

What Happened to The Trans-Texas Corridor?

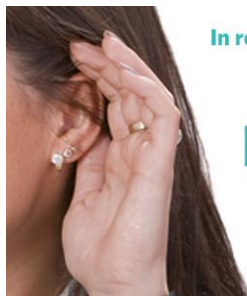
“How Did A Once Popular New P3 Transportation Concept Unite Texas Citizens In Opposition To Its Implementation?”

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In 2002, Texas Governor Rick Perry, running in his first election to keep the position he attained when George W. Bush ascended to the Presidency, proposed a bold and innovative approach to solving the state’s pressing need for new transportation capacity which he named the Trans-Texas Corridor (TTC). The concept envisioned a 4,000 mile network of super corridors up to 1,200 feet wide containing parallel road and truck tollways, rail and utility lines, and it was endorsed by the Texas Transportation Commission (Commission) in June of that same year and proved to be popular throughout the state, as citizens saw it as a way to solve the highway funding shortfall without increased taxation. The Governor easily won re-election and the TTC concept, aided by enabling legislation (HB 3588) passed in 2003, began to move toward reality.



Fast-forward to January 6, 2009 and the Houston Chronicle printed, “In response to the public outcry, the ambitious proposal to create the TTC network has been dropped and will be replaced with a plan to carry out road projects at an incremental, modest pace.” What happened? Are there lessons to be learned from this failure?



In response to public comment,
TxDOT
recommends
No Action
on the
TTC-35

There are probably as many opinions as there are opposition groups around the state – a number in the dozens, if not the hundreds; but the single insurmountable fault that spelled doom for the TTC was not the concept, but the process applied to implementing the concept. As a long serving member of the National Council for Public-Private Partnerships, a 501(c)(3) educational group promoting P3’s and the Best Practices for achieving them, I have attended many meetings in their Arlington, Virginia offices and have often contemplated a small wall hanging in their conference room which lists the “Six Keys To Successful PPP’s” , namely:

- Statutory and Political Environment
- Organized Structure
- Detailed Business Plan

- Guaranteed Revenue Stream
- Stakeholder Support
- Pick Your Partner Carefully

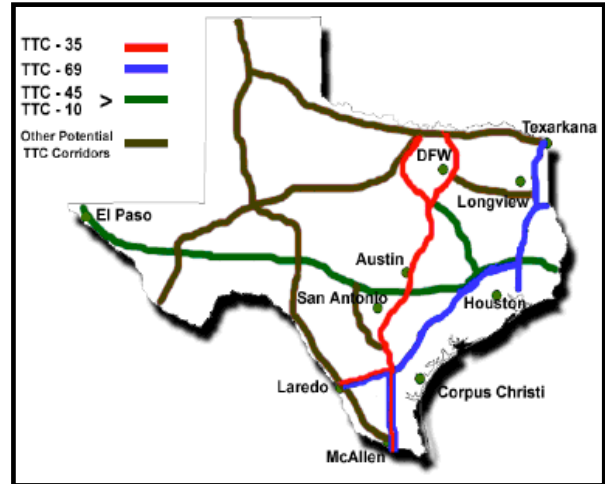
To my eye, these keys have always seemed appropriate but somewhat out of sequence. However, in Texas the TTC process appeared to follow an even riskier timeline and left some of those critical keys out of the process all together, at least in the early stages. To understand what happened we need to look at the TTC process in greater detail.

In 2002, citizens in Texas were beginning to understand that transportation funding was facing a serious shortfall driven by a number of factors, but primarily by the fact that the constitutionally established state gas tax that supported highway construction and maintenance had been set at a fixed rate of 20 cents per gallon in 1991 with 25% of the revenue dedicated to education and 75% to transportation. No provision had been made to index the gas tax for inflation and the rise in construction costs coupled with the state's rapid growth in population was causing a revenue crisis in transportation. Governor Perry seized the initiative in his campaign that year by proposing the TTC as a funding solution. The public responded positively to the idea of using private partners to build the proposed network utilizing private investment to be repaid by tolls on usage, thereby avoiding new or increased taxes. The governor was re-elected, and armed with what he believed to be public support for his TTC concept, he called for enabling legislation (HB 3588) which was quickly passed in 2003 and signed into law. The first Key Point had been achieved rather quickly and a foundation consisting of a positive statutory and political environment had been laid.

