Local Government Corridor Preservation Toolkit
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Preface

This toolkit is part of a larger corridor preservation effort sponsored by the Utah Department of Transportation (UDOT) with the input and assistance of representatives of Utahan metropolitan planning organizations (MPOs), transportation commissioners, and local elected and appointed officials.

The concept of preserving land for future transportation improvements, including roadway widening, new alignments, and mass transit, is rooted in the acknowledgement that so doing greatly reduces the costs of acquiring right-of-way at the time of actual construction – whether the cost is measured in terms of dollars, environmental impacts, or disruptions to homeowners, business, and the communities of which they are a part.

Although corridor preservation is advocated at the federal level, no other state has gone as far as Utah in terms of putting into plan both enabling legislation and dedicated resources with which to make the concept a reality. A Transportation Corridor Revolving Fund (hereafter referred to as the Fund) was established in 1996 by Utah’s legislature. The Fund is governed by the State Transportation Commission, which is assisted and advised by a Transportation Council that comprises UDOT staff, two transportation commissioners, and representatives of the state’s MPOs.

The Fund is supported by a 2.5 percent tax on rental vehicles, loan repayments, general fund transfers, interest on each balance, and bond issues. Yearly revenues since 1998 have ranged form about $4.5 to $6 million. To date, approximately $27 million has been disbursed from the fund.

The purpose of UDOT’s overall Corridor Preservation Study, of which this Toolkit is part, is to provide guidance in the implementation of the Fund, particularly at the local level. Local governments may apply for corridor preservation loans from the Fund. Once a local government has received capital from the Fund and purchases land or property rights for preservation, official ownership of the land is transferred to UDOT. The local public agency repays the loan when the project actually commences, at the original purchase price.
While the Fund is a critical tool for corridor preservation, its resources are limited and can not cover more than a small percentage of the total right-of-way on critical corridors that will be needed to accommodate Utah’s explosive growth over the next several decades.

For corridor preservation to succeed, the state and local governments will need to coordinate their efforts. The state’s major tools for corridor preservation are purchasing property rights and controlling access to state highways. Meanwhile, only local governments have the power to regulate land use, an authority that can be a powerful and cost-effective tool for corridor preservation through a variety of specific techniques, including subdivision regulations, easements and density bonuses, among others. As such, UDOT and local governments will accomplish the most by leveraging scarce state dollars with local contributions in the form of land use management and local dollars.

This toolkit is intended to help local governments to understand and avail themselves of the tools for corridor preservation, including loans from the Fund itself. The toolkit opens by explaining how long-range planning sets the foundation of corridor preservation. This is followed by a discussion of tools already in use in Utah, illustrated with Utahan examples. Next, a set of tools that have not yet been deployed in Utah, but that have been used with good results elsewhere, are presented. The toolkit concludes with five corridor preservation case studies from Utah. These demonstrate the complexity of executing a successful corridor preservation, a process that is innately long term in nature.
Corridor Preservation Toolkit: An Overview

Corridor preservation entails the coordinated application of various methods to obtain control of or otherwise protect right-of-way for a planned transportation facility. A simple illustration of the concept of right-of-way and its elements is provided in Exhibit 1. Right-of-way comprises the land owned by a transportation agency that is used to create the traveled roadway itself, plus shoulders and buffer zones.

The purpose of this toolkit is to provide guidance to local governments on the methods of corridor preservation. Part 1 discusses individual corridor preservation methods that are already being applied in Utah, along with specific examples. Meanwhile, Part 2 features methods practiced elsewhere in the country. Both sections describe lessons learned and obstacles to developing successful corridor preservation strategies.

Exhibit 1: The Elements of Right-of-Way
Because it is doubtful that any single method of corridor preservation would be viable (legally or financially) to protect all of the right-of-way needed for a future alignment or widening, it is important to consider corridor preservation in a larger context. Most corridor preservation efforts require the application of multiple tools—long term regional planning, local land use management, developer negotiations, and purchases financed at state or local levels. Part 3 of this toolkit illustrates this practical complexity through case studies from Utah that describe the corridor preservation strategies pursued, results to date, and lessons learned.

The Importance of Corridor Preservation

Local governments throughout Utah share a goal with the State: to provide transportation access and mobility in a way that reflects communities’ desired growth patterns at minimal environmental, economic, social, and financial costs. In this regard, Utah’s explosive urban growth presents a challenge for preserving land adjacent to existing roadways or in areas where roadways will eventually be needed. Exhibit 2 shows the dramatic growth that Salt Lake County has experienced between 1972 and 2001, which underscores the need for corridor planning.

Exhibit 2: Aerial Views of Salt Lake County: 1972 Vs. 2001
What is a Corridor?

More than just the road, a transportation corridor is a broad swath defined by points at either end between which flow both freight and passengers. A corridor may be existing or planned, and may serve any combination of transportation modes (e.g., automobiles, transit, freight, marine transport, bicycles, and pedestrians). Single corridors typically comprise multiple segments, each with their own functions, physical dimensions and characteristic looks and feels. Corridor types and classifications are depicted in Exhibit 3.

The Benefits of Corridor Preservation

Where corridors are not preserved and high density development is allowed, the eventual costs of acquiring needed right-of-way turn out to be much higher because land owners must be compensated not only for the cost of their land, but also for the cost of any improvements they have made in the interim. Therefore, a well planned corridor preservation program can minimize social, economic, and environmental costs. Among corridor preservation’s other benefits are the following:

- Corridor preservation can help keep the existing roadway network operating efficiently by preventing or mitigating development patterns that limit carrying capacity.
- Regional cooperation on corridor preservation can strategically focus resources on a limited number of highways, resulting in a smaller number of high capacity thoroughfares. These not only move passengers and freight more efficiently, they also mitigate urban sprawl.

- Corridor preservation often has value in not foreclosing the most environmentally desirable location for a needed transportation improvement.

- By acquiring right-of-way before it is needed for construction, project delivery can be streamlined. Traditionally, right-of-way acquisition has been a highly unpredictable, expensive, and litigious aspect of project delivery. Because it is a critical path item, right-of-way issues can halt project construction.

- Business damages and landowner fees, such as utilities relocation, severance, and relocation, make up a substantial proportion of overall right-of-way costs, which further supports the case for corridor preservation, which can minimize these ancillary expenditures.

- To the extent that corridor preservation mitigates against high intensity development along roadways where utilities are concentrated, it reduces the costs of utilities relocation, another expensive and unpredictable project delivery bottleneck.

- Open and coordinated corridor planning is advantageous to developers who are positioned to make better business decisions when they are aware of long-range plans regarding the location and timing of roadway improvements.

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**Local Governments Play a Key Role in Corridor Preservation**

Although corridor preservation has been discussed among transportation planners for decades and promoted at the federal level\(^1\), states have been left to develop their own techniques and programs. Utah has been a true pioneer by backing up the concept of corridor preservation with enabling legislation, financial resources, and policy tools. In fact, Utah is the only state that has established a dedicated funding source to capitalize a revolving fund for corridor preservation (a 2.5 percent statewide tax on motor vehicle rentals). These tax revenues, along with other sources, including revenue bonds, interest, and loan repayments, are deposited into a Corridor Preservation Fund governed by the Transportation Commission, which is advised and assisted by a Corridor Preservation Council that comprises Utah Department of Transportation (UDOT) staff, representatives of metropolitan planning organizations, and transportation commissioners.

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\(^1\) The Federal Intermodal Surface Transportation Efficiency Act of 1991 formally introduced the concept of corridor preservation and required the states to consider “preservation of right-of-way for construction of future transportation projects…and identify those corridors for which action is most needed to prevent destruction or loss of viable transportation networks.”
Both UDOT and local governments are eligible to borrow from the fund to purchase property or property rights (e.g., options, easements) for corridor preservation. While the State Legislature and UDOT have initiated a statewide corridor preservation effort, key corridors cannot be preserved without the active cooperation of local governments. Only local governments have the power to regulate land use, and this authority can be used to preserve right-of-way for future needs in several ways. The State’s major tool for corridor preservation is purchasing property rights and controlling access to state-owned roadways. However, since its funding is limited, the State could not possibly purchase all of the land needed to preserve even a subset of key corridors.

For this reason, local governments’ ability to regulate land use—for example, through adoption of general plans, zoning, and subdivision permitting—is a critical complement to the capitalization for loans to local governments from the Corridor Preservation Fund.

Exhibit 4 illustrates relationships among levels of government with regard to corridor preservation. It demonstrates that while state, local, and regional government play key roles in needs assessment and planning, local government alone has the authority to control land use through zoning and subdivision regulations. It also reflects the fact that both state and local government may be involved in property purchases.

**Exhibit 4: Local Governments Play a Key Role in Corridor Preservation**

UDOT and local governments will be able to accomplish the most corridor preservation by working together—with local agencies using their land use controls and relationships with developers to prevent incompatible development and the state disbursing loans from the Corridor Preservation Revolving Fund to complement local efforts.
Corridor Preservation Stakeholders

In addition to land owners, developers and state and local governments, many other public and private entities in Utah have a stake in corridor preservation, some of which are listed in Exhibit 5.

