

COMMENTS & TESTIMONY

TIER ONE DRAFT ENVIRONMENTAL IMPACT STATEMENT TTC-35 PUBLIC HEARING

DAVID K. STALL
CORRIDORWATCH.ORG

JULY 27, 2006
DALLAS, TEXAS

INTRODUCTION

My name is David Stall and I am commenting on behalf the more than 5,000 members of CorridorWatch.org who live and/or own land in 186 Texas counties including all 38 counties within the preferred corridor and reasonable corridor alternates for TTC-35 the subject of this Draft Environmental Impact Statement (DEIS).

In establishing the National Environmental Policy Act (NEPA) the Congress of the United States recognized the profound impact of man's activity on the natural environment. In particular they noted the profound influences of population growth and industrial expansion. They further recognized the critical importance of maintaining environmental quality to the overall welfare and development of man. In NEPA they declared a policy of cooperation between Federal, State and local governments, and other concerned public and private organizations, to use all practicable means and measures to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

This DEIS is not just for the Federal Highway Administration (FHWA), it's also for the citizens of Texas and their elected officials who are entitled to consider the environmental effects of both the proposal and alternatives.

TIER ONE DRAFT ENVIRONMENTAL IMPACT STATEMENT COMMENTS

We are told by the state that the Trans Texas Corridor (TTC) is in response to projected population growth and industrial expansion. We question however if it is the right answer in light of our individual community needs and our national environmental policy.

Duty to Alert and Inform

TxDOT has failed its NEPA mandate to alert and inform the public of potential adverse environmental consequences of their planned actions. TxDOT has failed to emphasize environmental issues and alternatives. The procedural duties imposed by NEPA are not being carried out to the fullest extent possible.

Instead of informing the public of possible environmental consequences, TxDOT is bombarding the public in a marketing effort designed not to educate, but rather to sell the TTC. Any and all critical observations are argued and discounted out-of-hand without due and proper consideration. Ask those, like the thousands of CorridorWatch.org members, who have attended TxDOT TTC meetings and you, will discover the overwhelming experience is one of pacification, not honest discourse.

Virtually no critical observation of the TTC is allowed to stand without TxDOT rebuttal. By example, when the Texas Farm Bureau expressed concern at the width of the corridor to House Transportation Committee Chairman Representative Mike Krusee, he publicly asked TxDOT Executive Director Michael Behrens if there was anything in the agreement with Cintra that says the corridor is 1,200-feet wide. Behrens responded no, that there wasn't anything in the agreement that said the corridor would be 1,200-feet wide. This is a good example of the lengths TxDOT will go to in their disingenuous effort to spin every criticism in a positive direction. As we all know, literally thousands of TxDOT documents, including this DEIS, consistently describe the TTC as up to 1,200 feet in width. In fact, Cintra submitted their proposal based on a TxDOT provided Implementation Plan that describes the TTC as 1,000 to 1,200 feet wide. Why does the Executive Director of TxDOT disguise the truth and intentionally mislead the public?

Open Discussion and Planning

Discussion is one of the most important ingredients of an EIS. Yet the TTC-35 proposal has never been the subject of meaningful public discussion or debate. And, that's exactly how Governor Perry wanted it.

According to Texas Transportation Commission (TxTC) Chairman Ric Williamson it was the express intent of the Governor to remove the TTC from the political flow of the state and make it policy.¹ For that reason Williamson said the Governor asked the TxTC and TxDOT to move fast. Following direction from the Governor, the TxTC forcefully stifled any discussion of the merits or consequences of the TTC and pressed for quick legislative authority to execute their plan. That plan, was set out is the Crossroads of the Americas: Trans Texas Corridor Plan and was adopted by the TxTC in June 2002 without debate or any substantive public discussion.

Incredibly, for four years the Plan TxDOT drafted, and the TxTC unilaterally adopted, remains absolutely unchanged. Meanwhile unsolicited comments, suggestions and alternatives from elected officials, metropolitan planning organizations, cities, counties, civic groups and citizens who are not in lock-step agreement with the TxDOT TTC 'vision' find their input unwelcome.

Today the TTC plan remains unchanged since its adoption and serves as the Implementation Plan for TTC-35.

Commissioner Williamson testified before the House Transportation Committee that the Governor was interested in changing the way we look at transportation planning and execution. He acknowledged that local transportation leaders were intentionally not consulted in developing the corridor plan adopted a year earlier.² Today we can see the impact of that change.

The change in planning and execution instituted by Governor Perry and Chairman Williamson was described in an editorial that appeared in the Fort Worth Star Telegram

¹ *Transcript*, Texas Transportation Commission meeting, Austin, TX, June 27, 2002.

on June 18, 2006. Fort Worth Mayor Mike Moncrief wrote, “TxDOT's understanding of the new CDA approach to road building is that local branches of government and the Legislature are no longer part of the process. According to the TxDOT view, once an agreement is made with a private partner, TxDOT and the provider alone are empowered to makes decisions concerning road alignments. This is a staggering change from the way we have historically made these decisions. These projects are too important to not allow the citizens to participate through their various voices in government.” Mayor Moncrief who was formerly a state senator and Tarrant County Judge was describing his experience with TxDOT and TTC-35.

