

Multi-Modal Transportation Facilities

In recent years, Kaplan Kirsch & Rockwell has assisted a number of clients with complex undertakings involving the interaction of multiple transportation modes. We are in the forefront of initiatives to secure private investment for multi-modal facilities (known as P3s or public-private partnerships). We have provided advice on negotiations with railroads, public transportation providers, and related entities. Our attorneys have assisted airport clients with related environmental reviews, obtained authorizations and permits from multiple agencies, coordinated the establishment of jurisdictional boundaries between numerous oversight bodies, and obtained financing. Additionally, we have assisted highway proponents in securing public and private investments for multi-modal facilities.

Airports

Kaplan Kirsch & Rockwell represents some of the largest airports in the country in comprehensive master planning for multi-modal projects. A large portion of our firm's airports practice concerns the legal requirements for airport development projects and the implementation of master plans. This work has called on our expertise not only in airport planning and in compliance with federal law, but also on our in-depth knowledge of intergovernmental agreements, land use planning, state and local environmental regulations, public finance, and contract negotiation—all of which enables us to help our clients navigate the myriad legal hurdles that face complex public sector projects.

Increasingly, our firm's airports practice requires our expertise in other transportation modes. Airports are finding that capacity constraints and environmental mitigation often require intermodal connections. New highway interchanges, light rail access, commuter rail lines, freight rail spurs, coordinated planning with Metropolitan Planning Organizations (MPOs), and other multi-modal strategies are now a frequent component of master planning. Incorporating these elements into planning and development projects is often critical for airports, not only to address capacity constraints, but also to mitigate air quality and other environmental impacts, as well as to enhance revenue-generating commercial development on airport property. As a result of the increasing awareness of the value of multi-modal connections, Kaplan Kirsch & Rockwell has assisted clients with innovative projects to optimize intermodal connectivity.

Rail and Transit

Our experience in rail passenger projects is similarly broad and deep. Our attorneys have counseled a number of public transit agency clients on issues ranging from the initial planning of their systems, through the acquisition of rail corridors and construction of facilities, to the implementation and operation of service. Many of our clients are state or regional commuter rail or transit agencies that must negotiate with railroads to acquire the right to operate passenger service. In these transactions, we negotiate the right of one or more freight or other passenger railroads to conduct operations on the line. We regularly counsel transit agencies in connection with the negotiation of agreements for the shared use of rail corridors and related facilities, including passenger terminals. Such transactions typically involve the negotiation and drafting of agreements and easements with the freight railroads to permit shared freight and passenger use of corridors, agreements with corridor partners regarding allocation of responsibility for maintenance of right-of-way and signals, and agreements with Amtrak for the operation of intercity service over lines owned by the client agency.

State and local governments that own or share rail corridors and operate commuter or transit service occupy a distinct niche within the framework of federal rail regulations. Our attorneys' detailed knowledge of this focused regulatory regime has been acquired through frequent practice before the relevant federal agencies. Kaplan Kirsch & Rockwell's attorneys are experienced in applying the specialized regulations and policies related to labor and employment, regulatory treatment of rail corridors, the scope of regulatory obligations attendant upon transit agencies, and exemptions from generally applicable regulations that apply to commuter and transit agencies.



Highways

Our attorneys frequently represent state and local governments in seeking Federal Highway Administration (FHWA) approvals and related environmental, interstate access, land use, and other permits. We have assisted state departments of transportation (DOTs), airports, local governments, and other municipal organizations on traditional public and public-private partnerships in building, financing, designing, operating, and maintaining highway and multi-modal facilities. Our firm has developed and implemented effective strategies for the finance, delivery, and approval of—or opposition to—highway projects throughout the country and has represented airports as they seek to increase surface transportation access and work through issues with FAA, the Federal Highway Administration (FHWA), state DOTs, and MPOs. Our attorneys have also worked with state and local governments on innovative tolled and non-tolled finance projects.

Public Financing for Infrastructure

Providing counsel on infrastructure funding mechanisms is a critical aspect of our project development practice. We understand the public funding process of major projects, including airports, highways, transit systems, and similar projects, and are very familiar with FAA's specific guidelines for use of airport funds, including Airport Improvement Program funds and Passenger Facility Charge funds, for rail and transit, as well as road access. Kaplan Kirsch & Rockwell also has extensive experience in development-related infrastructure financing, such as tax increment financing, special districts, and convention center hotels. Our attorneys typically advise clients on the structure and options for, as well as the negotiation and implementation of, such financing. For example, we have advised clients on the use of the Transportation Infrastructure Finance and Innovation Act (TIFIA) loan program administered by FHWA as it has been used for both rail and transit and highways.

