

# Rocks for the Goliath Road

**Small-town leaders in Central Texas think they've found cracks in the Trans-Texas Corridor's armor.**

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**By PETER GORMAN**

BARTLETT — Sitting in Lois and Jerry's Restaurant, surrounded by a blue-jean and overalls lunch crowd, Mae Smith and Ralph Snyder don't look like giant-killers. In fact, the small-town mayor (5' 2") and the salvage shop owner (6' 6") look more like a Mutt and Jeff comedy team.

But along with mayors, business leaders, and farmers in Bell County, north of Austin, and their counterparts in several other parts of the state, Smith and Snyder are taking on a Texas Goliath — the Trans-Texas Corridor, the monster transportation project being pushed by Gov. Rick Perry and the Texas Department of Transportation.

Two years ago, the I-35 section of the project, planned to parallel the existing interstate, was seen as a done deal, and TxDOT was busy signing contracts with the Spanish-U.S. consortium called Cintra-Zachry to build a section of the corridor and operate it as a private toll road. Now, however, much of the political support for it has drained away in the face of widespread grass-roots opposition. Even the project's backers say the small-towners' group may have a chance of causing major holdups — and perhaps even fatal delays.

Smith, Snyder, and a growing group of leaders in other small towns and rural areas in the TTC's path have found what they believe to be a chink in the giant's armor, and they are exploiting it for all they're worth — backed by national property-rights groups that have fought government land seizures in other states with some success.

In the last two years, Smith, the 64-year-old firebrand mayor of Holland, and the leaders of three other Bell County towns, with a combined population of less than 6,000, had grown increasingly worried about the threat that the TTC project posed for their communities. Frustrated by their inability to get state transportation officials to pay attention to their fears, the mayors found a provision in state law that allows for the creation of local planning commissions — and then requires TxDOT and other state agencies to coordinate projects with those commissions.

So they created a planning commission and began asking for consultations and records on TTC. And what they found in the process astounded them.

Smith said that TxDOT claims in official documents that it has studied the Corridor's expected effects on communities it will run through — but that it has done no such studies. In the draft version of its environmental impact study, she said, the agency wrote a summary — the only part many busy lawmakers are likely to read — that varied wildly from the information in the body of the report.

The local officials charge that the transportation agency report broadly misstated its own consultant's findings regarding jobs that the TTC would create and failed to mention heavy losses in personal income and in the tax base the project would cause. They say TxDOT has also ignored requirements in state and federal law that it consider effects on air quality and the environment, look into other alternatives — or even to state why the TTC, with its grand vision of toll roads, train and pipeline rights of way, and commercial areas controlled by private corporations, is needed at all. And, perhaps most importantly for one of the state's richest farming areas, they charge that TxDOT has failed to consider the major impact the project would have on their federally protected farmland.

As a result, the planning commission is pressing for TxDOT to redraw its environmental impact statement and to stop any further work on the TTC until proper studies have been done and requirements met — or expect to be sued.

TxDOT officials have said only that they have contacted the Federal Highway Administration to find out if the Central Texas group, which now includes a fifth town, in Milam County, has the power to compel it to respond. TxDOT spokesman Chris Lippencott wrote in an e-mail that, "We are awaiting further guidance from [the federal agency] on whether and how to revisit the already-completed portion of this process." Gov. Rick Perry, who has been the power behind the push for the TTC, declined to comment.

Perhaps worse news, from TxDOT's point of view, is that, since the Central Texas group formed, four more local planning commissions have been formed in East Texas, two more are being organized on the other side of the state, and the Sierra Club is getting into the action, pointing out problems with the environmental assessment on another major portion of the TTC and asking that that work be delayed as well, until a new impact study is done.

The small-town group's formal request to the state agency cites so many sins in the Corridor planning process, Smith said, that the detailed document "can almost indict people for the way TxDOT has purposely ignored state and federal law."

