats, and which may need to link or relate between multiple and independent adjacent plats.

M-9. The review criteria for plats have very specific references to utilities and public facilities, but there is not a clear mechanism or process for which land acquisition would occur for public facilities beyond utility easements. (sections 1-401, 6-306, and 8-101 through 8-103) This can become important particularly if the improvement is one not built by the City and/or one not specifically required in association with the development. An example is “reservation” provisions, which allow opportunities for negotiation, planning and acquisition for public facility sites that parallel the plat review process for only a limited time period.

M-10. Section 1-301 appears to only utilize this authority with respect to the city's planning jurisdiction in unincorporated Riley County, and not for the portions of the US-24 study area in Pottawatomie County.

St. George

S-1. The PUD (Article V, Section 103) and PURD (Article IV, Section 102) do allow for flexible application of standards. However there are not any specific design criteria and objectives other than ranges for allocation of general land uses or setback requirements. Therefore, it does not provide much guidance to planners or potential developers on how the City intends to use this flexible regulatory authority.

S-2. Some of the districts do have general introduction or intent statements that are more detailed (i.e. the PUD, PURD, C-1, and C-2), however they do not go into sufficient detail to describe how the districts will relate to an overall and long-range pattern of growth and development of the City. In effect, the statements can only be helpful in analyzing the design of particular sites, and not as much in analyzing the application of a zoning district to a particular area. This is likely the result of not having a comprehensive plan.

S-3. 16-307 of the City Code establishes variance criteria that meet the state statutory requirements but do not specifically indicate the BZA and applicant may use the comprehensive plan as a mechanism for determining if the criteria are met.

S-4. Article III, Section 103.4 references the City's extraterritorial zoning authority, however there is no specific indication in the ordinance to the extent or areas to which the City has implemented zoning restrictions beyond its boundaries.

Wamego

W-1. See Manhattan Zoning Ordinance section 3-412 for a detailed process for review of all public improvements for conformance with a comprehensive plan.

W-2. Certain districts do have specific review and approval criteria (i.e. PUD) and tie approval to comprehensive plan policies and intent of the district, but in general the ordinance does not explicitly establish these review and approval criteria for all districts.

W-3. The variance criteria meet the state statutory requirements but do not specifically indicate the BZA and applicant may use the comprehensive plan as a mechanism for determining if the criteria are met. Note the Exception criteria in Article XXX, Section 12 do specifically include the comprehensive plan in the consideration for “exceptions” to the ordinance.

W-4. The ordinance does not have any specific urban design standards specifying how buildings and open spaces should relate in various districts or different contexts. The zoning ordinance does contain basic parking, sign, and landscape standards, however without an explicit site plan process (for non-zoning change applications) and/or detailed review and approval criteria, enforcement of these standards could vary based on the circumstances of any particular application. Additionally, none of the site design standards are specifically geared towards more compact or concentrated development that could minimize impacts on the US-24 corridor. The planned districts or new overlay districts could be used to accomplish this in the absence of specific criteria. (See Implementation section of the US-24 Corridor Management Plan.)

W-5. Article VI, Section 3 includes general street standards, but they are based purely on functional classifications and make no accommodations for different types of street networks and/or different street design types to be used in different contexts. They also do not account for any difference in urban design strategies along streets or in different contexts, and are organized purely by street width (80' / 70' / 60' / 50') by functional classification.

W-6. Article VI, Section 2 includes some very general standards that begin to regulate overall network connectivity and could result in the proper arrangement of blocks and lots across multiple divisions of land, but because they are so general they do require close administration by the City and Planning Commission to ensure this result.

W-7. See comment W-6 above.

W-8. Article VII allows for this but does not contain a specific procedure for how reservation may occur in the platting process.

W-9. Article I includes some circumstances for extra-territorial application of the Wamego subdivision regulations, but they are not to the full extent authorized by the Kansas Statutes.