Representative Matters

- Represents a belt line project around a large Southern city that includes multi-modal transportation links throughout the neighborhoods lining the corridor. The project comprises more than 5,000 units of affordable housing being financed through an affordable housing trust fund and incorporates coordinated zoning incentives, a tax increment finance district, brownfields remediation, and a city-sponsored residential mortgage program to encourage the purchase of homes near the belt line.
- Serves as counsel to a city on the west coast on a range of issues related to its relationship with an airport authority in which the city has minority control. We are assisting the city with negotiations for the construction of a replacement passenger terminal and the development of 50 acres of airport-adjacent property as an Airport City development. We assisted the city in the permitting, environmental reviews, and securing approvals for innovative clean energy components for a PFC-funded transit center that includes a rental car center, urban bus facility, and parking for an adjacent regional transit station.
- Represented one of the largest cities in the nation in its efforts to secure regulatory approvals for improvements to interstate access to an international airport, an automated people mover at the airport, and other access projects. Representation included environmental and interstate highway access approval processes, as well as coordination with the state DOT, FHWA, and the city's planning organization.
- Represents a county in the desert Southwest on myriad issues relating to county's multi-airport system. Our attorneys provide strategic counsel on the planning and design of a new greenfield commercial service airport, including highway access and multi-modal connection opportunities and coordination with, and connection to, a proposed high-speed interstate rail line.
- Represents a Western state and its transportation agencies as part of the legal team advising on a public-private partnership (P3) procurement (Design-Build-Finance-Operate-Maintain) project, including an intergovernmental agreement with the largest city in the state, the project agreement, instructions to proposers, and related state and local issues. The project is connected to one of the largest hub airports in the West and enhances access to that airport.



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- Represents a Western city’s aviation department on a public-private partnership for the development of the on-airport rail station as a transit-oriented development project that includes development of private off-airport land. Our involvement includes issues related to real estate, public and private finance, land use, federal airport regulation, and other regulatory issues. Our attorneys previously represented the city in negotiations with FAA regarding maintenance funding, as well as future expansion funding and allocation for a main access road connecting the interstate to airport.
- Represents a large suburban city in the Western United States with regard to the redevelopment of a large federal government office complex that is being converted into a transit-oriented development. A key component of this project is advising the client on the authority structure to be used, including exploring a wide range of authorities and options.
- Represents one of the largest cities in the nation in connection with implementing its airport master plan and land side developments, including automated people movers and connections to light rail. Our representation includes providing advice regarding environmental law, revenue diversion questions, and transit-approval processes.
- Serves as counsel to an urban transit administration in the Eastern United States in negotiations with a passenger rail operator regarding the implementation of a plan that allowed for a direct connection to the train station using walking trails and rights-of-way. Our attorneys advise administration in the acquisition of rights-of-way from freight railroads for use in developing a light rail corridor.
- Represented a Midwestern city in efforts to secure funding and to support light rail connection between downtown and two terminals at its large hub airport. We counseled the city on the extent to which airport and non-airport revenue could be used to finance elements of system, including mainline track, track between the two airport terminals, the airport stations, and other elements. The system is now operating and provides airport access for passengers and employees traveling between the two terminal complexes.
- Assisted in planning for the construction and financing of a new consolidated transportation center that would combine rail, rental car, and long-term parking facilities at a large east coast airport hub. Our attorneys assisted in drafting state legislation authorizing a consolidated facility charge to fund the planning, design, construction, and operation of the facility.
- Assisted an East Coast port operator in the acquisition of acquired land to construct a new intermodal transfer facility that, upon completion, would significantly enhance the port’s capacity to handle incoming and outgoing intermodal container traffic for both domestic and international shipment. Our attorneys represented the port in negotiations with the freight carrier that would serve the improved facility, addressing issues related to the construction of the new facility to meet the railroad’s operating standards and to the requirements for operation of the facility in a way that satisfy enhanced requirements related to security of shipments and safety of rail and port employees.
- Assisted in structuring overall transaction and public financing related to the redevelopment of a historic train station in a large Western city. Public infrastructure included TIFIA and Railroad Rehabilitation and Improvement Financing (RRIF) loans, as well as a significant tax increment component to repay the federal loans. Our attorneys represented the transportation district in negotiations with railroads for corridor acquisition or shared usage rights and negotiated with the FRA and passenger rail operator concerning the reconfiguration of tracks and related facilities. We also served as part of the legal team that represented the transportation district on a \$2 billion commuter rail project running from downtown to airport.