Chapter 391 of the Texas Local Government Code is the not-so-secret weapon of the Central Texas officials who are fighting the Corridor. The code "says that TxDOT and other state agencies have to coordinate project planning with local planning commissions," Smith explained, "so we formed one" — specifically, the Eastern Central Texas Sub-Regional Planning Commission, of which she is president.

The commission was created in August 2007, by which time TxDOT had already released its draft environmental impact statement on the part of the Corridor project that affects Bell and Milam counties, known as TTC-35. In the draft statement, Smith said, the agency “claimed to have studied the highway’s environmental impact and the impact it would have on the communities it ran through, but that wasn’t true.” So the group asked for a meeting with TxDOT to talk about it.

At that first meeting, in October, Smith said, TxDOT officials admitted they hadn’t studied the environmental impact the planned 1,200-foot wide corridor would have on the area covered by the four towns — Holland, Bartlett, Rogers, and Little River-Academy (Buckholts has joined since then). That area is part of the Blackland Prairie, covered by the federal Farmland Protection Act.

A second meeting revealed that the environment wasn’t the only thing TxDOT hadn’t studied. The local commission concluded that in fact, TxDOT hadn’t studied much of anything with regard to Bell County “They had no idea how to answer questions about [the TTC] dividing our cities in half and the effect that might have on school districts, on the agriculture business this area depends on, or the effect that highway would have on our emergency services,” Smith said.

TxDOT officials, she said, promised they would do that work when they began the second phase of the project — that is, after they decided exactly where to put the superhighway. In the meantime, however, the agency was already buying land and making deals with contractors. “That’s not OK with us,” she said. “That’s not the law. You can’t begin to study the impact you’ll have after you’ve made your plans; you have to make your plans around the impact you are going to have.”

The planning commissioners also found that the state highway agency’s draft environmental study didn’t even agree with itself — the summary wasn’t supported by the text of the report.

And so Smith’s group sent out a formal request on May 20 to Edward Pensock Jr., the engineer who is director of corridor systems of the TxDOT’s turnpike division, asking the agency for a supplemental report on the project’s environmental impact.

The Central Texas commission backed up its request with a 28-page list of “deficiencies” in the current environmental assessment. Perhaps as important as the request itself is the commission’s insistence on when it should be done.

“We want the supplemental environmental impact study done by TxDOT prior to any further work or planning on the highway,” Smith said.

TxDOT wasn’t happy with the request and sent it on to the Federal Highway Administration, asking whether it indeed has to do a supplemental report. The federal agency’s answer is expected by the end of the month. And if the ruling favors the local commission, the entire TTC could be held up until that new report is complete.

A TxDOT official who asked not to be named said the state agency has satisfied its obligations by holding hearings and meeting with the commission — and that it isn't required to actually address the commission's request for a new study.

Not so says Snyder, the only non-elected member of the commission. "We're a political entity, and as far as this request is concerned, there are things that TxDOT ignored under federal law," he said. "And they've got no choice but to abide by those federal laws."

Snyder predicted that the feds will pressure TxDOT to do the additional study before further work is done on the TTC plans. But if that doesn't happen, he said, he's confident that the commission can force the state agency's hand through the court system. "We've got the law on our side," he said. "TxDOT has to do this thing right, or there will be no TTC."

The Central Texas group has environmental, economic, and legal issues to pick with TxDOT. One of their key points, for instance, is TxDOT's claim that when the new superhighway is complete it will add 434,000 permanent new jobs and \$135 billion in additional personal income in the state.

But in fact, the report done for the state agency on the TTC's economic impact doesn't make that prediction on new job creation, and suggests that the project would decrease personal income across the state by \$90 million a year because of land to be taken by the project. On the TTC-35 section alone, the Perryman Group consultants predicted governments will lose \$94 million in taxable property.

More than 4,000 acres would be lost just in Smith's planning region, which includes an area roughly 30 miles by 30 miles. Additionally, the Perryman Group's report, which was all but ignored by TxDOT in its draft environmental statement, predicted hundreds of millions of dollars would be lost from the agricultural sector.