### Exhibit 5: Corridor Preservation Stakeholders

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<tr>
<th>Stakeholders</th>
<th>Interest/Involvement in Corridor Preservation</th>
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<td><strong>Local Agencies:</strong></td>
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<tr>
<td>- County boards of commissioners</td>
<td>- Plan transportation facilities.</td>
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<tr>
<td>- County planning commissions</td>
<td>- Designate corridors.</td>
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<tr>
<td>- Municipal board of commissioners</td>
<td>- Establish local legal frameworks and land use regulations.</td>
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<td>- Municipal planning commissions</td>
<td>- Purchase lands and property development rights.</td>
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<tr>
<td>- Local planning authorities</td>
<td>- Implement local land use regulations.</td>
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<td>-</td>
<td>- Define availability of sufficient government-owned right-of-way or property development rights to manage current and future transportation needs.</td>
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<td>-</td>
<td>- Define ability to control community character, historical and aesthetic values.</td>
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<td><strong>Metropolitan Planning Organizations and other Regional Associations</strong></td>
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<td></td>
<td>- Identify long-range transportation needs.</td>
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<tr>
<td></td>
<td>- Define availability of sufficient government-owned right-of-way or property development rights to manage current and future transportation needs.</td>
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<td></td>
<td>- Identify specific corridors for development and improvements.</td>
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<td>- Complete long-range planning documents.</td>
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<td></td>
<td>- Coordinate land use actions among dozens of jurisdictions to work toward a coherent corridor planning and preservation process.</td>
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<tr>
<td><strong>State Agencies:</strong></td>
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<tr>
<td>- Utah Department of Environmental Quality</td>
<td>- Develop and implement statewide plans and policies.</td>
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<tr>
<td>- Utah Department of Natural Resources</td>
<td>- Implement state laws and regulations.</td>
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<tr>
<td>- Utah Department of Transportation</td>
<td>- Desire availability of sufficient government-owned right-of-way or property development rights to manage current and future transportation needs.</td>
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<tr>
<td>- Utah Transit Authority</td>
<td>-</td>
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<tr>
<td>- Utah Transportation Commission</td>
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<td><strong>Federal Highway Administration</strong></td>
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<td></td>
<td>- Owns or has interests in improving the quality of life and properties under its jurisdiction or within its overall mission and responsibility.</td>
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<td></td>
<td>- Owns lands that may be affected by state and local corridor preservation activities.</td>
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<td></td>
<td>- Implements federal laws and regulations.</td>
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### Stakeholders

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<th>Other Interested Parties:</th>
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<tr>
<td>Citizens</td>
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<td>Developers</td>
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<td>Landowners</td>
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<td>Neighborhood groups</td>
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<td>Business associations</td>
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<td>Envision Utah</td>
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<table>
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<tr>
<th>Interest/Involvement in Corridor Preservation</th>
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<tr>
<td>Want transportation facilities managed efficiently and effectively.</td>
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<tr>
<td>Want to ensure government funds are used prudently.</td>
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<tr>
<td>Want to ensure that transportation infrastructure does not negatively impact personal property, and, at the same time, ensure there is sufficient infrastructure and facilities available to provide movement of goods and services supporting growth and development.</td>
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<td>Provide input to long-range planning documents through comments and public activism.</td>
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<th>Elected Officials and Bodies:</th>
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<td>State Legislature</td>
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<td>City/County Councils</td>
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| Make laws enabling creation of corridor preservation tools, such as the Corridor Preservation Fund. |
| Write and enact municipal codes governing land use regulations. |

## The Importance of Coordination

Corridor preservation is most effective when UDOT, local governments, and developers cooperate. Working in concert, these stakeholders can serve their constituents and customers by preserving land needed for future transportation improvements.

By designating certain corridors for particular attention through long term planning, UDOT and local governments can coordinate their capital programs, develop funding strategies, and develop ordinances and interlocal agreements that promote corridor preservation in a holistic as opposed to piecemeal way. This is critical because any single corridor may run through five, ten, or more separate local governments. Coordination can streamline project development, increase opportunities to preserve needed right-of-way, and accelerate right-of-way acquisition.

Shown in Exhibit 6 is a stretch of State Route 36, the adjacent property of which has not yet succumbed to severe development pressure. However, this corridor will become increasingly important as expansion to the east is limited by existing density and the Wasatch Mountains. State Route 36, runs through or adjacent to the communities of Mills Junction, Toole, Stockton, Faust and Vernon, as well as large chunks of unincorporated Toole County.
Exhibit 6: State Route 36
Toole County

Exhibit 7: Poor Planning Leads to Development within Needed Right-of-Way

Exhibit 7 illustrates a failed case of short term corridor preservation. In this Toole County case, the developer was unaware of the state’s plans to widen the roadway upon which the pictured vehicle is driving. As a result, the developer went ahead and built the structure within the planned right-of-way. Resolving this problem will now be much more expensive and complex than it would have been if the developer had been aware of the planned widening or if the agency had preserved the corridor in advance.

There will be fewer and fewer failures in short term and long term coordination for corridor preservation as the state and local governments become more aware of the benefits of corridor preservation and the tools with which to support it. Following is a positive example of coordinated planning for corridor preservation between two local governments.

Layton and Syracuse

In 2003, the cities of Layton and Syracuse signed an Interlocal Agreement which codified their coordination by designating in their general plans capital projects for critical shared roadways. They have also agreed to share construction costs
when a project benefits both cities, even if it crosses jurisdictional boundaries. In terms of corridor preservation, these communities have committed to plan together to identify their critical corridors and to strategize on how to provide for the preservation of the right-of-way needed to improve these corridors and to build others. This Interlocal Agreement is reproduced in an appendix to this toolkit.
Planning for Corridor Preservation

Cost-effective corridor preservation is based on coordinated long term land use and transportation planning—by local governments, the state, and metropolitan planning organizations. A lack of long term planning would lead to isolated, uncoordinated purchases that advance no particular strategy. Piecemeal purchases or land use controls will not achieve the key benefits of corridor preservation: preservation of existing infrastructure investments and efficient development of local and state roadways. The integration of corridor preservation with transportation planning helps focus resources and identify right-of-way needs early on.

Following are two examples of long term planning for corridor preservation in Utah:

- **Wasatch Front Regional Council.** Through its long-range plan, the Wasatch Front Regional Council (WFRC) has designated the Bangerter Highway and the Western Valley corridors for special attention. The WFRC will work with the jurisdictions that these corridors run through to develop land use plans and ordinances that promote the future development of these corridors as key elements of the regional transportation network.

- **City of Bluffdale.** The City of Bluffdale, located just south of Riverton on the west side of I-15, is conducting the Porter Rockwell Corridor Study which will identify the best alignment for a future transportation corridor between I-15 and Camp William Road. The study aims to identify a corridor that can be built to accommodate new development in the area while preserving an option to accommodate future light rail. Meanwhile, the community is working to preserve potential alignments along property lines to minimize the property impacts of the selected alignment.

Local Transportation Planning Practices in Utah

General plans and master transportation plans are explicit statements of how a city envisions its future. They form the basis of every city’s corridor preservation and land use strategy. The importance of plans and the planning process is that they
typically identify overall goals, the policies necessary to achieve those goals, and
the implementation or action items necessary to execute those goals. Such
planning processes and tools are widely accepted by the development community
because they offer an official and adopted plan for development and
transportation. Successful corridor preservation through planning is more likely in
scenarios where the need is great as evidenced by severe traffic congestion; or
where land is undeveloped and corridor preservation has less impact on the
individual property owner. The types and purposes of planning documents
produced by Utah’s local governments are described below. These plans provide
mechanisms for corridor preservation planning at the local level.

- **Master Transportation Plans.** Local governments in Utah generally use the
  master transportation planning process to identify and prioritize locally and
  regionally over a 20-30 year timeframe the significant transportation corridors.
  Utah’s cities cover the spectrum in their level of experience and sophistication
  with the master planning process. While some drill down to the level of
  identifying right-of-way widths, others take a less specific, more piecemeal
  approach to corridor and facility planning.

- **General Plans.** Like master plans, the general planning process is used by
  Utah’s local governments, although less specifically for transportation
corridor preservation. General plans are more likely to discuss transportation
  needs with respect to planned land uses and future development. General
  plans tend to be less specific in their definition of future road corridors, both
  as to alignments in undeveloped areas and in terms of their capacities, cross-
  sections, and rights-of-way.

- **Official Maps.** Official maps are products of a previous Utah state statute
  (since repealed). They had been intended to be more detailed and specific
  elements of the master transportation planning process. Generally, official
  maps identify not only necessary future facilities but also give their
  classification, size, and expected traffic volumes.

  Issues with official maps arose because they limited the exaction authority of
  local governments. They required jurisdictions to purchase properties within
  one year of placement on the map, but local governments did not typically
  have the resources to do this. While the legal status of official maps is subject
  to change, it is important to be aware of their past role in corridor preservation.

- **Capital Facilities Plans.** Capital facilities plans must be prepared as a
  condition of implementing development impact fees. Small towns, however,
  are exempt from this requirement. Capital facilities plans specify the city’s
  plans with respect to infrastructure construction and maintenance, a
  timeframe for such improvements, and how they will be financed.
Issues and Obstacles

Difficulties in using plan documents as the basis of local governments’ corridor preservation efforts can come in the final product. It is often said that drawing a line on a map can have an immediate negative impact on the land where the line is drawn, even if it is solely for planning purposes. Indeed, many of the hardship acquisition cases that UDOT deals with result from identifying future corridors or road expansions. While planners are chastised for not doing more planning when traffic congestion reaches unacceptable levels, the appearance of doing “too much” planning at preliminary stages often sparks litigation and forces UDOT to make hardship purchases, which are also funded out of the Corridor Preservation Fund.

Another planning-related paradox in Utah’s corridor preservation process is the fact that transportation priorities are subject to change. In short, the wrong corridor may be preserved, at high financial and political costs. The situation on US 89 from South Ogden to Farmington is a case in point. This north-south corridor was once considered critical to regional mobility, and local governments acted to preserve adjacent right-of-way despite pressures from land owners and developers.

Meanwhile, this land being held aside discouraged job producing businesses from locating along the corridor, which in turn reduced tax revenues to adjacent cities. Plans to improve this corridor have since been relegated to the back burner because of other area roadway improvements done in conjunction with the 2002 winter Olympics, and property along the initial alignment is seen as having been blighted solely by virtue of drawing the line.
Corridor Preservation Tools in Use in Utah

Described in this section are land use management tools that can be useful as elements of a corridor preservation strategy. This section focuses on tools already being used in Utah, along with local examples.

Zoning

Zoning is a useful corridor preservation support in that it is used to regulate the intensity of development throughout a jurisdiction. Clearly, it is easier to deal with low intensity uses, such as agriculture, than high intensity uses, such as commercial, when it comes time to build the needed improvement.

Zoning tools, generally part of the development approval process including plat approval and environmental review, are the specifications within a given municipality’s zoning ordinance that give that municipality control over land use and development within its borders. Zoning and zoning tools come as the follow-up step to the general plan process; in fact, they are the chief means by which general plans are executed.

As part of overall planning, zoning specifies what types and intensities of development will be allowed, and where the development should be located. Zoning is widely used in Utah and it is an expected component in the plan approval process. Aspects of zoning that facilitate corridor preservation are described in this section.

Setback Requirements

Setbacks preserve critical corridors by precluding development too close to the needed right-of-way. Local governments use setback requirements to regulate the minimum distance a building can be placed relative to a defined right-of-way. Building setbacks are required distances from the street, right-of-way line, and building lines within which development or construction is not permitted without a variance. The setback concept is illustrated in Exhibit 8.
In corridors where a future alignment has been identified and the needed right-of-way width determined, setback requirements are an effective corridor preservation tool. Of course, setback requirements do not address preservation of a future potential roadway alignment; they are only of use in protecting additional right-of-way to widen existing roadways.

Local governments generally require setbacks to be measured from future right-of-way lines. Unless otherwise established, the future right-of-way line is determined as one-half the required right-of-way as measured from the centerline of the future corridor.