Mayor Moncrief’s editorial followed the May 24, 2006, statement by TxTC Chairman Williamson who said, “If you aggressively invite the private sector to be your partner, you can't tell them where to build the road.”

The staggering changes in TxDOT planning and execution have not been limited to deciding alignments.

Under the leadership and direction of the TxTC TxDOT has failed the NEPA mandate of a careful and informed decisionmaking process conducted fully and in good faith.

Rather than sharing information and collaborating with regional and local transportation officials TxDOT has been publicly and officially instructed to sever communications and cooperation with those who the Chairman has identified as, “working at cross-purposes.”

Communities, community leaders, and organizations are publicly chastised and rebuked for daring to advance the consideration of any alternative to the singular plan advanced by the Governor and his appointees on the TxTC.

During a meeting of the TxTC on November 18, 2004, Chairman Ric Williamson inquired of TxDOT Deputy Executive Director Steve Simmons about the River of Trade Corridor Coalition (ROTCC). Williamson asked, “And what seems to be their point?” Simmons answered, “Well, the issue at hand is they're concerned that the industry and businesses

² *Transcript*, Texas House Transportation Committee hearing, Austin, TX, March 25, 2003.

along the existing I-35 corridor will be impacted severely with a new alignment away from I-35.” To which Williamson responded, “That's reason enough to not choose a developer and move along, is that their argument?” “I think that they believe that the first option should be to consider expanding I-35 and that the corridor should come second,” said Simmons.

CorridorWatch.org believes that the concerns and input advanced by the ROTCC deserve proper consideration as on of the TTC-35 alternatives.

Delay of a project is not sufficient reason to reduce or eliminate consideration of alternatives and environmental factors under NEPA. A certain amount of delay is inherent in achieving compliance. It is far more consistent with the purposes of NEPA to delay action at a point when meaningful environmental protection may be accomplished than to proceed to a point where corrective action may be so costly as to be impossible.

With a line of questioning that smacked of a witch-hunt, Williamson wanted to know who was behind the ROTCC and what other members had joined that effort. Williamson belittled community concerns about protecting their investments, businesses and industries along the existing IH-35 corridor. He summed up their concern as being about their gas stations and as being at cross purposes with the TxTC and TxDOT.

Chairman Williamson took the opportunity to express his personal displeasure with Dallas City Councilwoman Sandy Greyson, David Dean, Dean International and anyone else who participates in the ROTCC.

Chairman Williamson then directed TxDOT management that they were not to provide any further assistance or resources to Dean International or any organization that associates with Dean International including the ROTCC, High Speed Rail, and TEX-21 without first checking for his approval.

At the close of the TTC-35 discussion Williamson reinforced his lack of patience with groups who oppose the TxDOT TTC-35 plan. He listed a few 'arguments' he considered legitimate and distinguished them from others he considered deliberate misinformation or deliberate opposition to advance some unidentified individual's political agenda.

Williamson continued and expressed his lack of patience for those groups he described as "ad hoc, spur of the moment, last minute" that "spring up for no reason other than, got to find a way to make a buck and scare people."

CorridorWatch.org believes that elected officials should be given greater voice in the process as representatives of their constituents, not be abused for failing to agree with the TxTC. The City of Dallas, or any other Texas community, is not only entitled but has a responsibility to represent the concerns and issues that effect their jurisdictions. That representation is often in the form of a paid advocate such as Dean International.

It is entirely inappropriate that the TxTC be intolerant of honest opinions that differ from their own. It is unacceptable that this Commission acts to retaliate against communities, organizations or their advocate because they seek to organize in opposition to a plan that is itself a matter of public debate.

Chairman Williamson says that he will not tolerate the kind of ad hoc input that this very process is designed to solicit. The intent is transparent and the message is loud and clear – sit down and shut up.

Alternatives such as those advanced by the ROTCC and others cannot be disregard merely because they do not offer a complete solution to the problem.

NEPA should ensure that the public is informed that TxDOT has considered environmental concerns in its decisionmaking process. TxDOT has a duty to provide the public with comprehensive information regarding the environmental consequences of a proposed action so that they may participate effectively.

Through their actions the TxTC has rejected their duty and responsibility under the Act. Their actions have nullified the protections that the citizens of Texas are entitled to receive under state and federal law.

Well documented actions by TxDOT to quell unwelcome input and comment on TTC-35 makes a mockery of the NEPA environmental impact study process.

The retaliation is swift and the message is clear. CorridorWatch.org is stunned at the threats and coercion cast upon public officials who suggest anything other than the predefined program. Despotism has become the new management culture at TxDOT.

Disclosure

TxDOT has not made an earnest effort to fully disclose and discuss all major points of view on the environmental impacts of the alternatives, and particularly not the proposed action. The basis for choice is obscured and the options presented to the public are incomplete.

