

# TxDOT's "Myth Versus Reality" Press Release Misses the Mark

The Texas Department of Transportation (TxDOT) recently issued a press release titled, "Myth Versus Reality." A more accurate title might have been, "Myth Versus PR Response." What's missing in large measure is the Reality. Media outlets that receive this press release should do some fact checking before presenting it to the public without qualification.

Granted it is difficult to address every issue in black and white terms. However, TxDOT has a vested interest in making every pig's ear of the TTC a silk purse. At CorridorWatch.org our goal is education and to call a pig's ear a pig's ear. We try our best to be objective and sometimes you might find a very nice pig's ear, if you like that sort of thing.

CorridorWatch.org takes this opportunity to share the list of eighteen 'Myths' provided by TxDOT (source or sources unknown), the TxDOT Response, and add to that a touch of Reality provided by CorridorWatch.org. The Myth and Response portions reprinted below are verbatim from the TxDOT press release and appear in the same order.

## Mysterious TxDOT Myth Number 1

**TTC-35 will be 10 miles wide.**

**TxDOT Response:** No. If federally approved, the *study area* would be 10 miles wide. Then, additional studies would be conducted within the 10-mile wide study area to identify a final route. If roads, rail and a utility corridor are located adjacent to each other, TTC-35 would be no more than 1,200 feet wide. Also, where existing roads and railways can be incorporated, the amount of right of way needed would be less.

**CorridorWatch:** No. 1,200 feet is wide enough. In fact it is more than 400 feet wider than necessary to accommodate all four truck lanes, six vehicle lanes, six rail lines, the 200-foot utility right-of-way, and all required drainage, highway shoulders, barriers and safety buffers. It is unlikely that the already oversized corridor will exceed 1,200 feet in width except at interchanges and in areas where cut-and-fill construction is required.

## Mysterious TxDOT Myth Number 2

**TxDOT already knows the location of the project and will direct Cintra Zachry where to build it.**

**TxDOT Response:** No. The location of TTC-35 is not yet known. Like all transportation projects, TTC-35 must go through a federally-required environmental study to identify a route. Property cannot be purchased and construction cannot begin unless TTC-35 has been environmentally approved by the Federal Highway Administration.

**CorridorWatch:** Maybe and No. Cintra Zachry has submitted a proposal to build more than 300 miles of TTC-35 facilities and in doing so they calculated a cost associated with that work. Does anyone really suspect that Cintra Zachry did that without looking at a map and determining, even if in relatively general terms, the location of that road? There are physical constraints created by topography and design criteria for roads and rail that dictate the most suitable and economic routes. Those are engineering and economic driven design decisions. Potential environmental impact is also reduced to an economic decision; the cost of avoidance versus the cost of mitigation. Unfortunately, every indication is that TxDOT will not direct Cintra Zachry where to build it.

## Mysterious TxDOT Myth Number 3

**By taking thousands of acres off the tax rolls, the corridor will remove thousands of dollars and cripple local governments' ability to provide services.**

**TxDOT Response:** No. Businesses generate more in tax revenue for local communities and school districts than undeveloped. As with any transportation project, business development will occur near the corridor bringing increased tax revenue for local services.

**CorridorWatch:** Yes and Maybe. No recognized study that we are aware of has attempted to assess the economic impact that the TTC will have on local communities and school districts. What is certain is that thousands upon thousands of acres of taxable land will be removed from the tax rolls of counties, school districts, rural hospital districts, and utility districts. That action alone will result in a direct and immediate loss of local revenue. It is impossible with any certainty for TxDOT to assert that local governments will not be severely affected, if not indeed crippled. There are however numerous examples of communities across Texas that have suffered significant economic losses as the result of highway relocations and bypasses. No road project anywhere in the world has ever taken 146 acres of land for each lane-mile as the TTC promises to do across thousands of miles of Texas. TxDOT is asking local government to take an extremely long shot bet that property tax losses today and forever will be somehow offset by potential revenues produced by yet unknown and uncertain business developments at least five years into the future if and when the road is completed and accessible to the local community. Who pays the bills until then?