Exhibit 8: Building Setbacks

![Exhibit 8: Building Setbacks](image)

According to Utah statutes, setback ordinances may not be used for the sole purpose of reserving land for future roadway widening. However, their enactment is a legitimate basis for zoning because they promote the public welfare by providing for increased light and air, vision clearance at intersections, and a safety buffer against noise and traffic, all which are considered public purposes. Following are examples of the successful application of zoning and setback tools by local governments in Utah.
**Wasatch County**

Wasatch County recently adopted a new land use code with setback regulations for buildings adjacent to state and federal highways (requiring a 150-foot distance between rights-of-way and buildings). Setback requirements for county roads are less.

**Draper City**

Draper City increased its setback requirements from 25 feet to 50 feet on Highland Drive, a corridor that is already experiencing growing demand and related congestion. Although UDOT wanted a 106-foot right-of-way, and the city anticipated the need for an 80-foot right-of-way, the more modest increases in setback requirements does at least mean that new homes will be located farther from the road, and that any needed expansion will only require the purchase of lawns and yards, as opposed to structures.

**L5 Minimum Standards**

L5 Minimum Standards refer to sets of standards cities adopt as conditions for development permits. Most relevant to corridor preservation are L5 standards pertaining to overall roadway width. First, to the extent that wider roadways are required at the time of development as a result of the impact of a specific development, L5 minimum standards relate to corridor preservation in that there is less urgency to preserve right-of-way because some portion of needed capacity is provided when the development goes in. Second, by requiring the developer to provide for the added infrastructure costs created by his development, rather than the local government reaching into its own coffers, the local government can conserve its own resources for corridor preservation purchases.

Utah cities generally establish nonnegotiable minimums, and then analyze the need for increasing the width based on specific development impacts as measured by Traffic Impact Studies. Developers are required in turn to mitigate the impacts of the requested development by building infrastructure, such as roadways, curb and gutter, at dimensions sufficient to serve that development.

L5 minimum standards are more a means of preventing the further erosion of the roadway network’s functionality than as a means of corridor preservation. In fact, it is unconstitutional to require a developer to contribute to future needs beyond those that are a direct impact of the development for which permitting is required.
Overlay Zoning

Overlay zoning can be used as a corridor preservation tool by laying over (rather than changing) existing zoning additional requirements, which may specify permitted uses of land adjacent to key corridors. Overlay ordinances have been used in several Utah communities to support corridor preservation by controlling development adjacent to transportation corridors in terms of intensity, location, and permitted uses.

Overlay zoning may be used in conjunction with other zoning in cases where the land use entails special circumstances (e.g., areas around interstate interchanges and airports). Overlay zoning adds special requirements to a given area’s existing zoning—it does not change the underlying zoning. In fact, overlay zoning gives governments a way to tailor communities’ land use strategies to serve the unique circumstances of specific areas or corridors.

Overlay districts may address a variety of issues, including:

- Right-of-way dedication.
- Allowances for interim uses.
- Setbacks on designated corridors.
- Cluster zoning.
- Joint and cross access provisions.
- Limitations on new driveways and curb cuts.
- Driveway spacing standards.
- Transfer of development rights.

Following are some examples of overlay zoning being used in Utah that can be applied for corridor preservation purposes (as long as they serve other legitimate purposes as well).

Pleasant Grove

The gateway overlay zoning adopted by the City of Pleasant Grove protects land adjacent to the City’s “gateways,” which it considers to be its key corridors.

The City of Pleasant Grove’s gateway overlay zone comprises five subdistricts, each of which is a major entry into town. For instance, the Pleasant Grove Boulevard Subdistrict consists of all the land a distance of four hundred feet on either side of the right-of-way of Pleasant Grove Boulevard.
Pleasant Grove’s overlay district is intended to execute the City’s 1997 General Plan by encouraging imaginative and efficient land use, developing a sense of community, and ensuring compatibility with the surrounding neighborhoods and environment. The City plans to accomplish this by encouraging efficient land use, attracting capital investment, and promoting the safe flow of traffic. The means of accomplishing these objectives are seen as greater flexibility in the location of buildings (e.g., density bonuses and transferable development rights) and consolidated open spaces. It is hoped that a key outcome of the overlay zoning will be a well-planned circulation system and attractive entrances to the City.

Exhibit 9 depicts the City of Pleasant Grove’s Gateway Overlay Zone and its subdistricts.
Exhibit 9: Pleasant Grove's Overlay Zone and its Subdistricts
Salt Lake County and Park City have established overlay zoning that is intended to preserve key corridors in terms of their environmental and aesthetic characteristics. Corridor preservation for purposes other than roadway widening and development of future new alignments is important as part of a region’s overall corridor preservation plan. Setting aside key corridors for their environmental and aesthetic value allows planners to focus on the remaining corridors that are most appropriate for capacity expansion.

**Salt Lake County**

Salt Lake County has established a Foothills and Canyons Overlay Zone (FCOZ), which governs land use in the foothills and canyons. The special requirements of this overlay zone require a review of roadway and residential development in these sensitive areas to protect visual and aesthetic qualities, water quality, fragile soils, steep slopes, ridgelines, vegetation, and wildlife habitat. The effect of this overlay zone is to preserve land adjacent to existing roadways, but for environmental reasons rather than increased roadway capacity.

**Park City**

Park City has established an active corridor preservation program by combining overlay zoning with fee simple real estate purchases. The City’s General Plan is highly focused on maintaining the resort town’s aesthetic appeal and historic character. To this end, the City has established a Frontage Protection Zone (FPZ) overlay that includes those properties with frontage on, and within one hundred feet of the right-of-way line, of the town’s major central streets.

Shown in Exhibit 10 are photographs taken along Highway 224, which is the western entrance to Park City. As shown, the land adjacent to the highway is free from unsightly development, and there is a sizable bare ground buffer zone adjacent to the highway.
The City also created a subzone of the FPZ, the Entry Corridor Protection Overlay (ECPZ), which planners and community developers in Park City have designed to avoid the unattractive, sprawling strip-type development that is often found just outside resort towns. The special ECPZ regulations apply to all structures on lots adjacent to or within 250 feet of the right-of-way of the City’s primary arterials.

The FPZ overlay protects the Deer Valley Drive (Hwy. 224) corridor, for instance, with a right-of-way 100 feet wide. The ECPZ overlay protects Highway 224 and 248 further out from the main part of town with a corridor right-of-way width of 250 feet.

In addition to enacting zoning overlays to protect the use and character of its transportation corridors, the local government, in conjunction with developers and citizen groups, have also purchased land with their own resources fee simple in order to preserve the town’s corridors and their aesthetic quality.

Park City’s overlay zones are mapped in Exhibit 11.
Issues and Obstacles

Zoning can support corridor preservation, but only indirectly. Zoning expressly for the purposes of corridor preservation is clearly unconstitutional, as pointed out in the 1990 study, Methods and Techniques of Corridor Preservation: A Guide for Utah Practice, conducted for UDOT by Mitsuru Saito et al., at Brigham Young University.

Two types of zoning can raise taking of property problems in corridor preservation programs: downzoning and zoning with acquisitory intent. Downzoning occurs when land is reclassified from a more intensive use to a less intensive use, such as going from commercial to agricultural. This can create taking of property problems if property is downzoning solely to preserve a transportation corridor.
The second type of zoning that raises the takings issue is what can be construed as zoning with acquisitory intent, which means that zoning ordinances are applied with the primary objective of reducing property values prior to acquisition of key parcels.

Nonetheless, zoning ordinances can be used to regulate the intensity of land use, as long as the promotion of the low intensity use is applied in harmony with the community general plan and is based on uniform planning criteria.

Another issue arises with regard to general planning and zoning as they are applied in practice in Utah. In order to be useful for corridor preservation, there must be agreement between the local government’s general plans and zoning ordinances so that there are tools with which to support the city’s corridor preservation goals. However, in fact, the relationship between zoning ordinances and general plans varies considerably among Utah cities. While some cities regularly update their zoning ordinances based on general plan updates, other cities do not automatically do so; rather they wait for developer requests for zoning changes. The results of such lags between general plan updates and zoning ordinances is inconsistency in general plan implementation. In short, zoning tools are only viable as corridor preservation supports when they are consistent with cities’ general plans.

**Subdivision Regulations: An Opportunity for Negotiation**

In addition to zoning and setback requirements, subdivision and development reviews can be treated as opportunities to work with developers to plan for and establish roadways and structures that accommodate both public and private interests. Corridor preservation should be part of this process. By approaching permitting and approvals as an opportunity for collaboration, as opposed to police power control, it is more likely that local governments and developers will be able to work out mutually beneficial development plans.

Approaching land use control as an opportunity for negotiation with developers is particularly strategic in Utah, where an unusual degree of deference is accorded to private land owners in exploiting the “highest and best” use of their property. The more effective the negotiations with the developer, the more smoothly the local government will be able to plan and preserve key corridors. The content of the negotiations on the developer’s side include the provision of infrastructure, land dedications, and impact fees. On the local governments’ side, while their police powers are clearly a “stick,” local governments also have inducements to offer. They include density bonuses, water and sewer connections, rezoning approval, or cash.
In approaching developer negotiations, it is vital to bear in mind that the developer’s planning operates on an entirely different timeline than that of a local government. Developers often purchase property rights that specify a period in which they must exercise an option to purchase a piece of land. They often need to make decisions quickly, often within weeks. To the extent that local governments wish to work more collaboratively with developers to establish corridor preservation strategies, they will need to get to “yes or no” sooner rather than later.

The rule of thumb of real estate, “location, location, location,” applies in the development negotiation process as well. Direct access to heavily-traveled transportation corridors is of high value to developers. Because it is a negotiation issue of great importance, most Utahan developers are willing to work with local governments and UDOT on right-of-way dedication and road building. The greater the perceived value of the corridor and development location, the greater the developer’s interest in negotiation.

Impact Fees

Impact fees are intended to create a rational relationship between the impact created by new development and the cost of funding additional roadways and other public infrastructure to serve the added demand. Impact fees are one source of local cash for corridor preservation. Local governments throughout Utah call upon developers to contribute to the cost of providing public services and infrastructure (including roadways) through impact fees, dedications, and exactions. Whether the developer contribution comes in the form of money (impact fees), land (dedications), or new roadway (exactions), such contributions can be used to provide local governments with resources for corridor preservation.²

According to a 1995 study by Utah State University, 25 out of 54 Utah cities surveyed collect transportation impact fees. According to state statute, the calculation of transportation impact fees is subject to specific standards which are based on the principle of establishing a fair share cost per unit of impact. Of the cities with transportation impact fees, the highest impact fee was found to be $2,132 per house while the lowest was $125 per house.