TABLE 7.B
Regulatory Gaps Between Partner Agencies

	Pott. Co.	Manhattan	St. George	Wamego
PLANNING				
Comprehensive Plan. Does the jurisdiction have a Comprehensive Plan?	Yes	Yes	No	Yes
Official Maps. Does the jurisdiction have an official long-range transportation plan map, either as part of the comprehensive plan or independent?	No	Yes	No	Yes
Plan Consistency. Do development regulations and/or review criteria reference comprehensive plan?	No	Yes	No	No
Utility Planning. Does the jurisdiction have a utility master plan for service infrastructure or stormwater facilities?	No	Yes	No	No
Conformity of Public Improvements. Does the jurisdiction have practice of making all public improvements (city, state, or local, and public, quasi-public, or privately owned) reviewed by the Planning Commission for consistency with long-range policies in the comprehensive plan?	No ^{P-1}	Yes	No	No ^{W-1}
ZONING				
Zoning Ordinance. Does jurisdiction have a zoning ordinance?	Yes	Yes	Yes	Yes
Planned Zoning Districts. Does jurisdiction have planned zoning, and if so are its requirements tied to clear long-range planning policies?	Yes	Yes ^{M-1}	Yes ^{S-1}	Yes
Overlay Districts. Does the jurisdiction have overlay districts in its zoning ordinance, and are they tied to unique circumstances?	Yes	Yes	No	Yes
Zoning District Intent. Do the zoning districts have clear intent statements, including reference to the comprehensive plan, reference to the scale of application of the district, and reference to relationships to other supporting or compatible zoning districts?	Yes	No ^{M-2}	No ^{S-2}	Yes
Site Plan. Does the jurisdiction have requirements for site plan submittals for development activities not associated with zone change requests?	Yes	Yes	No	No
Review / Approval Criteria. Does the zoning ordinance have approval criteria for rezoning that reflect the intent / character of the zoning district, including the ability to condition approvals on meeting the specific intent?	Yes ^{P-2}	Yes	No	No ^{W-2}
Variance Criteria. Does the zoning ordinance have approval criteria for granting variances, including reference to the state statute requirements and reference to the comprehensive plan or zoning district intent when assessing those criteria?	Yes ^{P-3}	Yes ^{M-3}	Yes ^{S-3}	Yes ^{W-3}
Site Design Standards. Do the regulations have standards or criteria for good site design / urban design based on a variety of different contexts (i.e. building form and placement, open spaces, parking, on-site pedestrian and vehicle circulation)?	Yes ^{P-4}	Yes ^{M-4}	No	Yes ^{W-4}
Extra-territorial Zoning. Do the regulations take advantage of any extra-territorial authority to coordinate interim development activity with long range growth and annexation?	N/A	No	Yes ^{S-4}	Yes
SUBDIVISION REGULATIONS				
Subdivision Regulations. Does the jurisdiction have subdivision regulations?	Yes	Yes	No	Yes
Comprehensive Plan. Do the subdivision regulations reference development pattern policies of the comprehensive plan as a significant criteria or factor for land divisions?	No	Yes	N/A	No
Street Networks and Designs. Do the subdivision regulations have standards or criteria for street networks and designs for different areas (i.e. guidance for transportation planning and development beyond the major streets that may be part of an Official Map above)?	No ^{P-5}	Yes ^{M-5}	N/A	Yes ^{W-5}
Connectivity Standards. Do the regulations have standards or criteria for connectivity of local streets to support different development contexts (i.e. compact commercial requires 400' to 600' intervals; urban residential requires 400' to 800'; low density residential requires 600' to 1000', etc.)?	No ^{P-6}	No ^{M-6}	N/A	Yes ^{W-6}
Blocks and Lots. Do the subdivision regulations provide standards or criteria for the proper arrangement of blocks and lots, with particular consideration to different contexts and/or potential logical re-subdivision of land?	No ^{P-7}	Yes ^{M-7}	N/A	Yes ^{W-7}
Open Space Systems. Do the subdivision regulations have a mechanism for coordinating various types of open spaces across multiple developments and implementing a system-wide approach to open space?	Yes	No ^{M-8}	N/A	No
Utility Systems / Stormwater Mgmt. Systems. Do the subdivision regulations have a mechanism for coordinating service and natural infrastructure across multiple adjacent developments, with particular emphasis on planning and coordinating development that may occur in separate time periods?	Yes	Yes	N/A	Yes
Community Facilities & Other Public Improvements. Do subdivision regulations provide a mechanism to review for the need and/or location of community facilities (i.e. schools, public safety, utilities, etc.) and a mechanism for acquiring the property in association with development of the area?	No	Yes ^{M-9}	N/A	Yes ^{W-8}
Cluster Development / Conservation Subdivisions / Density Incentives. Do the subdivision regulations encourage innovations that can yield more efficient layout of potential development and meet multiple long-range planning goals (i.e. more concentrated open space preservation / farm-land protection, etc.)?	Yes ^{P-8}	Yes	N/A	No
Extra-territorial Platting. Do the regulations take advantage of any extra-territorial authority to coordinate interim development activity with long range growth and annexation?	N/A	Yes ^{M-10}	N/A	Yes ^{W-9}
OTHER RELATED DEVELOPMENT REGULATIONS				
Building Permits.	Yes	Yes	Yes	Yes
Transfer of Development Rights / Density Transfers.	No	No	No	No
Setback Ordinances.	No	No	No	No