In its request for a new impact report, the small-town group wrote that TxDOT's draft environmental statement "should have revealed the [Perryman] study ... and then analyzed those facts to determine the economic impact" on the region.

"In plain language, they had a study done, and then when the figures didn't match what they wanted, they just made up some figures and put them in the summary they passed out," Smith charged. "Just made them up."

In addition to the financial losses to individuals and governments in the area, the TTC would force area governments to build their own overpasses and underpasses for all except state highway crossings — and some crossings could carry tolls. "None of those issues were even considered" in TxDOT's draft environmental statement, said Smith.

Beyond that, the planning commission charges, are all the federal laws and even state needs that are being ignored by the TTC planning process, including the Environmental Protection Act.

But there is one overriding concern that the Central Texas commission members share, and it is more basic than tax losses or expensive overpasses. It is the land itself, the rich black clay that defines their region's culture and economy. And in saving the land, they believe they've got the federal government — and, oddly enough, some of the federal government's most implacable opponents — on their side.

Just a few miles east of I-35, near Salado, lies the heart of the Blackland Prairie. The gently rolling hills reach to the horizon, the fields alternating with stands of Osage orange, hackberry, cedar elm, oak, and pecan orchards. Corn ready for harvest stands next to the dark brown of the milo tops and the rich green of cotton. Recently harvested wheat fields expose the rich black clay from which the prairie gets its name.

Holland's downtown, a block of old brick buildings dating back more than 100 years, is a throwback in time. The only lunch spot in town is closed for vacation. At noon a siren shrieks, calling the hour.

So when Mae Smith drives up in her dusty dark green Dakota pickup, we head over to Bartlett, to meet reinforcements and find lunch. She wears jeans and a red blouse, and her blonde hair is cropped short.

"Most of the people living here have been living here for generations," she explains as she drives. "And they like this life. They may work in Temple or Austin, but they still live here. Just like their daddies and their daddies."

Stepping out of the truck 20 minutes later on Bartlett's main drag, we're met by the huge figure of Snyder. He has the same searing blue eyes as Smith.

"Let me tell you something about the Blackland Prairie," Snyder says. "In 1850 this was the most heavily populated area in the United States west of the Mississippi. That's because of the soil here. Now the blackland, a fine clay, runs from Mexico up to Canada." In some parts of the country, the swath of soil is 250 miles wide, but here it's just 30 miles across. "And if you take any of it away, well, it's gone forever, and these towns depend on the ag business."

At one point in the lunch, he makes a dash to his truck and comes back with an ear of corn. "Take a look at that," he says, peeling back the husk to show off a large ear with golden kernels. "The black clay here expands with the winter rains and then gives off the water during the summer months. We're in the middle of a drought, and this was grown without irrigation. Farmers will be averaging 130 bushels of corn around here per acre without irrigation. This soil is a national treasure. To pave it over is a crime."

Farmland is lost every day in this country to urban sprawl and road development, but this fertile region has federal law on its side — the Farmland Protection Act — as well as state protections. Although most of the Blackland Prairie in Texas is being farmed, the Texas Parks & Wildlife Department has identified the remaining 5,000 acres of the formation as deserving “high priority protection” — and has already recommended that TxDOT not put another huge highway through the area, but stick to the I-35 corridor to build any additional freeway capacity.

The Farmland Protection Act has already been used in freeway fights. According to the lawyer for a national property rights group, the Federal Highway Administration cited that law in rejecting plans for a new highway in Indiana, in favor of an alternative that had less impact on farmland.

The property rights group in question is called Stewards of the Range. And one of its founders is neck-deep in the TTC controversy.

Snyder was the linchpin in getting the Bell County planning commission off the ground. In the spring of 2007 he attended a meeting called by Margaret and Dan Byfield in the town of Jonah, about the TTC. “There had been a lot of misinformation put out by TxDOT on the Corridor, and the Byfields were meeting with the folks ... to give them the real story,” he said.