The total impact fee charged may not exceed the need created by new development within the municipality charging the impact fee. In Utah, impacts to state highways are not addressed in the impact analysis, which means that corridors along state-owned facilities cannot be preserved using local impact fees.

² Although impact fees could be used to purchase land for corridor preservation, they are almost always used for infrastructure construction on existing right-of-way in Utah.
The inapplicability of local impact fees for use on state-owned facilities is a significant obstacle to regional corridor preservation.

An article from the Utah League of Cities and Towns on the impacts of the court decision, Home Builders vs. North Logan, regarding impact fees is contained in the appendix. This article contains information on developing legally defensible impact fees in Utah.

A Fine Point in Developer Negotiation: Severance

An important negotiation factor, one which often causes the corridor preservation process to break down, is the amount and configuration of land that remains after the necessary right-of-way has been preserved. Private property “takings” are a complex legal issue that arises when property loses economic benefits due to various regulations and requirements imposed under local government police policy.

The degree to which the economic benefit is diminished is subject of much legal debate, and certainly will not be solved here. The important point is that if the amount of land left after exactions causes the land to be undevelopable or unsellable, property owners are likely to approach local governments and/or UDOT as hardship cases because they believe the resale or development of their land is impossible. The less usable land left after an exaction or dedication process, the greater is the bargaining power of the land owner or developer.

West Jordan and Sandy City

West Jordan has been proactive in collaborating with developers. A lynchpin of its strategy has been to highlight the importance of various transportation corridors to specific developments and thereby garner developer support in preserving and constructing needed facilities with adequate capacity. With programs such as these, developers generally feel as though they are being rewarded with development rights and densities for their corridor preservation cooperation. Sandy City is another local government that has worked in collaboration with developers to preserve right-of-way by offering in exchange for increased densities, flexibility in property frontage, access agreements, and signal locations.

Issues and Obstacles

While negotiating with property developers to obtain impact fees and other mitigation for the impacts of their development has significant advantages as a means of corridor preservation, it is nonetheless limited in its application for at least three reasons. First, it is typically successful only for large-scale developments. This raises a related obstacle. The cumulative impacts of small scale developments, though significant, may not be accounted for at all. Second, any negotiated tax
abatements reduce overall local revenues. Third, it may not be successful where development pressures create greater rewards than does cooperation with local government.

**Land Trusts**

Among the advantages of land trusts for corridor preservation is the fact that they keep large tracts intact, which makes it easier, less time-consuming, and less costly for governments to negotiate with a single entity as opposed to dozens or even hundreds of individual land owners along a given corridor.

Although land trusts have not been used for corridor preservation in Utah, there are many conservancy related land trusts throughout the state. Land trusts protect corridor right-of-way for as long as the trust operates or until the land is sold to another entity. Private land trusts can be especially useful when large properties are threatened by subdivision and development. Local planning authorities and transportation agencies can use land trusts to work with owners of large tracts to create conservation easements prior to subdivision.

Individuals and private or public entities may create land trusts to keep land in an undeveloped state for several years, even decades. Public or private land trusts involve the acquisition of specific critical tracts of land for future exchange or purchase by local governments. An example of private land trusts are those owned and managed by the Nature Conservancy to protect and conserve open space from development.

The mechanism for operating these trusts include purchasing fee title to property, holding and managing the land or conveying it to a public agency, or acquiring conservation easements.
The Land Trust Alliance has developed a set of standards and practices for operating private land trusts for environmental protection. The Standards and Practices Guidebook is available at <http://www.lta.org>.

Established land trusts have not been used to specifically protect right-of-way for transportation corridors in Utah, although many have been established throughout the state to protect open spaces.

**Issues and Obstacles**

Land trusts have not traditionally been used as a mechanism for preserving corridor right-of-way, as such, their usefulness for this purpose is not well understood. Second, when a land trust dissolves, control of the development rights becomes unclear. Finally, resolution of control of development rights may be held up in courts for months, if not years.

**Access Management**

Access management is an approach to corridor management, if not preservation. Access management is a tool in the corridor preservation toolkit because it preserves the carrying capacity of existing roadways and thereby diminishes the need for those capacity improvements which require more right-of-way. Access management effectively controls the number and location of conflict points along
Access management includes regulatory actions such as permitting, and non-regulatory actions such as the use of roadway design elements like raised roadway medians.

Exhibit 13: Raised medians are a design-based form of access management.

Access management should be considered in the context of local governments’ ongoing planning efforts because it is much more difficult to retrofit facilities or enforce new access management after development has already occurred. Well executed access management improves safety and traffic circulation, while reducing delay at a nominal capital cost—particularly compared to the costs of adding lanes or new alignments. Its value in terms of corridor management is twofold:

- By preserving the functional utility and capacity of the existing roadway network, a given corridor may be preserved without having to secure additional right-of-way.
- Effective corridor management includes not only avoiding development in the path of planned transportation facilities, but also the management of access as new development adjacent to the roadway occurs.

UDOT has developed a statewide Access Management Plan that contains standards, regulations, and guidelines that promote uniform, equitable access to or from any roadway that is part of the State Highway system. It contains provisions for the following:

- Limitation of the number of conflict points at driveway locations.
- Separation of highway conflict areas.
- Reduction of the interference of through-traffic.
- Spacing at-grade signalized and unsignalized intersections.
- Adequate on-site circulation and storage.

UDOT’s Access Management Plan does not address access management on locally owned roadways, except as they intersect with roadways owned and operated by the State Highway system. The authority for controlling access along locally owned roadways and intersections lies in the hands of local governments, which must pass their own access management ordinances. In fact, state law governing the Corridor Preservation Fund requires that local governments have an access management ordinance in place as a prerequisite to borrow from the Fund.

Although aspects of access management may be embedded in local governments’ subdivision regulations (e.g., regulations for driveway spacing), establishment of an access management ordinance would entail consolidation of what may be disparate elements into a coherent whole—along with the addition of any missing elements.

Exhibit 14: Access management reduces the number of conflicts on local roads.

Cache County

Cache County has undertaken an innovative, cooperative approach to access management. Initially enlisting the unincorporated areas of the County plus several
cities, the County developed an Access Management Plan modeled on UDOT’s draft policy, which applies to state-owned roadways.

Although the County is still working to develop standards tailored to the needs of locally owned roadways, the effort has already borne fruit in terms of raising awareness of the value of a cooperative approach to access management.

**Exhibit 15: Access management preserves existing roadways’ carrying capacity.**

![Exhibit 15](image)

Conflicts occur by allowing unlimited access to development.

Conflicts are reduced by use of regulated traffic flow into and through development.

Exhibit 15, which depicts a strip of commercial development, shows how access management can be used to control ingress and egress to a group of establishments. Instead of allowing limitless access along the whole length of the strip (as is possible in the absence of curb and gutter or other physical barriers), access is consolidated. Such consolidation supports corridor preservation by improving the existing roadway’s carrying capacity. Unlimited access slows traffic and disrupts the flow as vehicles enter and exit at any point along the strip at will. In allowing so many conflict points, accidents, which further impede traffic operations, are more frequent. By preserving existing capacity of the corridors, the need for transportation improvements and the resources they
require, are diminished, leaving more of the network functionally intact and resources available for other purposes, including corridor preservation.

**Issues and Obstacles**

Reasonable access is a property right subject to takings clauses in private property law; as such, legally defensible access management plans cannot be overzealous.

**Fee Simple Acquisition**

Fee simple acquisition is the simplest and most easily implemented corridor preservation technique. State or local government entities buy properties needed for future transportation corridors outright, gaining full title to the land and therefore full control over its use. Although this corridor preservation method has the fewest institutional complications, it also requires the greatest capital outlay. Financial resources for simple purchases include the state Corridor Preservation Fund as well as a variety of local sources, including general funds, proceeds from special improvement districts, tax increment financing, and bonding.

Through fee simple acquisition, the state or local government gains the full title to land within proposed transportation corridors. This eliminates the possibility of development foreclosing desirable alignment alternatives and preserves the corridor for extended periods, allowing for flexibility in construction scheduling. There are many advantages of fee simple acquisitions for corridor preservation. First, the local or state government holds full title and control of the property, which provides the most latitude in how it chooses to manage and use the land, at the least legal and political risk. Other advantages of fee simple ownership include the following:

- Property rights purchases eliminate the threat of development without entering into the legal issue of “takings.”
- Undeveloped lands can be purchased at lower cost.
- Ownership of the land allows maximum flexibility in road construction scheduling.

**Utah Statewide**

According to an analysis covering the dates from July 1998 through February 2003, 26 bare ground (non-hardship) purchases had been made from the Corridor Preservation Fund at a value of $11.8 million. All are in the Salt Lake Valley metropolitan area.
Park City

Park City has used local funds to purchase farmland adjacent to transportation corridors heading into town in order to preserve the City’s general plan vision as a destination resort with a rich natural cultural history. Park City has complemented such purchases with overlay zoning requirements along its critical corridors.

Issues and Obstacles

While there are clear advantages to having free and clear title to land to be preserved for future transportation use, there are also disadvantages, which include the following:

- Fee simple land purchases are expensive, and the potential need far outstrips resources at state or local levels combined.
- Funds may be committed years in advance of corridor construction, which can be politically unpopular and difficult to justify, particularly when conditions change and a different alignment becomes preferred.
- There is question regarding the appropriateness of the state’s purchasing of land and holding it until it is of higher value, even if those gains are passed on to the people of the state.
- The acquisition of right-of-way in advance of a project can be problematic from a NEPA compliance perspective. While the federal government has expressed support for corridor preservation in principle, federal regulations still require NEPA compliance and public hearings before any full-scale right-of-way acquisition on federal-aid projects.
- Government at the state or local level must manage and maintain the property, while foregoing tax revenues.
Other Tools

As shown in the previous section, corridor planning and preservation techniques now used in Utah center on general plans, zoning, subdivision regulations, access management and fee simple acquisition. In addition to these methods, there are techniques that have been used in other states, such as transferable development rights, and other property rights transactions that result in less than fee simple rights to the land, such as options to purchase, rights of first refusal, and easements. Such techniques are generally less expensive than fee simple acquisition and yet provide considerable levels of protection against incompatible development.

This section of the report describes corridor preservation techniques that have not yet been used in Utah or whose use in the State is still emerging.

Density Bonuses Rights

Density bonuses are a means of preserving needed corridors by allowing private landowners to develop parts of their land at a higher density than would otherwise be permitted in exchange for not building within a negotiated corridor preservation area.