From that point, the public record reflects that the Commission, and the Texas Department of Transportation (TxDOT) it controlled, moved directly to defining a project and picking a private partner with only cursory attention paid to gaining stakeholder support for an actual TTC project. In August of 2003 TxDOT announced that it was considering expanding I-35 to six lanes and building a toll road parallel to the interstate, then in September proposals for a project along I-35 were accepted from three competing groups. In February 2004, TxDOT, apparently believing that the TTC concept had been sufficiently vetted in the gubernatorial race and in the 2003 legislature, responded to a HB 3588 requirement and conducted public hearings in all 254 Texas counties within a 23 day period - 35 hearings being held on one day. Attendance was extremely light, hearing officials read from a prepared text related to the Trans-Texas concept rather than to the details of a specific project, and no answers were available for the few citizens who showed up with serious questions.

Although not covered in those hearings, the I-35 TTC project had been internally redefined at TxDOT as a TTC corridor separate but parallel to the existing I-35 and the project was rolling along by mid 2004, with state and federal officials designating the TTC as a special experimental project, thereby accelerating the purchase of required right-of-way and moving construction up several years. TxDOT had now made the project public by publishing a map of the proposed I-35 project showing, not an improved existing corridor, but a new corridor marked as a red swath cutting across the state from the Red River to the Rio

Grande, bypassing major cities and small towns with exits only at major highway intersects. The swath itself was just a depiction of the area in which the new corridor would lie, but its graphic size relative to the state map created great concern in the agricultural community and emphasized the acreage to be taken to sustain a 1,200 foot right-of-way. Then in December 2004, while the public awaited public hearings on the proposed new corridor, the Commission voted to begin negotiating with the Spanish firm Cintra, S. A. and its San Antonio partner Zachry Corporation. Suddenly a scattered undercurrent of concerns in various groups across the state began to gain a loud and powerful voice, and members of the legislature began to question the scope of authority granted to TxDOT in the 2003 enabling legislation.



In January 2005, while work on corridor planning continued, TxDOT reacted to the growing concerns around the state by announcing the creation of a “Citizens Advisory Committee” with a primary duty to oversee the design and construction of TTC projects, followed in May by the initiation of a “Myths and Realities” public relations campaign. Transportation commissioners went out across Texas to meet with citizens and explain the program. Those meetings met with growing skepticism as the commissioners could not provide any documentation of feasibility or a comprehensive business plan for the proposed project. To counter those requests TxDOT placed a copy of a feasibility study performed by Cintra-Zachry, its chosen partner, on its website, immediately generating accusations of self-interest bias in that study’s findings and conclusions. As the 2007 legislature convened, a line had been drawn between the executive and legislative branches. The Commission had adopted a purely defensive position relative to the TTC and insisted on continuing under the existing law, while lawmakers, claiming they had been misled by HB 3588’s sponsor, demanded a suspension of the effort while the law was amended to reflect the demands of the proposed stakeholders.

Perhaps the biggest blow to the project now came when Robert Nichols, who had resigned his seat on the Commission to run and be elected to the State Senate, took a seat on the 2007 Senate Transportation Committee. In August 2003, then Commissioner Nichols had stated, “The Governor, the Transportation Commission, the TXDOT, the administration – our staff – we are all committed to implementing this plan. We believe it is real.” Subsequently, Nichols had become disenchanted with the manner in which TxDOT developed the SH 130 project in Austin, believing that too many unnecessary concessions had been made to the project’s private partner. Now Senator Nichols was an outspoken opponent of the TTC plan; calling for more transparency in the process, revisions to the Comprehensive Development Agreement law which established the enabling structure for public-private partnerships (P3’s) for transportation projects and ultimately voting with a veto-proof majority of the legislature to abolish the program during the 2009 session.

Why did it come to this? There has been much public debate of this question, most of it loud but inconclusive. Accusations of conflicts of interest, the selling of public roads to foreign entities and mortgaging our children's future and other such schemes abound. However, more important to the TTC's actual demise were pragmatic issues at the true center of the dispute that served to rally a large number of allied groups in opposition to the project. The public had initially reacted positively to the concept of building new roads without new taxes, but when the full impact of the actual I-35 project became apparent, the issue of tax avoidance became secondary to the negative impact of the actual project. The proposed 4,000 mile, 1200 foot wide TTC concept would have consumed 1 acre for every



36 feet of linear corridor – an immense 600,000 acres (900 square miles) of farm and ranch land upon completion. The project was intended to by-pass small towns and large municipalities alike. However, small towns along interstates depend on traffic for a large portion of their economic activity. Large cities, though less dependent on the traffic, were concerned about being bypassed by the corridor for what might be best described as “chamber of commerce’ issues. The railroads went public with their outright rejection of participation in the network of rail corridors as proposed

in TTC stating that they had no trouble moving freight in rural Texas – their problems were concentrated in the major metropolitan areas of Dallas-Fort Worth, Houston and San Antonio. Concerns were voiced about the secretiveness surrounding the award of the contract to Cintra-Zachry. Opponents attacked the foreign partner, while more moderate voices that might have accepted a foreign partner were nonetheless concerned about the transparency issue. Since TxDOT controlled the project itself, opponents launched a legislative attack on the underlying legislation supporting the concept, finally succeeding in rescinding the Corridor authorization in the 2009 legislative session.