US-24 Corridor Management Plan

Completed by HWS, in association with: George Butler & Associates, Gould Evans, Richard Caplan & Associates and Stinson Morrison Hecker

DEVELOPMENT REGULATIONS GAP ANALYSIS

A “Gap Analysis” was performed as part of the US-24 Corridor Management Plan and is summarized in Table 7.B. It is based on the Toolbox of Implementation Strategies, as well as the goals and policies of the US-24 Corridor Management Plan. It assesses each jurisdiction’s development regulations against the planning and regulatory tools identified in the toolbox. This Gap Analysis merely identifies the presence or absence of each tool in the jurisdiction’s regulations. The comments included in the notes to the Gap Analysis identify how the “gaps” could be filled in relation to the goals of the US-24 Corridor Management Plan, providing additional commentary on how the tool could be generally implemented in each jurisdiction. The comments are based on independent assessments of each regulation, and on assumptions on general plan implementation techniques and “best practices” in the planning profession. The specific appropriateness and application of each tool for the various jurisdictions will need to be based on more detailed discussions and formal procedures.

FINANCING STRATEGIES

The Corridor Management Plan has been developed to maximize economic opportunity and to provide a fully functional highway and street network for property owners within the corridor. The full costs of the improvements to the mainline highway and adjacent street network necessary to achieve these Plan objectives are significant. Monies needed to complete these enhancements may not be available from KDOT or from the local communities within the corridor when the enhancements are needed. Therefore, the below activities are all critical to the successful implementation of the Corridor Management Plan.

- Identify all existing financing tools, both the traditional and the alternative tools;
- Creatively analyze how these tools can best be utilized individually and in concert with one another to maximize resources;
- Investigate possibilities for new options using home rule and delegated powers;
- Pursue federal and state statutory and regulatory amendments to eliminate funding obstacles and provide new approaches; and
- Pursue new legislative authority for innovative funding approaches.

To achieve this sought-after success, it is imperative that all corridor partners carefully and constantly coordinate with one another to identify potential sources of funds and work diligently, once sources are identified, to make certain that available funds are utilized in the most effective and efficient way to the benefit of all parties to this endeavor.

That having been said, there is a wide array of financing options available to cities and counties to finance infrastructure improvements. Notably, many of these same financing options can be used as economic incentives to encourage development to occur at a certain location, in a certain form, and/or in specified densities or intensities. These financing options include the traditional mechanisms used by cities and counties to raise revenues and to pay for both the capital and operational expenses of government and other alternative financing strategies.

Traditional Funding

Traditional funding mechanisms include federal and state funds, real and personal property taxation (Article 12, Section 5 of the Kansas Constitution, K.S.A. 19-101 et seq. and K.S.A. 79-1801 et seq.), sales taxation (K.S.A. 12-187 et seq.), economic development tax exemptions (Article 11, Section 13, Kansas Constitution), special assessments (K.S.A. 12-6a01 et seq., and K.S.A. 12-601), and the Main Traffic way Act (K.S.A. 12-685). All of these financing mechanisms are available to fund improvements contemplated by the Corridor Management Plan and their use, as the situation dictates, should not be ignored.

Because the traditional mechanisms are regularly utilized by KDOT, cities and counties to pay for capital projects, they will not be discussed in detail in this Chapter; rather this portion of this Chapter is devoted to an explanation of several of the less-traditional mechanisms available to cities and counties to pay for improvements contemplated by the Plan and to incent corridor development that is consistent with the Plan’s recommendations.