## Mysterious TxDOT Myth Number 4

**TTC-35 will make it impossible for small communities to exist due to access issues.**

**TxDOT Response:** No. According to state law, there must be a direct connection to the TTC with interstate, state, and US highways. Connections to farm-to-market, county and local roads will also be considered as design plans are developed.

**CorridorWatch:** Maybe. The original plan suggested connections to interstate and US highways, but only 60% of the state highways. In 2005 legislation was adopted adding that the TTC will connect with all state highways. If a small community is not presently served by one of these highways it may find that it has serious access issues. Other 'considered' connections will be based on criteria that small communities may never achieve.

## Mysterious TxDOT Myth Number 5

**TTC-35 will wipe out entire towns and communities.**

**TxDOT Response:** No. TTC-35 will go around populated areas. In fact, the potential impact to communities is one of the environmental factors considered in the study. In addition, to encourage economic development along TTC-35, there will be connections from TTC-35 to communities along the corridor.

**CorridorWatch:** Maybe. Going around populated areas is exactly how you remove the economic benefits of a highway. With the traffic go business opportunities, tourism, and access to local revenue generators. Motorists on a toll road with a full range of traveler services will pass thousands of Texas communities, large and small. Entire towns and communities have been wiped out as a direct result of moving a railroad or moving a highway. Chances are pretty good that there are entire towns or communities that will be wiped out by the TTC.

## **Mysterious TxDOT Myth Number 6**

**Counties will have to pay to build crossings over the corridor and residents will have to pay to cross.**

**TxDOT Response:** No. Interchanges and overpasses will be constructed as part of the TTC-35. Counties will not have to pay for these connections nor will motorists be charged to cross TTC-35.

**CorridorWatch:** Maybe. TxDOT has never said that all roads interrupted by the TTC will be provided with a crossing. In fact TxDOT has the authority to decide which roads will and will not be provided with a crossing. Who will pay for those crossings? The concessionaire is building the TTC because they can collect a toll for it's use. What return on investment do they have on a non-toll 2-lane county road crossing that TxDOT estimates to cost \$2,661,750 to construct? If your county wants that crossing it may have to pay to build it. Maybe your Regional Mobility Authority (RMA), an entity comprised one or more counties will foot the bill. With TxDOT aggressively pushing tolls across the state it's not difficult to imagine paying a toll to cross a quarter-mile wide corridor. We seriously doubt the TxDOT employee who wrote this response has the ability to guarantee Texans that they'll never pay a toll to cross the TTC.

## **Mysterious TxDOT Myth Number 7**

**All land will be acquired under eminent domain at pennies on the dollar.**

**TxDOT Response:** No. Any land needed will be purchased and property owners will be paid fair market value. There will be an independent appraisal, an offer, and opportunity for negotiation. If the property owner is still not satisfied with the TxDOT offer, he has the same due process rights of a jury trial through the judicial system.

**CorridorWatch:** No. Property owners will get more than pennies on the dollar. Some may get full market value or even more. But for sure everyone will get the absolute minimum that TxDOT can get away with paying. This is a very complex legal process and every landowner should have the advice of an attorney before accepting any offer.

## **Mysterious TxDOT Myth Number 8**

**TxDOT has the authority to condemn property for private use and operate commercial facilities associated with the Trans-Texas Corridor.**

**TxDOT Response:** No. TxDOT can only acquire property for transportation purposes. If customer service facilities are needed, such as gas stations or convenient stores, TxDOT may acquire the land but the private sector will provide those services. In other words, any competition will be among private businesses and the landowner retains development rights. According to state law, Cintra Zachry, nor any other developer of TTC projects, will be allowed to operate these facilities.