The Byfields, who joined us for lunch, are controversial figures. Margaret, 41, helped found the nonprofit Stewards of the Range in 1992, when the federal government moved to take away her family’s right to run their herds on 1,100 square miles of federal land next to their Nevada ranch. Dan Byfield, 54, is the president and founder of another land rights group, the American Land Foundation. When they met, the two were already involved with their respective organizations in the long-running private property rights called the Sagebrush Rebellion, which has pitted Western U.S. farmers and ranchers against environmental groups fighting for causes like the protection of wetlands and endangered species habitat.

The couple moved to Central Texas about five years ago — only to find that the behemoth TTC was being aimed within a mile of their property. It was the attorney for Stewards of the Range who drew up the Bell County group’s demand letter to TxDOT, asking for a new environmental impact study.

“We’ve often fought with environmental groups,” Dan said, “but in this case we seem to have come full circle and are fighting [alongside] them.”

It was from Dan Byfield that Snyder heard about the local government code provision that allows for creation of the sub-regional planning commissions. Similar federal provisions had been used by the Stewards of the Range to force the federal government to deal with counties in the West.

“I told him we ought to try it up in Bell County,” Snyder recalled, “because those people were already looking for a way to stop the TTC from destroying the Blackland Prairie.”

His first step was to approach each of the four mayors with his idea. “And then I got on the agenda for the city councils for each of the four cities and explained to them how a commission worked and that we wanted to form one. And as there was zero opposition to it, we did.” The school boards of the four cities joined as well.

“It wasn’t hard, because I knew everyone. Heck, I probably know everyone in Bell County,” said Snyder, 64, who owns three farms besides his salvage business.

From the viewpoint of Snyder, Smith, and the Byfields, the whole TTC is a land grab disguised as a transportation issue. Snyder pointed to a study done in the 1990s by the Federal Highway Administration and TxDOT. “That study says that you can expand I-35 in the existing right of way to build enough road to take care of our transportation needs until 2025,” he said. “But that study has been thrown away for the TTC. So it’s not about transportation.

“But the TTC is planned at 1,200 feet wide so that there will be room to lease land to McDonalds and gas stations and motels along the highway, and they’re going to lease the rights to use the pipelines and rail lines they’re planning. That’s when you get to see it for what it is: the use of eminent domain to grab hundreds of thousands of acres in rural Texas to make money.”

While none of Snyder’s property would be affected directly by any of the proposed routes of the TTC, he’s passionate on the issue. “A lot of people here have been here for as many as six generations. They’re not all very sophisticated, and they’re the ones who are going to be taken advantage of,” he said. “They’ve got no idea what their land is worth, they don’t trust lawyers, and they’re ripe. ... You cut these towns up and you’ll kill them; they’ll never be the same again.”

A fellow in overalls at the next table leaned over to say, “I agree with you. I hope you stop it.”

Then Sammy Cortez, a huge young man whose arms are covered in tattoos, stopped by. “I can’t see it,” he said of the TTC. “People have been living on and working this land forever. They’re not going to give it up. I don’t even know why we need a new road.”

“That’s what most people are beginning to ask,” Dan Byfield said.

Another few miles away, through more lush farmlands, is the town of Little River-Academy. The drive comes with Smith’s travelogue of memory — here’s where the old road was, that pecan orchard is new, her uncle used to live over there.

At Gunsmoke Motors, wrecker service owner Ronnie White was inflating a stack of tractor-tire inner tubes. His family and friends were planning to celebrate the Fourth with

a five-mile float down the Little River. A Navy veteran who took part in the Cuban missile crisis action and served in Vietnam, White has been mayor of this town, population 1,645, for 27 years. Now he's also a member of the planning commission.