Although not actually a source of additional revenue, the bonding authority of cities and counties is worthy of mention. Each is authorized to issue long-term debt to finance projects, with that debt to be repaid from a variety of traditional and some alternative revenue sources. Bonding authority is important for many reasons, but one key advantage of issuing

bonds to finance public improvements is that it allows the issuing entity to pay for an improvement up front (before total project costs are available in hand) to get a project started or even completed in those instances where timing is critical in terms of events in the community and/or to take advantage of favorable financial markets. These improvements can then be paid for over time, generally up to 20 years, as tax revenues or other dedicated sources become available. This can be a huge advantage and can help the partners in their efforts to acquire land for and make the improvements contemplated by the Plan when actual situations in the corridor dictate those actions occur.

Cities and counties are authorized to issue general obligation (GO) bonds payable from a general tax levy on all taxable property within the city (K.S.A. 10-101 et seq.). These GO Bonds are backed by the full faith and credit of the issuing entity. As an alternate, the city may issue revenue bonds (K.S.A. 10-1201 et seq.). Revenue bonds are repaid from a pledge of the revenue from a specified income-generating facility or source. Revenue bonds are not guaranteed by the full faith and credit of the issuer. A city may issue special assessment bonds to be repaid, in whole or in part, from the revenues received from special assessments imposed on properties that are specially benefited by the improvement(s) constructed within an assessment district (K.S.A. 12-60015). Special assessment bonds are actually general obligations of the issuer, which, in addition to the pledge of the revenues from the special assessment, are backed by the full faith and credit of the city. The final category of traditional municipal bonds is special obligation bonds. These are bonds issued under the authority of Kansas statute, specifically, K.S.A. 12-1770 et seq. and 12-17, 160, et seq., to finance the undertaking of redevelopment projects. These bonds are payable from incremental property tax increases resulting from the redevelopment in an established redevelopment district, a pledge of a portion of the revenues received by the issuer from transient guest, sales and use taxes collected from taxpayers doing business in a redevelopment district, franchise fees, private, state or federal assistance or any combination thereof.

Alternative Funding Mechanisms

Most alternative funding techniques are devised by one local government to meet a local need and their use then spreads from community to community. The techniques are refined based on trial-and-error. Many of these approaches do not have specific legislative authority, but are enabled through home rule, local police powers, or a broad reading of authority from another source, such as local planning.

State highway, road and street projects required to support new development may be constructed utilizing economic incentives, such as tax increment financing, Star Bonds, sales tax reimbursement agreements, tax abatement, special assessment districts and transportation development districts, to name only several of the options. It is important that, wherever possible, local communities along the corridor be cognizant of their ability to require that revenues from the grant of these incentives to developers be used to offset the cost of the construction of mainline highway improvements and related improvements to the local street network, as shown on the Corridor Management Plan. But, even more importantly, they must actually make the grant of these incentives conditional on a reasonable portion of these monies being used to pay the cost of Corridor Management Plan identified improvements. *Jurisdiction:* Local.

These incentives also can be effectively used to influence the location, type/uses, form, architectural quality, configuration and density/intensity of development. It is important to utilize these incentives, not only to offset traditional public costs for these facilities, but also as incentives to shape development proposals, so they further Plan recommendations and achieve quality design and sustainable development in the corridor.

Impact Fees – Impact fees are one-time regulatory fees assessed against new development to cover the costs for necessary capital facilities proportionate to the demand generated by the new development. The fee is imposed by a public sector entity on development activity as a condition of granting development approval, and generally is calculated at the platting stage and collected at the time a building permit is issued. Kansas has no impact fee statutory authority. Nevertheless, cities and counties can establish a system of impact fees using their home rule authority. This system of fees requires the development of a local legislative adopted scheme that includes the calculation methodology for the fee, and a system of credits, exemptions and appeals. The system would be adopted by ordinance or resolution, as the case would require. Impact fees must be used to add capacity attributable to new development; they cannot be used to pay for improvements necessitated by existing development. An impact fee must meet three requirements:

1. The new facilities are a consequence of new development;
2. There must be a proportionate relationship between the fee and the infrastructure demand; and
3. The funds collected must be used to provide a substantial benefit to the new development.