**CorridorWatch:** Yes. The TTC was specifically excluded from the recently adopted law that otherwise prohibits the use of eminent domain for economic development purposes. TxDOT can and will use eminent domain to acquire property for the TTC which will be operated as a commercial for-profit enterprise. The concessionaires are private businesses that will use the TTC to generate a profit. It appears from the limited information made available to the public that Cintra Zachry will have a monopoly on at least the toll road portion of the TTC. Providers of service facilities located within the TTC must negotiate with a single entity. The result is monopoly that will drive provider location costs well above the real market value. This is not unlike other

turnpikes, airports or sports stadiums. The result is also equally common, highest bidder gets the location and the consumer with limited options pays a premium for goods and services. When was the last time you went to the ballpark for dinner?

## **Mysterious TxDOT Myth Number 9**

**TxDOT will transfer its eminent domain authority to a private entity hired to develop the corridor.**

**TxDOT Response:** No. TxDOT cannot delegate the power of eminent domain to a private or third party. A developer for the TTC will not be condemning land.

**CorridorWatch:** Technically No. But does it really make any difference? Remember that it is the concessionaire who has decided which segment of the TTC system they want to build and operate. They are the ones doing the design work and construction and they will have tremendous say in both general and specific terms where the corridor will be located. If necessary, TxDOT will use their power of eminent domain to condemn land for the TTC whether they identified the parcel or the concessionaire did.

## **Mysterious TxDOT Myth Number 10**

**All land will be owned by the Spanish government.**

**TxDOT Response:** No. TTC-35 is a state-owned project and any land purchased or transportation improvements built will be done in the name of the state. All property acquired will be the property of the State of Texas. Should Cintra Zachry or another private group develop any portion of TTC-35, their role will be to finance, design, build, maintain, operate and collect a portion of tolls for a period of time.

**CorridorWatch:** No. All land acquired will be the property of the State of Texas. TxDOT concessionaires will however be granted yet unknown rights and powers to control the use of, and operations on, that land for fifty or more years. For practical purposes the care, custody and control exercised by the concessionaire may be virtually the same as if they owned the land themselves.

## **Mysterious TxDOT Myth Number 11**

**TTC-35 will open up the borders to Mexico and allow unlimited access for Mexican immigrants.**

**TxDOT Response:** No. International crossings will not be built as part of the TTC-35 but will connect to existing border crossings. These international crossings are subject to state and federal laws.

**CorridorWatch:** No. The TTC itself is not anticipated to facilitate increased illegal immigration.

## **Mysterious TxDOT Myth Number 12**

**Tolls on TTC will be set at whatever Cintra Zachry wants.**

**TxDOT Response:** No. TxDOT will establish toll rate methodology for how toll rates will be set. Tolls will be set at a price that the market will bear. If it is too expensive, motorists will not use the road.

**CorridorWatch:** Yes. TxDOT will establish "how toll rates will be set," but it is still the concessionaire who will determine toll rates. In 2005 language was added to the law allowing TxDOT to establish a toll rate methodology. While TxDOT dictates the method used to calculate the toll, they will have a limited ability to regulate tolls, fees, fares or other usage charges. TxDOT's response itself tells the reader that the only limit they anticipate is the "price that the market will bear" and that, "if it is too

expensive, motorists will not use the road.” Nothing in that response indicates that TxDOT will exercise authority to control excessive toll charges.

### **Mysterious TxDOT Myth Number 13**

**Traffic is not bad and can be handled by upgrading existing facilities.**

**TxDOT Response:** No. Planned improvements to I-35 will continue but are not expected to substantially reduce the congestion levels that are predicted for 2025 and beyond. Some studies indicate that I-35 would need to be expanded to 16 lanes in metro areas and 12 lanes through Central Texas.

**CorridorWatch:** Yes. Of course we have serious traffic congestion problems, particularly in and near urban areas. Yes Texas needs to add and improve its roads and highways for today and the future. Yes existing facilities do need to be upgraded. Congestion is a natural indicator of where that added capacity is required. Additionally other alternatives need further examination and serious consideration.