It can reasonably be concluded that, while there might be a question of motive for any of the various actions and statements made by proponents and opponents of TTC from 2002 to 2009, the actual demise of the concept can be traced directly to that early Commission decision to by-pass a properly timed sequence of project development activities in order to fast track the initial I-35 project. Misled by the concept's popular reception by voters during the 2002 campaign and the quick success in gaining legislative authorization, the Commission may well have felt confident that the actual project would be accepted with popular enthusiasm. For whatever reason the decision was made, skipping key elements in the P3 development process was a fatal error.

The 2009 legislature effectively killed the TTC. TxDOT survived Sunset review, (a process by which the Texas Legislature periodically reviews each state agency to determine if its services are necessary or if there are means to modify its structure to better deliver required services. Results of Sunset Review can range from termination of an agency to major or minor restructuring), however, TxDOT was continued under Sunset review until the 2011 session. Even though some specific project money was made available to TxDOT, no permanent improvement in the revenue stream was achieved in 2009. The questions that motivated the development of the TTC concept still exist. The future of Texas highway

development remains uncertain. The only certainty is that the State of Texas will have lost eight years of needed highway capacity development by the time the 2011 legislature again takes up the question of TxDOT and highway funding.

What lessons can be learned from the failure of the Trans-Texas Corridor. Simply put, P3's were not the problem, the fatal flaw was the process used to achieve the TTC P3. It is imperative that both the government and the private sector realize the importance of adhering to a logical due diligence approach to P3's shaped along the lines of those key elements put forward by the NCP3P.

After analyzing the TTC process it seems that this list of key elements for successful P3's can be improved by expanding each element slightly and by restating them with an appropriate timeline and a couple of critical additions.

The time required to develop a P3 using these steps will vary depending on the projects complexity and the number of stakeholders involved. However, failure to follow a process such as this opens any P3 initiative to substantial risk. Given the popularity of the proposal to use P3's to build new road capacity without increased taxation in 2002, had the Texas Transportation Commission adhered to these revised key elements and their associated timeline in developing the Trans-Texas Corridor, it is highly probable that the initial I-35 project would have looked much different than initially proposed. The corridor would not be 1200 feet wide; there would be no rail lines; Cintra-Zachry, a very well qualified partnership might, or might not, be the state's partner; the project would not skirt small town Texas; farm land bifurcated by pavement would be connected though structures included in the project; the new infrastructure would probably be in, or very near, the current I-35; reasonable caps would be placed on the tolling structure; there would be a buy-back provision fair to both the public and the private partners; and most important, it would probably be alive and progressing today.

KEY ELEMENTS AND TIME LINE FOR DEVELOPING SUCCESSFUL PUBLIC- PRIVATE PARTNERSHIPS

- **Maintain Transparency** throughout the entire process, then
- Achieve **Statutory and Political Environment** for the concept, then
- **Define a Proposed Project** to stakeholders, then
- Modify the project as necessary to gain **Stakeholder Support**, then
- Develop a **Detailed Business Plan** for the modified project, then
- Identify a **Guaranteed Revenue Stream**, then
- Build an **Organized Structure** for project implementation, and
- **Pick Your Partner Carefully**

It has been said that no single statewide issue in Texas had ever succeeded in unifying business, labor and agriculture interests plus small and large municipalities in a common effort since the Alamo fell,

until the Trans-Texas Corridor came along. As unique an outcome as that might be, Texas desperately needs new road capacity, and from that perspective, there were no winners – all of Texas lost.

However, while the TTC is now history, something positive may yet come from the TTC failure as state officials learn from the mistakes of the past. There appears to be a chance that is happening in Texas. State Senator Glenn Hegar, newly appointed Chairman of the Sunset Commission recently told an Infrastructure Conference in Rosenberg, Texas, "There is a role for Public-Private Partnerships in Texas Transportation. Where they make sense, they should be used. We need to learn from the past and define a better process for identifying those candidate projects that make sense, and we need to improve the process by which we develop those projects as P3's." The 2011 legislative session will provide Texans the first opportunity to put those lessons in place and improve the process of adding road capacity to Texas highways.