In Kansas, impact fees may be collected either across the entire jurisdiction or in a designated geographic area. While they may be assessed at platting, impact fees are typically collected upon building permit issuance. A detailed calculation is necessary to ensure that the system, and particularly the fee charged property owners, is proportionate to the demand for new facilities that each unit of new development generates, i.e., its impact, in terms of facility capacity consumed. In funding transportation network facility improvements, the measuring stick for each development's impacts is the number of vehicle trips it will generate. Since streets are generally designed to accommodate the PM Peak trips, that is generally the time interval used.

The Kansas Supreme Court has recognized the legitimate use of impact fees in *McCarthy v. City of Leawood*. In that case, the City of Leawood assessed the payment of impact fees on the issuance of building permits and plat approvals for properties within the K-150 (135th Street) corridor. The purpose of the fee was to finance a portion of the improvements of

K 150. Back when first established in 1988, the fee was calculated based upon trip generation, at a rate of \$26.45 per trip. This rate was then multiplied by the average number of trips generated by a use to determine the individual fee. For example, residential uses were projected to generate 10 trips per day, multiplied by \$26.45 for a fee of \$264.50 per unit.

Jurisdiction: Local.

Excise Tax – Technically, an excise tax is a broad term that covers every type of tax, except a property tax. As with all taxes, it is a method of raising revenue. It is distinguished by the fact that rather than being based on the value of property, it is levied on a certain activity or the exercise of a privilege – more accurately described as business done, income received, or privilege enjoyed. Typical examples of excise taxes include taxes on the purchase of gasoline, alcohol or cigarettes, business license taxes and on the rental of hotel rooms. In recent past, local governments in Kansas have innovatively used an excise tax to fund transportation network improvements that are required to support development. It is structured as a tax on activity of platting lots. The rate of the tax is based on the amount of square footage proposed to be constructed or on the number of vehicle trips the proposed development will generate on the street network. The key reason for its use has been that because it is a tax and not a regulatory fee, the rate is not required to satisfy the constitutional benefit or nexus requirements of regulatory fees imposed by local governments, such as impact fees discussed above. Kansas courts had upheld this financing approach.

In 2006, however, the Kansas Legislature amended K.S.A. 12-194 to make it uniformly applicable to all cities. By doing so, this provision became no longer subject to a charter ordinance or resolution whereby cities and counties could make its provisions inapplicable to that city or county and adopt supplemental provisions on the subject. This charter approach was the one that cities and had used to eliminate the legal impediment in K.S.A. 12-194 and use their ordinary home rule power to establish an excise tax system of this type. It had become known as a “development excise tax.” That amendment, in addition to precluding local governments that did not have a development excise tax in place from adopting one, also included a provision that prevented cities and counties that had levied or imposed a development excise from increasing the rate of the tax without a majority vote of the electors, after July 1, 2006. Accordingly, this technique is only available to local governments that had a development excise tax in place before that date, and those that did have one in place cannot increase the rate charged without a vote. *Jurisdiction:* Local.

¹ 257 Kan. 566, 894 P.2d 836 (1995).

Transportation Development Districts – A Transportation Development District (TDD) (K.S.A. 12-17,140 at seq.) is a form of a special district that was enacted specifically to facilitate the construction, maintenance and financing of a broad array of transportation projects, ranging from streets, roads, highway access roads, interchanges and bridges to light rail and mass transit facilities. Most improvements related thereto, such as streetscape, utility relocations and other necessary associated infrastructure can also be funded using this technique. While a regular special district can be used to address transportation issues, transportation development districts allow greater funding flexibility, including authority to impose a transportation development district sales tax of up to 1% (K.S.A. 12 17,145), in addition to the authority to levy special assessments. If a transportation development district is sought to be imposed, the governing body must hold a duly noticed public hearing in advance of adopting the resolution or ordinance creating the district and approving the method of financing projects within the district. The district may issue bonds backed by the revenues received from properties in the district from the imposed sales tax or special assessment.