### **Mysterious TxDOT Myth Number 14**

**The Cintra Zachry contract is a big secret and no details have been made available to the public.**

**TxDOT Response:** No. The contract is a public document and is available online at [www.keeptexasmoving.org](http://www.keeptexasmoving.org). Just as no business owner wants to share his financial investments with his competitors, potential TTC developers do not want to share theirs. Texas needs an even playing field among competitors so that it can attract private sector capital to build needed transportation improvements. For these reasons, proprietary information on Cintra Zachry should not be released.

**CorridorWatch:** Yes and No. The contract is a public document. The Texas Attorney General has ruled that the entire contract is a public document. Yet approximately half of that document (about 200 pages) is still not available to the public and is not online anywhere. Arguably the most important parts of the contract are “a big secret.” The missing information includes the TTC-35 design and financial details. As a result Texans don’t know what they are buying or what they are paying for it. This is a public project and the public has the right to know all of the details that will impact their lives and that of several future generations. The public interest should always be put above that of a private business. Unlike national security, state transportation matters should not be shrouded in secrecy.

### **Mysterious TxDOT Myth Number 15**

**TTC will pave over cemeteries and destroy historic properties.**

**TxDOT Response:** TxDOT's goal is to avoid cemeteries and historic properties. TxDOT works with local, state and federal agencies to identify these areas so that any impacts are minimized. It is during route-specific studies (Tier Two) that actions to avoid or minimize potential impacts will be developed.

**CorridorWatch:** Maybe. TxDOT has a good and honorable record of accomplishment in avoiding cemeteries and historic properties. Sometimes however it is unavoidable. But never before has TxDOT worked under the pressure of a private partner who will define the route in terms of lowest cost and highest profit. Take note that this isn’t one of the myth Responses that starts with an unequivocal “No.”

### **Mysterious TxDOT Myth Number 16**

**Large tracts of land will be taken only to wait decades for the corridor to be built.**

**TxDOT Response:** If property is not immediately necessary for the transportation project, the department will strongly consider purchasing options and offer lease-backs to allow the property owner to continue occupying the land.

**CorridorWatch:** Yes. Unless TxDOT builds all elements of the TTC immediately there will absolutely be large tracts of land waiting decades for some speculative transportation use. Before TxDOT can “strongly consider” leasing-back land and becoming a government landlord, the property will have been taken away from the private owner. Those tracts taken for state land speculation may be 600 feet wide and hundreds of miles long, totaling thousands of acres. If this is a valid and acceptable concept then why not abolish all private land ownership and let the state lease our property back to us until they decide it is necessary for some other government project?

### **Mysterious TxDOT Myth Number 17**

**If a developer is unable to make payments to its lien holders, the road would be shut down and the state would have to bail out the developer.**

**TxDOT Response:** No. TTC-35 is a state-owned project and would remain open regardless of a developer's ability to make payments to the bondholders. All financial obligations are between the developer and the bondholders. By law, the state cannot be held responsible for a private developer's financial obligations.

**CorridorWatch:** No. Of course there are all kinds of complications that would arise in the unlikely event of financial a failure. There are already examples of failures occurring during the construction phase of highways in Texas that caused substantial project delays.

### **Mysterious TxDOT Myth Number 18**

**TxDOT has the authority to pump groundwater and strip the minerals beneath the surface.**

**TxDOT Response:** No. State law prohibits TxDOT from extracting groundwater for commercial purposes. TxDOT does not acquire the mineral rights and has no authority to drill for minerals on state-owned land.

**CorridorWatch:** No. But until the legislature took that ability away in 2005 TxDOT and their concessionaires could have extracted groundwater from the TTC without any limit or regulation. While TxDOT does not take subsurface mineral rights they could effectively block your ability to access those minerals. This is another time when you need to consult an experienced attorney.



CorridorWatch.org, is an organization of concerned Texans and public officials who question the wisdom of the Trans-Texas Corridor.

Our mission is to increase public awareness and understanding of the Trans-Texas Corridor and its impact on Texas and all Texans.

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