On March 11, 2006, TxDOT entered into formal agreement with Cintra Zachry for a master development and financial plan to include road, rail, and utility projects for the entire proposed 600-mile length of TTC-35. That agreement also contains approximately 200 pages of design and financial details that likely contain significant, substantive and relevant factors to be considered in evaluating the environmental impact of this proposed action. Since March 11, 2006, TxDOT and Cintra Zachry have refused to disclose the full contents of this development agreement. On May 31, 2006, the Texas Attorney General issued a ruling that declared the agreement to be a public document not protected from disclosure. Despite that ruling TxDOT and Cintra Zachry continue to keep the design and finance portions of the agreement secret from the public.

Without full disclosure the public cannot be ensured that TxDOT has considered environmental concerns in its decisionmaking process or that the environmental impact decisions reached are not arbitrary and capricious. Absent full disclosure of all relevant project factors it is impossible to draw a rational connection between facts to be found and the choice to be made.

The intentional omission of and secrecy of TTC-35 project design details contained in the Comprehensive Development Agreement (CDA) thwart the possibility of a reasonably complete discussion of the project and possible mitigation measures. Without that information and subsequent discussion the public is unable to adequately evaluate the severity of potential adverse effects. Such omission undermines the “action-forcing” function of Act.

It is particularly significant that the details of the CDA are being kept secret when Chairman Williamson describes a primary purpose of the CDA process is that a developer will bring finance, design, construct and operate concepts that for TxDOT to otherwise take advantage of would be illegal.³ That is how Chairman Williamson defined innovation. Such potential deviations from the norm in finance, design, construct and operate concepts makes evaluation without specific information impossible.

Before the public can comment adequately on the draft statement's analysis of effects there need to be a full disclosure of the project, specifically its proposed design and development details contained in the CDA.

Such obscuration is contrary to NEPA's manifest concern of preventing uninformed action. Accordingly, this draft statement is so inadequate that it precludes meaningful analysis and certainly does not fulfill and satisfy to the fullest extent possible the requirements established for final statements in section 102(2)(C) of the Act as required by regulation.

This DEIS is incomplete and these hearings are unable to provide the public an opportunity to comment on pre-established development and design features known to TxDOT and kept secret from the public and other interested parties.

TxDOT has failed to make those underlying documents available to the public. TxDOT has not provided early nor meaningful public participation in the decision making process. To the contrary, TxTC has diligently and aggressively discouraged and rejected public involvement in the decision making process.

The TxTC has created a climate of fear and intimidation that may make it impossible to know what additional comments, input, or alternatives have been withheld for fear of reprisal. Accordingly, the level and nature of the interference by the TxTC has made it impossible for TxDOT to comply with NEPA and CEQ regulations.

³ *Transcript*, Texas Transportation Commission meeting, Austin, TX, November 18, 2004.

SUMMARY / CONCLUSION

Based on the information contained in the Tier One DEIS together with the information available to the public the selected decision should be the No Action Alternative.

For the reasons set forth herein CorridorWatch.org, on behalf of its members and the citizens of the State of Texas, respectfully ask that the Texas Department of Transportation (TxDOT) voluntarily agree that this Draft Environmental Impact Statement (DEIS) is inadequate for proper and required public involvement; that the Texas Transportation Commission be cautioned against continued or future actions contrary to their duties, obligations and responsibilities under NEPA; that TxDOT voluntarily revise this DEIS to fulfill and satisfy to the fullest extent possible the requirements established by regulation; that TxDOT voluntarily reconsider additional alternatives; and, that following FHWA approval of a revised DEIS the complete and entire Tier One public hearing process be repeated anew to afford the public and decisionmakers an opportunity to accomplish meaningful analysis with the newly disclosed information and incorporated alternatives.

In the event TxDOT fails to willingly and voluntarily take those actions respectfully requested above, CorridorWatch.org, for the reasons set forth herein, respectfully asks on behalf of its members and the citizens of the State of Texas, that the Federal Highway Administration (FHWA) find this Draft Environmental Impact Statement (DEIS) inadequate for proper and required public involvement; that the Texas Transportation Commission be cautioned against continued or future actions contrary to their duties, obligations and responsibilities under NEPA; that the Texas Department of Transportation (TxDOT) be instructed to revise such DEIS to fulfill and satisfy to the fullest extent possible the requirements established by regulation; that TxDOT be instructed to reconsider additional alternatives; and, that following FHWA approval of a revised DEIS that TxDOT be instructed that the complete and entire Tier One public hearing process be repeated anew to afford the public and decisionmakers an opportunity to accomplish meaningful analysis with the newly disclosed information and incorporated alternatives.

CorridorWatch.org respectfully requests that the comments and requests made herein in reference to the Tier One DEIS for TTC-35 be responded to in writing; and, that each comment and request be responded to and addressed individually on its own merits.

The mailing address for purposes of reply to CorridorWatch.org is: CorridorWatch.org, Fayetteville, TX 78940-5468.

SUBMITTED, For Your Consideration,

David K. Stall

On Behalf of:

CorridorWatch.org
Fayetteville, TX 78940-5468

July 27, 2006
Dallas, Texas