One significant difficulty in utilizing this mechanism for improvements covering a larger area is that the district can only be formed through a petition signed by owners of all of the land area within the proposed district. So, if the improvement is adjacent to lands owned by different owners, it may be difficult to obtain the consent of all necessary owners. It may have its greatest utility for distinct segments of the improvements proposed by the Management Plan, such as mainline highway interchanges and access roads located within one tract of land that is designated in the Plan for more dense or intense development. This technique can also be used effectively to assist in the financing of key portions of the adjacent local street network. The statutory scheme allows for a good deal of flexibility in how the boundaries of the district are established, so long as all included property owners agree. For that reason, the community partners should keep this tool on the list of the ones that should be considered for funding, particularly in those instances where a property owner or several property owners want to develop an area of land at an access point with sales tax generating properties. *Jurisdiction:* Local.

Transportation Utility Fee – A transportation utility fee is a fee collected on residences and businesses within a city’s or county’s corporate limits tied to the use and consumption of the transportation system. While this approach has only recently been applied to transportation services, utility charges have been used for years “to finance not only public water and wastewater systems but also such diverse facilities and services as electricity, telephone or telegraph services, gas, and a cotton gin.” There are a number of benefits to TUFs: Utility rates and fees provide a steady revenue stream that may be used for maintenance and operations costs, as well as facilities construction and are not required to meet the direct benefit test applicable to special assessments. Also, utility charges are generally not subject to voter approval, as are many taxes. And perhaps most applicable to the current circumstances, “[t]he development of a transportation utility is a particularly attractive option in states with strong home rule powers, such as Colorado, Florida, and California.”

Utility fees are collected from all development, both existing and new (as it “hooks-in” to the existing system). Charges are based on usage estimates of trips by land use and project budgets. The transportation utility fee is typically included on an existing county or utility collected tax or rate bill. The uses to which revenues from a utility can be used are limited only by the restrictions placed on their use in the home rule authority. Generally, however, the revenues would be placed into a separate fund and earmarked or dedicated to the purposes stated in the enabling authority and to no other purpose.

There is no specific legislative authority for transportation utility fees in Kansas. Local governments will need to look to home rule to authorize this financing mechanism. The key to the successful employment of this technique is crafting an ordinary ordinance or resolution that establishes a system of charges that will not be found to be a “tax,” while at the same time ensuring that the ordinance or resolution is not in conflict with existing state statutes, such as, by example, K.S.A. 12-6a01 et seq., authorizing special assessment districts.

In the leading case on transportation utility fees, *Bloom v. City of Fort Collins*, the Colorado Supreme Court reached the following conclusion: We hold that a transportation utility fee is not a property tax but rather is a special fee imposed upon owners or occupants of developed lots fronting city streets and that such fee . . . is reasonably related to the expenses incurred by the city in carrying out its legitimate goal of maintaining an effective network of city streets.

The Fort Collins transportation utility fee was adopted to address maintenance issues. Nothing, however, would prohibit the utility fee from being designed to fund construction-related costs. The Fort Collins fee was calculated based on: “the amount of frontage in linear feet that each lot or parcel has on the right-of-way of an accepted street; the base rate maintenance cost of each foot of frontage; and the developed use of the property (which includes the amount of vehicular traffic generated by the property)”. The fee was billed monthly. The Colorado Supreme Court found that the transportation utility fee qualified as a fee and not a direct tax. “Unlike a tax, a special fee is not designed to raise revenues to defray the general expenses of government, but rather is a charge imposed upon persons or property for the purpose of defraying the cost of a particular governmental service.”

Although this technique has a lot of potential as a viable alternative funding strategy, careful coordination with legal counsel will be necessary to ensure the precise structure developed is legally defensible.

Jurisdiction: Local.

² 64 *Am. Jur.2d Public Utilities* § 1 (1972) (cited in *Susan Schoettle & David Richardson, Nontraditional Uses of the Utility Concept to Fund Public Facilities*, 25 *URB. LAW*. 519 (1993).

³ *Id.* at 525.

⁴ *Id.*

⁵ 784 *P.2d* 304, 305 (Colo. 1989).