With density bonuses, local governments work closely with developers to apply mechanisms such as clustered development to preserve future corridors for and within new developments. Under density bonus programs, a landowner is allowed to use “clustering” to develop the portion of his property outside the corridor at a higher intensity, resulting in the same number of units that would have been allowed on the entire property in absence of the corridor. With density bonuses, a landowner is allowed to develop a separate piece of property at the same density that would have been allowed on the parcel now reserved for transportation use.
The “right to develop” is based on the zoned use and density or intensity allowed under local regulation and statute. Density bonuses are effected by creating two “zoned” areas: the sending area and the receiving area. The sending area comprises that land that is in need of protection from development; e.g., it may be the intended future corridor right-of-way. Meanwhile, the receiving area is that portion of a landowner’s property that may be developed more intensively (to offset the loss of building privileges in the sending area).

### Transferable Development Rights

Transferable Development Rights (TDRs) are among the most institutionally complex corridor preservation tools. TDRs can be used to preserve needed corridor by allowing owners of the land to sell their development rights to a landowner in another area whose current zoning does not permit his desired intensity of use. As such, TDRs can be used to swap infill for corridor preservation.

TDRs are traditionally used to preserve open space and farmland from development. Throughout the country, state and local governments have enacted policies to create market-based mechanisms for acquiring land as a means of countering development and sprawl in agricultural areas, open spaces, and environmentally sensitive land that may have public value beyond its value to private owners.

Transferable Development Rights, as the name implies, involve the transfer of legal rights to develop a property. The “developer” does not have ownership of the land itself, only the TDRs, under which the right to develop a parcel of land is severed from ownership of the land itself. Local and state governments create a
market with buyers and sellers of the development rights. Those who sell development rights permanently preserve their land in its current undeveloped state (farmland, open space, etc.), while purchasers are typically developers who want to build houses at a greater density than allowed by local zoning ordinances. TDR markets are used to channel development away from areas considered valuable for farming or other undeveloped uses.

A TDR constitutes a single transaction or the concept may be used to shape land use in larger districts through creation of a market in sending and receiving rights. For instance, sending rights could be used to provide infill where desired, while maintaining desired open space, whether that open space is intended for parks, agricultural lands, or corridor preservation.

TDR programs must be enabled through a particular type of zoning ordinance. In addition, when the TDR action is being completed, the local government should ensure that the agreement is made permanent by recording the development right transfer with the deed to the land.

Density bonus programs and TDR programs have many common advantages. Working with developers to specify development rights through density bonuses, clustering, and the transfer of development rights are sophisticated means of corridor preservation in that they allow flexibility in siting residential and commercial development relative to the transportation network that will be needed to serve the demand that these and subsequent developments will bring.

Such arrangements can provide developers and local governments with land use patterns that conform to their general plans with less emphasis on police power and more emphasis on flexibility and mutual interest. Compared to fee simple acquisition, TDR and density bonus methods that preserve corridor are much less expensive, and compared to rigid enforcement of inflexible zoning and subdivision regulations, they are less susceptible to legal challenge. In essence, these types of programs can be used to avoid a regulatory taking by compensating property owners for the loss of their development rights with comparable development rights elsewhere. Meanwhile, landowners retain the full benefits of property ownership. Finally, local governments lose no revenue base or resources to the costs of property management.

**Issues and Obstacles**

Density bonuses and TDRs are not always applicable because not all areas are appropriate as receiving areas. Some lack the physical infrastructure (e.g., water, sanitary sewer) to make development feasible in the near term. Others are subject to binding environmental regulations that prevent densities from exceeding baseline zoning ordinances. In many suburban counties, development moratoria imposed under adequate public facilities ordinances can delay development and reduce the value of TDRs.
Lack of information on the TDR market is another obstacle to using this tool in corridor preservation. Since TDRs are primarily a county-level planning tool, the potential size of a TDR market is limited. Transactions in most programs number in the tens to at most one hundred per year, making it difficult to establish a record of transactions with which to provide critical information for potential participants.

Finally, they do not work well in areas where property can be rezoned easily or where market demand for property is low, such as rural areas. These difficulties may require local governments to retain or keep staff on hand with specialties in managing these types of programs. It may also be difficult to cope with a situation in which there is a pronounced imbalance between those who wish to sell vs. buy development rights.

**Options to Purchase**

An option to purchase is a less expensive means of purchasing needed corridor, albeit on an interim basis. Although most state and local right-of-way agents’ comfort zone is limited to fee simple purchases, private developers use options extensively as a means of committing a prospective seller (by paying a relatively small payment) while zoning issues or financing are settled. Purchase options are not generally used to purchase property for federal-aid projects.

An option to purchase is an alternative to fee simple acquisition. Purchase of an option is a voluntary contract between a property owner and a buyer, in which the property owner agrees to reserve the property at a given price for a specified period, in exchange for a deposit payment on the land. During this time, the holder of the option is the sole party eligible to purchase the property, and may exercise the option at any time during the contract. If the purchase has not been made before the option has expired, then the property owner is no longer under any obligation to sell it to the original option holder. The amount of compensation may be a percentage (approximately 5 to 10 percent) of the estimated full value of the property or parcel.

Steps in establishing an option agreement would likely include the following:

- Gain information on the property of interest from tax records and other sources. Key data include a complete description of the property, its value, and its survey dimensions.
- The initiator of the option (we will assume for our purposes that the process would be initiated by a state or local official) would then attempt to enter into negotiations with the landowner, ultimately offering to purchase an option on a specified part of his or her property.
The terms of the option would then be subject to negotiations between the would-be option purchaser and the landowner. Important terms would include the amount to be paid for the option, as well as the length of the option.

The fourth step in developing an option agreement would be to complete the agreed upon payment transaction and sign the option agreement contract with the landowner.

Exercise option – If the optioned land turns out to be necessary at some date within the terms of the option, the option holder may execute its option to purchase the property under the terms of the option agreement. If the owner of the option does not choose to purchase the land within these terms, the agreement simply expires, and the landowner retains the payment paid for the unexercised option.

Purchase options are attractive for several reasons, particularly where corridor preservation is needed for a short, critical period. The capital costs are far lower than the cost of acquiring land fee simple. Nonetheless, the land is preserved in a relatively low-density state. Another advantage is that the development of options is a collaborative process that involves both land owners and public officials negotiating to find mutually agreeable solutions without having to resort to police power and legal challenges. Third, the fact that the local or state government can hold an option to purchase, as opposed to a heavy financial investment in a given corridor, mitigates the appearance that a fee simple purchase has prejudiced the environmental process.

Another advantage of this approach is that in keeping land in private hands, local and state government do not lose these tax contributions prior to their ultimate purchase. This also provides the local agency great flexibility. If the government finds, for whatever reason, that the land is not needed for a transportation improvement, then the option can simply be allowed to expire. The agency’s resources are less tied up in land that may or may not be critical and the agency still has access to the land if necessary.

Issues and Obstacles

The chief disadvantage of purchase options is that they are generally short lived. To the extent that they are executed in areas with high pressure to develop, the costs of such options increase accordingly. In fact, the cost of acquiring options may approach the cost of acquiring land outright.
Right of First Refusal

Purchase of a right of first refusal is another land use management technique that can be used for corridor preservation by ensuring that the state or local government has the opportunity to purchase land it may need for corridor preservation before it is offered to other potential buyers.

The right of first refusal is a special form of an option to purchase. A right of first refusal is a contract between a property owner and the holder of the right. Under the terms of the contract, the property owner is required to offer to sell the property or parcel defined in the contract to the holder of the right on terms and at a price equal to any offer to purchase made by a third party. Rights of first refusal can be exercised if an offer has been made by a third party for a property for sale.

This tool may be effective in certain limited conditions, such as when owners are unsure of the market value, or are not convinced that the appraised value represents the full market value of property. For example, if an owner of a vacant property is motivated to sell, but is not convinced that the offer of appraised fair value represents full market value, then he or she may agree to a local or county government’s offer to purchase a right of first refusal. This would provide the owner with a small payment in consideration for the right and the opportunity to “test” the open market to determine if a higher offer would be forthcoming.

Issues and Obstacles

In most cases, the right of first refusal is not a particularly effective property acquisition method. It has the following limitations:

- The existence of a such a right will have a negative influence on a property’s marketability. Prospective open market purchasers are not likely to make offers that can be preempted by a well funded institution. The property owner, or real estate broker, would be obligated to disclose the existence of a right of first refusal to prospective purchasers.

- Real estate brokers are not likely to list or to show properties that are encumbered by a preemptive right to purchase by public entities. Their sales efforts would not be productive (see above) and their commission may not be protected if the public entity exercised the right to purchase on presentation of a third party offer.

- Owners that would sell a right of first refusal to a public entity are least likely to be motivated to expose the property for sale. An owner might readily sell a right of first refusal for the monetary consideration offered with no intention of selling the property to anyone. The right does not create the motivation to sell.
- The public entity is obligated by Title III of the Uniform Relocation Act to offer fair market value for property acquired as determined by appraised value. Since a market offer would trigger the public entity’s right to purchase, the actual purchase would have to be subject to an appraisal, which may result in a higher or lower value.

- The public entity would have to act to exercise its right of first refusal on very short notice (3 days +/-) in accord with normal market real estate practice.

Some of the above limitations might be overcome by careful design of a right of first refusal program. However, on balance, the obstacles to effective use discussed above should assign this method a low priority.

### Easements

Easements may be useful in corridor preservation because they can provide the government with control over the land’s development rights, thereby preserving needed right-of-way in a low intensity land use. The landowner maintains all other land ownership rights.

Easements can be used as a targeted technique for preventing property development not compatible with the long-range plans for specific corridor development. In Utah, easements for corridor preservation may be used on either new construction or for future expansion of current transportation corridor facilities.

Development rights may be purchased as a permanent easement pending the acquisition of full property rights, using fee simple acquisition. In addition, a temporary preventive easement may be acquired, that expires at a predetermined time or event (such as selection of an alternative alignment). This tool is used extensively in the utility industry. Purchase of development rights is often used by conservation organizations to protect land and natural resources from incompatible use development.

This tool is used when two parties (i.e., the government and specific property owners) have a mutual interest in trading properties, and the government owns a piece of land that it does not need and the specific land owners and the government can agree that exchanging the properties is in their mutual best interest.

Following are the steps involved in entering into an easement purchase:

- Identify the parcel of property needed for easement purposes.
- Establish a fair market price, based on difference in the land’s present value and its market value based on local zoning and density patterns.
- Negotiate with landowner and agree on a price.
- Purchase the development rights to the property in the form of an easement.
- Permanently record the transaction in the deed to the property.