Tax Increment Financing – Tax increment financing (K.S.A. 12-1770 et seq.) is a tool used by local governments to capture the future increases in property tax and all or a portion of the revenues received from transient guest, use, local sales taxes collect from taxpayers doing business within the district, and increased franchise fees, and to make revenues realized there from available as an incentive to development, by using the revenue to pay for, generally, public infrastructure necessary to implement a redevelopment project plan (K.S.A. 12-170a (o)). Project costs may not include costs related to a structure to be owned by or leased to a developer. TIF funding can provide funds either as collected (pay-as-you-go) or through special obligation tax increment bonds repaid over 20 years.

While there is specific enabling authority for the use of TIF, it is limited to “eligible” areas that fall within one of the following categories and the boundaries of which are designated by the local government as a redevelopment district:

- Blighted
- Blighted and in a 100-year flood-plain
- Intermodal transportation area
- Major commercial entertainment and tourism area Conservation (becoming blighted)
- Major tourism area
- Historic theater
- Enterprise zone, or
- Environmentally contaminated area

Therefore, not all property within a local government’s jurisdictional boundaries may qualify to be included in a redevelopment area.

Eligible project costs most certainly will include all transportation network public infrastructures identified in the Corridor Management Plan.

Jurisdiction: Local.

⁶ *Id.* at 306.

Sales Tax and Revenue Bond Districts – This mechanism (K.S.A. 12-17, 160 et seq.) is the big brother/sister of tax increment financing. It’s “Super TIF,” if you will. The entire mechanism works almost exactly like tax increment financing, except the districts are called STAR bond project districts and the individual projects in the district are called STAR bond projects. Each project must be approved by the Secretary of Commerce and include at least a \$50,000,000 of capital investment and evidence \$50,000,000 in project gross annual sales or, if outside a MSA, met the requirements of K.S.A 12-17,162 (w). It is the heightened level of incentives authorized in these districts that is key. Once a district is established and a project plan is approved, the approving city may issue special obligation bonds. Importantly, those bonds may be repaid from the portion of the city and county sales and use tax collected from taxpayers within the city portion of the district AND the sales tax increment revenues received from any state sales taxes collected from taxpayers in that district. This is in addition to the property tax increment and local sales, use and franchise fee that can be pledged to repayment of the special obligation bonds issued in a traditional tax increment financing project. The Secretary can set a limit on the amount of bonds that may be issued to pay eligible project costs.

General Contract Authority – It is important to recognize that local governments have significant powers pursuant to the Constitutional home rule amendment and Chapter 19 of the Kansas Statutes. These powers include all powers of local legislation and administration that they deem appropriate, with really only minor exceptions. This Chapter extensively discusses state, county and city powers, such as the power to regulate through exercise of the police power, the power to zone, the power to tax, the power to charge fees, the power to impose special assessments and the power to purchase, hold, sell and convey land, including exercise of the power of eminent domain . The one power that really hasn’t yet received that much analysis is the power to contract. It would be a mistake not to also highlight this power which all the parties share. In addition to finding the source of the power to contract in the home rule provisions, K.S.A.12-101 contains a specific statutory delegation of power to cities to contract; K.S.A. 19-101 contains a similar grant to counties; and, among others, K.S.A. 75-5004 vests power to contract in the KDOT’s Secretary of Transportation.

The limits on the power of the participants to the preparation of this Plan to contract are minimal. The two major limitations are: (1) whether the

contract is within the scope of the delegated power: and. (2) Whether it is entered into and executed in accordance with statutory requirements. As to the first limitation, since the delegation in each instance is along the lines of “to make contracts in relation to the property and concerns of the city and necessary to the exercise of its corporate powers, “ as is readily apparent, the power to contract is quite broad. Generally, it is only limited by whether the contract is in conflict with statute or the constitution. A contract that violates the first limitation is ultra vires and void. For example, a contract that violates the Cash-Basis Law (K.S.A. 10-11-1 et seq. because it obligated the public entity to pay monies that are not budgeted and encumbered is completely void. Legally, it is as if it never existed.

It goes without saying that monies paid pursuant to a contractual obligation, like any other payment of monies by a public entity, must be for a public purpose. Courts, however, are clear on the broad scope of what constitutes a public purpose. Courts will presume that facts declared in support of a legislative determination of public purpose to be true and adequate A good rule is that a public entity is permitted to enter into all contracts that are reasonable and proper and which are reasonably necessary to allow it to fully perform the functions expressly conferred on it, as well as those that are essential to enable it to perform the duties of government for the benefit of its citizens.

The other main limitation on the contract power of which public entities should be wary is the prohibition on contractually bargaining away its duty to make reasonable laws and exercise their other legislative powers whenever doing so is necessary to preserve or protect the public health, safety and general welfare. As an example, a public entity could not agree by contract to approve a rezoning or impose or not impose some tax or fee at some later point in time.

The beauty of the contracting power is that it is so comparatively unfettered by limitation, particularly by those of the constitutional variety, such as the 5th Amendment’s constraints on exercise of the zoning and police power to require the dedication of land as a condition As noted above, for good and valid reasons, any dedication of land required in that instance must be roughly proportionate, in its nature and in its extent, to the impacts created by development. (See Sec. I.D.3)

In situations where the public entity is exercising its contract power, the parties are negotiating their own contractual duties and obligations. Ostensive, the ultimate objective of both parties is to achieve a win-win situation, where both receive the benefit of the bargain struck. The

traditional elements of a contract must exist for the agreement to be binding, of course. There must be an offer, acceptance of the offer, mutuality and delivery. As an example of use of the contract power to implement the Plan, an entity or individual contracting with a community within the corridor may be willing to agree to convey more land than the community could legally require them to dedicate when exercising its police or zoning power. So to, there may well be benefits the community can and is willing to provide to a developer that are more valuable to them than retaining that portion of the land which exceeds what “rough proportionality would allow the community to require, as a part of the development approval process. Based on the mutual interests of both parties, a deal can be struck that help in the implementation of the plan, while at the same time enhancing the developer’s business objectives. The fact that a contracting party voluntarily agrees to an obligation to which it could not be required to commit as a part of the development application process does not make the contractual obligation illegal.

The opportunities to utilize public entity contract powers to help implement this Plan are numerous and should not be ignored. In fact, each community along the corridor and KDOT should be ever vigilant about identifying situations where this power can be used beneficially. Virtually every time public incentives are provided to a developer, a contract is employed to memorialize the duties and obligations of the parties. The recipient of the incentives will expect that it will be asked to provide benefits to the community in exchange for being provided development incentives. There is no absolute right to develop land. Each party to the contract, however, must receive compensation (mutuality). Communities should be constantly watchful for opportunities to negotiate for the inclusion of provisions into agreements with developers and landowners along the corridor provisions that obligate them to take whichever appropriate actions they may be able to take to assist in implementation of this Corridor Management Plan.

INTERLOCAL COOPERATION

Through the exercise of home rule, by entering into an interlocal cooperation agreement, pursuant to K.S.A. 12-2901 et seq., and by utilizing powers granted to cities and counties by Kansas statutes, significant opportunities exist for cities and counties to cooperate with each other in the creation of corridor-wide financing strategies for the mainline highway enhancements and city connectors and local road projects within the corridor. There is potential for such cooperation in the use of both the traditional and the alternative financing mechanisms described above.

K.S.A. 12-2901 et seq. authorizes all public agencies of the state (including KDOT) to jointly cooperate in the exercise of any power, or privileges, or authority exercised or capable of exercise by such agency, including economic development and public improvements, pursuant to an agreement in the form therein provided. See also, K.S.A. 75-5023.

K.S.A 12-2904 (f) dictates that each interlocal agreement, prior to it taking effect, shall be submitted to the attorney general for a determination of whether or not the agreement is in proper form and compatible with the laws of the state. The Office of the Attorney General has made this determination on other interlocal agreements related to implementation of Corridor Management Plans, so obtaining approval of interlocal agreements, which are based on the KDOT-approved template Interlocal Cooperation Agreement, and is not daunting.

In addition, K.S.A. 12-2905 requires that, also prior to the interlocal agreement taking effect, it be filed with the register of deeds of every county in which each political subdivision or agency of the state that is a signatory to the agreement is located. The agreement also must be filed with the Office of Secretary of State.

Wherever possible, these opportunities should be investigated by KDOT and each local community to ascertain if a multi-jurisdictional approach will be beneficial to all parties, by providing better opportunities to successfully implement the goals of the Management Plan.

Jurisdiction: KDOT/Local.