The use of easements has a number of advantages, chief among which is that they reduce the need to acquire large amounts of property. In fact, easements can preserve right-of-way from development without condemning and paying for an entire property. Easement purchases can be designed to impose the least restriction on use of the property, and cost is thus limited to the value of the restriction. Finally, under easements, land remains in private ownership, which allows the government to continue collecting tax revenues. In addition, the government is not required to manage the property.

**Issues and Obstacles**

First, easement programs are difficult to administer. In particular, it may be difficult to establish a fair market price for the development rights to a parcel of land. In some situations, the established or negotiated price for purchasing the easement may be close to the cost of outright purchase. In such cases, there is no significant advantage over purchasing the land outright under a fee simple acquisition.

Second, easements in metropolitan or high growth areas may be expensive. While presumed to be less than fee simple acquisition, purchasing of development rights in some areas of the state may be as costly as fee simple acquisition of the land. If the land is ultimately not used for a transportation facility, then it may be difficult for the local government to recoup the costs incurred to purchase the easement.

**Exchange of Property**

Land needed for corridor preservation can be obtained by swapping the privately held piece desired for corridor preservation for a piece of surplus property with less strategic importance to the transportation agency. The exchange of property is a special type of development rights transfer. The tool involves the trading or swapping of deeds of ownership between local or county governments and owners of property needed for corridor right-of-way. The government in question must obviously have on hand surplus property to exchange.

Procedures for exchanging properties are similar to those followed for transferring development rights. The government and landowners establish an agreement by creating two parcels.
The following steps are taken to exchange properties:

- Federal rules permit UDOT to accept donations of property at any time it can legally do so under Utah State law. However, federal funding in the project costs requires assurance that the donation does not influence the environmental process and that the project complies with regulations relating to relocation, 4f, historic preservation, and resource agency permitting. In addition, federal regulations (23 CFR 710.505(a)) require that UDOT advise potential donors of their right to have the property appraised and receive just compensation.

- Delineate specific areas in the community where more intense development than is currently permitted by the zoning regulations would be acceptable. This area is known as the “transfer” or “receiving” district.

- Identify areas where the zoning regulations might currently allow more development than is acceptable. This “preservation” district could include, for example, the most important agricultural or forest resource lands identified by the community.

- Allocate “ownership rights” to property owners within the preservation district. The number of property rights distributed to each landowner should reflect either the number of lots into which they could subdivide their property or, in some other fashion, the relative value of their property as compared with all other properties in the preservation district.

Property exchanges between private land owners and government entities for the purpose of corridor preservation have several advantages. First, this practice reduces the cost of property acquisition. By transferring or selling the right to develop land, the local government can benefit from a potentially reduced cost for acquiring the land needed for right-of-way. In addition, the property remains in private ownership until needed, improving the overall tax base of the governing authority.

Second, this practice avoids the “takings” issue. Property exchange programs can be used to avoid a regulatory taking by compensating property owners for the loss of development rights. Landowners retain the full benefits of property ownership.

Third, property exchanges reflect increased cooperation and coordination between government and landowners. Property exchanges constitute a way that local governments can provide incentives for developers and landowners to participate in corridor preservation programs. Property exchanges and the transfer of development rights preserve undeveloped land within transportation corridors while still allowing the landowner to receive the full benefits of developing his property.
Issues and Obstacles

- The government may not own any surplus property desirable to developers.
- Government entities may be limited in the amount of land directly outside of the corridor right-of-way that they may hold.

Many states preclude local and county governments from purchasing property outside the right-of-way limits. This restriction severely limits property exchange to surplus property owned by the government.

Donations

Land needed for corridor preservation may come in the form of a donation from a private landowner to the government entity. Donations are the voluntary transfers of land from private owners and citizens to government. The donations may be a parcel of land, or an entire property. Typically, the landowner receives a tax benefit in return.

Property owners may be receptive to requests for donations early in corridor planning, as well as later, for several reasons. First, the value of the donated property may offset taxable income under federal and state tax laws. Second, the owners may benefit from reduced property tax assessments. Third, owners may be motivated to facilitate a transportation improvement that will benefit their remaining property, or the community at large.

An independent professional appraisal is needed to support any tax deduction, and the cost of the appraisal to the property owner may be a barrier to owner agreement to donate. IRS and state tax agencies may not accept an agency-secured appraisal as being independent and unbiased. However, the State of Utah may offer to reimburse the owner’s cost of securing an independent appraisal.

Advantages of accepting land donations for corridor preservation purposes include the following:

- This method provides the owner with a small payment in consideration of the right, as well as a means of “testing the waters” of the open market to determine if the land has higher value.
- The government may exercise its option not to buy, in which case the owner is free to sell to a third party.
- When private land owners donate property, local and state government do not have to come up with sizable amounts of capital, although they are in control of the donated land.
Issues and Obstacles

None to report.
Case Studies

Introduction

Although corridor preservation tools have been presented singly for the purposes of this toolbox, any regional corridor preservation effort, of which there have been several in Utah, involves unique challenges, strategies, and lessons learned. The five case studies presented herein describe specific Utahan corridor preservation efforts. They cover corridor preservation in the context of arterials, highways, and an interstate. The purpose of including these case studies is to draw from lessons learned, be they good, bad, or mixed.

Clearfield, Utah: Reclassification and New Construction

This case shows that flexible planning and design, in addition to availability of open space, provide opportunities to preserve sufficient corridor right-of-way for future development needs. It also illustrates the positive impact that coordination and communication between stakeholders can bring to successfully implement transportation corridor projects.

This case involves the expansion of a local/rural road to serve the increased traffic demand generated by new development. As part of this process, local planners reclassified the existing road from a rural collector to a principal arterial. The project consisted of constructing a new principal arterial running parallel to the existing roadway, which then became a local, limited access street for several homes occupying the north side of the thoroughfare.

A few years before identifying that 200 S would be a future principal arterial, a developer built several houses fronting the road. Once the road was identified to become a principal arterial connecting future housing developments to the urban...
In response, planners revised the initial design. Land on the south side of 200 S that had been zoned for agricultural usage within comprehensive plans was rezoned to residential. Additionally, a decision was made during preliminary design to shift the future arterial corridor south by several feet, thus mitigating the need to acquire any land from the homeowners on the north side of the road. In addition, access management principles were applied, converting the existing 200 S into a limited access roadway for use primarily by the homeowners.

Future residential developments built on the farm lands will be designed so that all homes back up to the arterial. Furthermore, community planning representatives coordinated with the developers to ensure that future housing lots located on the south side of the arterial will back up to the arterial, and have larger backyards to provide sufficient right-of-way clearance in the event of arterial expansion.
Sandy City: Moratoria and Impact Fees for Corridor Preservation

This case study illustrates the use of a temporary moratorium on development in order to preserve a needed corridor until the project had reached the necessary stage of development. In addition, this case illustrates how impact fees can be used to help acquire portions of the needed right-of-way.

Sandy City is Utah’s fourth largest city, with the third highest average household income. The city identified the need for constructing roads to serve new developments being permitted for construction. Typically, new collectors are built to serve existing, recently built, or planned residential developments. New construction or reconstruction activities typically involve acquiring easements to properties abutting the corridor in order to complete construction/reconstruction activities.

Highland Drive is a major north-south principal arterial that connects the southeastern suburban areas of the Salt Lake City Metropolitan area between Cottonwood Heights in the east and Sandy in the west, running south from Exit 8 of I-215. Before its extension from Creek Road to 9400 South, this route ran only from I-215 to Creek Road. Before the road existed, the route was planned and shown for many years on master plans and official maps. The extension’s alignment was in unincorporated Salt Lake County, but in an area slated for incorporation to Sandy City. Developers were building the area out quickly, causing transportation bottlenecks.
Although civic leaders were hesitant to stop development, they were also pragmatic about the need to seek a temporary moratorium. Once the moratorium was in place, the City turned to the County and got the land in the alignment condemned. The moratorium lasted less than a year, and building resumed. Land condemnation, right-of-way acquisition, and road construction costs were funded by an additional road development fee charged to developers through the permitting process. Eventually, the land outside of the Sandy City jurisdiction was annexed from the county.

Although built by the City, the road is now part of the state system. Plans are to extend the road further south. For this section, Sandy City has taken a dedication from developers, since the corridor route crosses land that is unsuitable for development. The right-of-way on most of the corridor is 106 feet, but wider at intersections and at locations necessary to handle slopes, drainage, and other physical features.

This strategy was innovative for its time, and although concerns were raised by the developers about having to pay for road construction, the strategy adopted by the City raised awareness that planners, developers, and decision-makers should complete roads with sufficient capacity to meet the expected volumes of traffic once developments are complete.

**The Wasatch Boulevard Corridor: Consequences of Failure to Protect a Corridor**

This case illustrates the consequences of failing to preserve land around a corridor that had been planned to serve as a major thoroughfare. The development that has been permitted within the needed right-of-way has halted plans to improve this critical alignment, which will add to congestion within the metropolitan area.

This case involves the overall management of the Wasatch Boulevard Corridor between Big Cottonwood Cave and Highland Drive. Wasatch Boulevard snakes through the lower slopes of the Wasatch Front. In spite of projections of increased housing and traffic, development along the boulevard was not controlled. Consequently, infill has occurred directly adjacent to the right-of-way. The originally planned alignment has been abandoned, and the land remaining for right-of-way is now insufficient to allow construction of a high capacity road. The road as built is winding and narrow, which limits its carrying capacity.

It is notable that such development is not unpreventable. In Exhibit 19, the left image, taken from an East Coast metropolitan area, is an aerial photograph that illustrates the preservation of land for a major limited access facility. The right image, meanwhile, shows the same area after the project has been built into the preserved land.
In terms of Utah’s Wasatch Boulevard case, regional planners and other stakeholders have assembled a set of lessons learned:

- Very little thought had been given to corridor preservation. Although road widening was planned, nothing had been done to prevent incompatible development.
- The haphazard development that has taken place in the area has foreclosed the possibility of the corridor originally envisioned, which would have had fewer adverse environmental impacts than remaining choices.

Exhibit 19: Corridor Preservation for Limited Access Highway and Interchange

Bangerter Highway: Construction of a New Urban Arterial

This case study illustrates the value of very long term (40 years) corridor preservation done cooperatively at the regional level. It also illustrates the importance of design decisions, such as the number of at-grade intersections, in preserving a facility’s long term carrying capacity.
The Bangerter Highway (formerly known as the West Valley Highway) runs north-south through the Salt Lake County communities of West Valley City, West Jordan, Riverton, and Bluffdale. The history of the development of the Bangerter Highway illustrates the complex challenge surrounding corridor preservation.

The need for this facility was identified on plans dating to the 1960s. There was significant continuity in the planning for this corridor, beginning with a Salt Lake County ordinance recorded in 1964 placing the alignment and reserving some right-of-way for the “West Valley Highway Alternative” on an official county map. Right-of-way for the facility had first been required to be set aside by developers in 1961 as a prerequisite for subdivision approvals and permitting. In addition, zoning ordinances, school attendance boundaries, and comprehensive planning activities accounted for the future facility. The Salt Lake Area Transportation Study also placed the facility on the Wasatch Front Regional Council Long-Range System Plan. There has been regional consistency in planning for this corridor. It has been an integral part of the Salt Lake County, West Jordan City, and West Valley City transportation master plans, and it was included in the Wasatch Front Regional Council’s Long Range System Plan.

Salt Lake County preserved the corridor by requiring developers to consider the corridor during any site and subdivision planning; this was enforced through permitting. When the right-of-way for construction was needed, it was available thanks to the local governments’ cooperation.

Ultimately, however, project outcomes have been mixed. First, the design incorporated many at-grade intersections, which have contributed to more congestion and accidents than would be expected on a facility with limited access. Second, the prolonged project development and construction cycle caused problems in the property acquisition process. Because the Environmental Impact Statement process took several years, property owners were delayed in receiving compensation.

**I-215 in Salt Lake County**

The primary corridor preservation lesson from the case of I-215 is that 20 years may be an inadequately short time horizon when building or making significant improvements to key corridors in rapidly growing areas, such as the Salt Lake Valley. Planners suggest that 40 or even 50 years may be more appropriate for major limited access facilities in such areas.

I-215 is configured as a broad, backwards “J” that serves as a partial beltway around Salt Lake County. At the north, I-215 branches off of I-15 just south of Wood Cross, and it continues south past an intersection with I-80, to just south of Taylorsville, where it curves eastward. It continues to run eastward through the metropolitan area to the border of the Mount Olympus Wilderness Area, where it curves north to the intersection with I-80.
The planning history of this corridor provides lessons learned regarding the value of very long term (beyond 20 years) planning. Planned in the late 1960s as a beltway around the urban core of Salt Lake City proper, I-215’s planning horizon was 20 years, then and now considered standard in regional and statewide plans. However, planners now project that all north-south and east-west corridors in the south central Salt Lake Valley, including I-215 are expected to operate at or above design capacity by the year 2030. In the meantime, new construction has already filled in bare or sparsely developed ground that might have been used for new alignments. As a result, planners expect that existing corridors, including I-215, will have to be widened.

In the case of I-215, had a longer planning horizon been contemplated, several aspects of the project might have been handled differently. First, the east-west portion of the corridor might have been located further south to better serve the areas that have grown fastest since project inception (e.g., West Jordan, Sandy). Second, additional right-of-way might have been preserved to widen the facility beyond its initial dimensions in order to avoid the now inevitable conflicts with developers, residents, utility companies, and businesses.
Appendix A. References and Other Resources

This appendix contains a list of references used in generating this toolkit. The reader is encouraged to review these documents for additional details on the corridor preservation process.

- Corridor Preservation – Case Studies and Analysis Factors in Decision-Making, USDOT, FHWA.
Preservation in Utah, Utah Department of Transportation, Salt Lake City, Utah, June 30, 1999.


Appendix B. Glossary

This appendix contains a glossary of terms presented in the toolkit.

Access. A way or means of approach to provide vehicular or pedestrian entrance to a property.

Arterial. A road intended primarily for through traffic where access is carefully controlled.

Access Management. The protecting of the capacity of existing routes and systems either by limiting access to them (such as restricting curb cuts) or by protecting adjacent land needed to widen or improve existing highways in anticipation of increased use.

Collector Roads. Roads intended to move traffic from local roads to arterials.

Comprehensive Plan. A statement of the goals and objectives for the future development of a community. The comprehensive plan usually contains sections or “elements” on land use, community facilities, transportation, and housing. The plan also contains a map that translates the goals and policies of the plan into land use designations indicating where different types of public and private development should be located. Together, the planning policies and map provide a basis for decisions on land use in the land use regulation process.

Corridor. The path or proposed path of a transportation facility that already exists or may be built in the future. A corridor may include not only the land occupied (or to be occupied) by a transportation facility but also any other land that may be needed for expanding a transportation facility or for controlling access to it.

Corridor Preservation or Protection. The techniques that public authorities may use to protect the capacity of existing corridors, to protect planned corridors from inconsistent development, or to preserve intact transportation or utility corridors that are or may be abandoned, such as abandoned railroad rights-of-way. The purposes of corridor preservation or protection include minimizing or avoiding adverse environmental, social, or economic impacts; reducing displacement; preventing the
foreclosure of desirable location choices for transportation facilities; allowing for the orderly assessment of impacts flowing from the construction of such facilities; permitting orderly project development; and reducing construction costs. The tools of corridor preservation or protection fall into three general categories: acquiring property rights in land within a corridor; regulating the use of such land; and negotiating with owners of such land for its preservation in an unimproved condition.

**Corridor Protection Restriction.** A deeded conservation restriction that conveys to the government the right to wholly or partially prohibit development within a corridor for a stated maximum period, typically up to 10 years, but it could be longer.

**Dedication.** A property owner’s conveyance of land or of an easement in land to the public for its use, and the public’s acceptance of that land or easement. Dedications may be among the exactions imposed on developers by subdivision ordinances that, as a prerequisite to the approval of any proposed subdivision of land, require that developers dedicate transportation and utility rights-of-way to serve the subdivided lots. Unless they serve the specific needs of proposed subdivisions, however, uncompensated dedications may be unconstitutional takings. For example, a subdivider’s uncompensated dedication of land to widen an adjacent highway would probably constitute a taking. A street widening dedication in exchange for a density transfer may, however, be constitutional.

**Deed.** A legal document conveying ownership of real property.

**Density Transfer.** The assignment of development density credits attributable to a proprietor’s land within a corridor to that proprietor’s contiguous lands outside it in exchange for the proprietor’s dedication of the land in the corridor to the public.

**Development.** The subdividing of land, the construction of improvements, expansions, or additions, or any other action that will appreciably increase the value of and the future acquisition cost of land.

**Development Easement.** A temporary or permanent property interest in developing or developable land which a governmental entity may purchase to protect land in transportation corridors from development. Because the development easement is a lesser interest in land than an estate in fee simple, the development easement may cost less to buy.

**Development Permit.** This includes any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or other official action of local government that permits the development of land.

**Easement.** A right-of-way granted, but not dedicated, for limited use of private land for a public or quasi-public purpose and without which the owner of the property shall not erect any permanent structures.

**Eminent Domain (or Condemnation).** The power of federal, state, or local governments to take private property for public purposes; a power constitutionally
limited by the requirement that government pay just compensation to the owner of the property taken.

**Environmental Impact Statement (EIS).** A detailed statement on the environmental consequences of proposed governmental actions as well as alternatives to proposed governmental actions.

**Exaction.** A contribution or payment required as an authorized precondition for receiving a development permit. Exactions may refer to mandatory dedications of land for road widening, or monetary assessments such as transportation impact fees.

**Frontage Road.** a public or private drive that generally parallels a public street between the right-of-way and the front building setback line. The frontage road provides access to private properties while separating them from the arterial street.

**Highway Platting.** Developers’ voluntary creation of separate lots for right-of-way where developers expect public authorities eventually to purchase those lots.

**Impact (or Facility) Fee.** A fee imposed by government on developers to recover costs of infrastructure improvements that their developments make necessary. Like dedications, impact fees are constitutionally valid only insofar as they recover costs directly attributable to the development.

**Land Use.** The development that has occurred on the land, that is proposed by a developer on the land, or that is permitted on the land under an adopted comprehensive plan, land development regulations, or land development codes.

**Limited Access Highway.** A freeway or highway designed for through traffic, and to which abutting properties have no legal right of direct access.

**Local Road.** A road whose primary purpose is to provide direct access to abutting properties and to roads of a higher functional classification.

**Median.** That portion of a roadway separating the opposing traffic flows. Medians may be raised, depressed, or flush.

**Median Opening.** An opening in a raised median that allows turning movements.

**Metropolitan Planning Organization (MPO).** Established by the Federal Highway Act of 1973 to coordinate highway and transit planning on a regional or metropolitan scale in urban areas with populations above 50,000, and to coordinate the efforts of local planning agencies. It provides a forum for discussion and consensus on issues that transcend jurisdictional boundaries.

**Official Map or Map of Reservation.** A map drawn up by local or state authorities and usually recorded in county recording offices that shows actual and proposed rights-of-way and/or centerline alignments and setbacks for streets and highways, restricts development in those rights-of-way or between those setbacks,
and allows authorities time to purchase reserved land. Filing of such a map for record may constitute an assertion that the governmental entity has “taken” rights to land shown on the map.

**Reservation.** A provision in a deed or other real estate conveyance that retains a right for the existing owner if other property rights are transferred. A method of holding land for a public use by designating public areas on a plat, map, or site plan as a condition of approval.

**Reservation.** The designation of a proposed highway’s or street’s right-of-way, either on an official map or on a subdivision plat approved under a subdivision ordinance, in order to prevent development within the reserved right-of-way.

**Reservation Easement.** Rights in real property, acquired by the state for assuming the availability of the property for future transportation needs and to prevent the landowner from using the property in a way that is inconsistent with that need.

**Right-of-way.** A strip of land occupied or intended to be occupied by a street, sidewalk, crosswalk, railroad, road, electrical transmission line, gas pipeline, water main, sanitary or storm water main, or shade trees. Land in which the state, a county, or a municipality owns the fee simple title or has an easement dedicated or required for a transportation or utility use.

**Setback.** A zoning requirement that buildings be a certain distance from property boundary lines or streets.

**Subdivision Ordinances.** Local ordinances, enacted pursuant to state-enabling legislation, regulating the subdivision and platting of land into lots and blocks and roads, usually for residential development.

**Taking.** An act or regulation, either by exercise of eminent domain or other police power, whereby government puts private property to public use or for a public purpose limits use of private property, and which actions may require compensation to be paid to private property owners.

**Transferable Development Right (TDR).** A government-created and marketable right to develop land, which owners of undeveloped land in transportation corridors may sell or retain for their own use on other parcels.

**Transportation Corridor Management.** The coordinated planning of designated future transportation corridors by land use planning and regulation within or adjacent to the corridor, promoting orderly growth and maintaining the integrity of the corridor.

**Transportation Facility.** A general term designating any means of transportation and the uses and improvements of land that they require.
Appendix C. Interlocal Cooperation Agreement Pertaining to the Planning and Funding of Street Systems – Layton City and Syracuse
INTERLOCAL COOPERATION AGREEMENT

This agreement is entered into this 20th day of February, 2004, by and between Layton City, a Utah municipal corporation, hereinafter referred to as "Layton" and Syracuse City, a Utah municipal corporation, hereinafter referred to as "Syracuse".

WHEREAS, Layton and Syracuse share common boundaries; and

WHEREAS, It is mutually beneficial to Layton and Syracuse to have a cooperative effort in developing a street system that is properly connected to accommodate the flow of vehicular and pedestrian traffic; and

WHEREAS, Layton and Syracuse are desirous of cooperating in funding the construction and long term maintenance of street facilities that are near the common boundary of the two cities; and

WHEREAS, The long-range street programming for both cities requires the development of arterial streets that will require the construction of those streets to be primarily within the boundaries of Layton City; and

WHEREAS, pursuant to the authority and provisions of the Interlocal Cooperation Act, Title 11, Chapter 13 of the Utah Code Annotated, Layton City and Syracuse City are willing to cooperate in planning for, and constructing a street system, and equitably provide for the maintenance and oversight of the improvements within the streets right-of-way.

NOW, THEREFORE, in an effort to provide an efficient, economical, and coordinated street system for both Layton and Syracuse; to enjoy the mutual benefit of a coordinated street system, and for other good and valuable consideration, the parties agree as follows:

1. Street Plan. The map noted as "Exhibit A" shall represent the agreed upon mutual major street system for Layton and Syracuse. The map is attached to, and is made a part of this agreement.

2. Layton City Undertakings. Layton will be responsible to extend West Hillfield Road to the common boundary of the two cities. The right-of-way width shall be 84 feet with the street being constructed to the Layton City standards for that width of street. Said extension will be done at the full expense of Layton. Layton will make appropriate efforts as agreed upon by the city engineers of both cities to capture storm water generated in Layton prior to that water entering into Syracuse. Layton will be fully responsible for the maintenance of West Hillfield Road to the Syracuse boundary.

3. Syracuse City Undertakings. Syracuse will be responsible to extend Bluff Road from its present terminus at Gentile Street, southeasterly along the projected right-of-way of Legacy Parkway to a future intersection with 3700/500 West. (on the Layton and Syracuse grids respectively). Said extension will be at the full expense of Syracuse and shall be at an 84 foot width and built to Layton City standards for that width of street. Syracuse will be fully responsible for the maintenance of this portion of the Bluff Road extended. The width of this roadway may be modified if the street
is incorporated as a frontage road commensurate with Legacy Parkway as agreed upon by the Layton, Syracuse, and Utah Department of Transportation engineers.

4. **Joint Undertakings.** Layton and Syracuse will equally participate in the extension of 3700/500 West from the existing terminus at approximately 750 North (on the Layton grid) southerly to its intersection with the Bluff Road extended. The alignment will be moved to the east to a corridor that is currently free of any structures. This necessitates placing the entire street within Layton. However, Syracuse agrees to participate on an equal basis in the construction and maintenance of that facility. Layton will preserve the appropriate right-of-way and may require new development adjacent to the street to pay a proportionate share of the street costs. Either Layton or Syracuse may use this right-of-way to place utilities such as culinary water, sanitary sewer, storm drainage, secondary water, etc. at each city’s own expense unless joint use of the facilities is deemed to be advantageous to both cities by the city engineers. If this roadway is incorporated as a frontage road for the Legacy Parkway, the Utah Department of Transportation may also place utilities as necessary.

Layton and Syracuse will equally participate in the extension of 500 West (Clearfield/Syracuse grid) from its terminus at the south line of Melanie Acres Subdivision. Sixty-six feet of an 84 foot right-of-way will be developed within Layton City and Syracuse will require the additional eighteen (18) feet of right-of-way on the west side of the common city boundary. Layton and Syracuse may require adjacent land developers to construct a proportionate share of the street. Layton and Syracuse will participate equally in the maintenance of this section of street. Syracuse will be solely responsible for any costs associated with the widening of the street in the area already constructed at a 66 foot width, to the north of the south boundary of Melanie Acres Subdivision.

Layton and Syracuse will equally participate in the extension of Bluff Road southeasterly from the future intersection of Bluff Road and 3700 West, along the projected Legacy Parkway alignment, to 2700 West (on the Layton grid). Layton and Syracuse will equally participate in the maintenance of this section of roadway. Said extension shall be 84 feet in width, built to Layton City standards except that this standard may be modified if the street is incorporated as a frontage road commensurate with Legacy Parkway. Any deviation from the 84 foot width shall be agreed upon by the Layton, Syracuse, and Utah Department of Transportation engineers. Layton may place utilities within the right-of-way at Layton’s expense.

The Utah Department of Transportation may place utilities in the right-of-way if it is incorporated into Legacy Parkway as a frontage road.

All streets noted in this section shall be permanent right-of-ways and no part of these streets shall be abandoned or vacated by one city without the written permission of the other city.

All of the streets noted shall be classified as arterial streets and neither city shall allow single family lots to front directly on the streets of have any driveway access.

5. **Administration of Agreement.** The administration of this Agreement shall be by the Cities’ respective City Managers.

6. **Acquisition of Property.** If any property is acquired through the performance of this Agreement, it shall be done by the individual City as needed to fulfill its obligations under this Agreement. No property shall be acquired in joint title by the Cities.
7. **Amendment of General Plan.** Each City agrees to amend its Master Street Plan, Transportation Element of its General Plan, or similar planning mechanism, to reflect the provisions of this Agreement.

8. **Termination.** The Cities agree that this Agreement will not be terminated until each entities' respective obligations are completed. The only exceptions will be for force majeure or a non-appropriation situation. If such a situation arises, the City needing to terminate the Agreement will immediately notify the other City.

9. **Breach.** If either City fails or refuses to perform hereunder, the non-breaching party shall demand performance to resume and be completed. If a good faith resumption of performance does not occur within 30 days from the demand for performance, the breaching entity shall pay damages in an amount equal to the amount necessary to complete the breaching City's performance under this Agreement. Said amount shall be determined through the statutory bidding process.

10. **Term of Agreement.** The term of this agreement shall be fifty (50) years from the date of execution. This agreement may be extended as jointly agreed upon by the City Councils of Layton and Syracuse.

11. **Amendments.** This agreement may be amended upon mutual agreement of the Cities, in writing. The purpose and reasons for any amendments should be set forth in the amended agreement.

Executed as of the day and date above.

**Layton City**

**Mayor**

[Signature]

**ATTEST:**

[Signature]

**City Attorney**

**Sydney City**

**Mayor**

[Signature]

**ATTEST:**

[Signature]

**City Attorney**
Appendix D. Article on Crafting Robust Impact Fee Ordinances

Source: David Church, Esq.
Church Newsletter, Utah League of Cities and Towns
<http://www.ulct.org/resources/staff_notes/church/yr99/church0714.html>

Impact Fees after Home Builders V. North Logan

The Utah Supreme Court recently issued the opinion titled The Home Builders Association of Utah v. City of North Logan\(^1\). This was a significant victory for North Logan City and potentially other cities as well. The issue in North Logan was who bears the burden of proving whether an impact fee is valid or invalid. Does the City have to prove the fees are reasonable or do the persons challenging the fee have to prove that the fees are unreasonable?

The home builder's association challenged four impact fees adopted by North Logan City. The association argued that the fees were invalid because the City Council did not and could not justify each fee by reference to certain rigid principles set forth in a Utah Case known as Banberry Development Corp. V. South Jordan City.\(^2\)

The Utah Supreme Court in the North Logan case held that the Banberry decision established both procedural and substantive guidelines for cases when impact fees are challenged. The Banberry decision allocated the burden of proof between the City and the challenger of the fee. The City is required to disclose the basis for the calculation of the fee to whoever challenges the reasonableness of the fee. The burden then shifts to the challenger to show “failure to comply with the constitutional standard of reasonableness.”\(^3\) On the substantive side, the Banberry Court held that while a City’s enactment of impact fees is presumed to be constitutional the presumption may be rebutted by a showing that the new development is being required to bear more than its fair share.

The Banberry Court established a list of factors to look at in determining whether the fees are reasonable or not. The home builders argued that North Logan had the
burden of justifying each impact fee by reference to each particular factor listed in the *Banberry* decision. The City argued that its determination of the appropriate impact fees was reasonable and that the home builders had the burden of showing how the fees were not valid.

The Utah Supreme Court decided that the City was correct. North Logan had a duty to disclose the basis for its calculations. Once the basis is disclosed the burden is on the person challenging the fees to show that the fees are not reasonable. Since the home builders did not produce any evidence to show that the fees were unreasonable the court ruled that a summary judgment in favor of the City was appropriate.

This case provides some helpful guidelines to cities who have adopted impact fees or who plan to adopt them. First the case shows the benefits of having a good impact fee study done to support both the need and the amount of the fees. North Logan used a professional consultant for this study. Since North Logan had the facts to make the initial calculation disclosure to the home builders, this shifted the burden of proving that the fees were unreasonable to the home builders. This is a very difficult burden to carry. If the City had not had good information to disclose when the fees were first challenged, then this burden would not have been shifted to the challenger and the City would have not been successful.

The North Logan case also shows that while the *Banberry* factors are important they do not establish a rigid formula that a city must slavishly follow and that City Council members are entitled to rely on the expertise of others in formulating the fees. This is also an argument for having professionals and consultants help in setting up impact fees.

This North Logan case was decided based on the *Banberry* case. The legislature passed the Impact Fee Act in 1995\(^4\) and any cases filed challenging a fee under that act may be treated differently by the court. The impact fee act does incorporate the *Banberry* factors as part of the analysis that a city must go through in establishing an impact fee\(^5\). The impact fee act does place the burden of proving that a fee is unreasonable on the challenger of the fee if the city shows that it has followed the procedures required to enact an impact fee\(^6\). The most important of these procedures is that a written analysis must support an impact fee. This written analysis, if done properly, is what will shift the burden of proof from the city to the challenger.

The North Logan case is a significant victory for that city. It is a victory that will be helpful to all cities and towns who have or will have impact fees, but only if the city or town follows the proper procedures in enacting its fees. If a city or town tries to enact impact fees without following the Impact Fee Act, the North Logan case will not be of any help in defending those fees. Any city or town with impact fees must be prepared for a challenge and be able to give to anyone who asks a copy of not only the impact fee ordinance, but also the written analysis of
the fee and the capital facility plan that supports the analysis. If a city or town is prepared to do this they can be successful in defending the impact fee.


2 631 P.2d 899 (1981)

3 Banberry at 631 P.2d 904.

4 Utah Code section 11-36-101 et seq.

5 Utah Code section 11-36-201(b)

6 Utah Code section 11-36-401