Light-hearted in talking about his holiday plans, he grew serious when the topic turned to the TTC. "The politicians and the people behind the corridor plan, they talk about how it will help the economy. I know I've had a few run-ins with the mayor of Temple — that's the largest city in Bell County, with a population of close to 60,000. He's all for it. He thinks the TTC is going to bring more money, help his city's economy. But down here, out here in rural Texas, we don't think that way.

"Our lifestyle is our wealth. Our land is our wealth," he said. "People have been here for generations, and we're happy with the way things are. If you start telling us you're going to take our land and put up new shops and we're going to start making a few more dollars and all we have to do is give up the way we live, well, that's not something people around here are going to go for.

"When they were taking land for I-35, they took a much wider piece than they needed," White said. "And we asked why they needed to take that much. The answer was that they'd need it in the future. Now they're saying the same thing when they're talking about taking 1,200 feet of land. Well, I say, 'You already took all that land for I-35, so now use it.'"

Pensock, the TxDOT official, sounded supportive when he talked about the Central Texas group. "These folks that form regional subcommittees are very concerned folks," he said, "and we definitely want to hear what they want to say and know what their thoughts are. We've already met with Mayor Smith and some of the other folks from the Holland area several times and spent a lot of time trying to give them information and answer their questions."

He's not quite so definite about what his agency needs to do in response. Does TxDOT have to meet the commission's demand for a new study? "Well, they have a voice and a right to be heard," he answered. "But Texas is a big state, and there are a lot of voices to be heard."

Pensock doesn't think that simply widening I-35 without taking more land is a real option. "People look at those broad medians and those gently sloping embankments and picture that we can just lay down another 12-foot lane. That's not really the case. For one, our highway engineering specifications are quite rigorous. And then there's the matter of why we put those medians there in the first place. They're there to help prevent head-on collisions. Our first guiding principle is how to best keep traffic flowing while minimizing accidents.

"So say you take away those medians and turn them into lanes. Well, we think that will increase the risk of horrible accidents. And those gentle embankments? If you cut them at a steeper angle to add lanes, or get rid of them altogether and put up a retaining wall,



you'll get your lanes but at what price? How many more accidents will you have and how much more severe will they be?"

For now, TXDOT is waiting on word from the Federal Highway Administration before moving on the commission's request for a supplemental study.

Fred Kelly Grant, president of Stewards of the Range, who wrote the commission's request to TxDOT, said he's thought from the first that the TTC issue would end up in court.

And Margaret Byfield said that, if that happens, the 5,000-plus-member Stewards group is ready to fund the fight. "Our membership opposes the corridor. And we're nationwide, so we have the financial backing, and we've already got the attorneys. So we are ready to go to court."

Smith said the commission has talked to officials of the Environmental Protection Agency and has a meeting scheduled with the Natural Resources Conservation Service, the part of the U.S. Department of Agriculture charged with protecting farmland.

"We're tired of fooling around," she said. "We want the supplemental studies done. And we're coming at them from state law, from the EPA, the NRCS ... from all sorts of directions."

While the Central Texas group is lining up its arguments and allies, it also appears to have exported its revolutionary sentiment to other parts of the state. The several newly formed planning commissions in East Texas and around El Paso are considering asking for TxDOT to re-do the environmental studies on TTC's impact in their areas as well.

The Lone Star Chapter of the Sierra Club has also asked TxDOT and the Federal Highway Administration to withdraw and redo the impact study on I-69, the leg of TTC planned between Laredo and Texarkana. The environmental group backed up its request with an 84-page document pointing out errors or omissions in TxDOT's original report on that road.

Smith said she expects to see an attempt in the Texas Legislature next year to eliminate the part of the local government code that allows for the formation of local planning groups like hers. Grant, the Stewards of the Range attorney, said that even if that happens, legislators won't be able to strip already-existing commissions of their powers.

"The public hearings that TxDOT holds are just that," said Smith. "The people come in and speak what's on their mind, but then TxDOT goes on its merry way. But with the commission we've formed, with four mayors and four school board officials, well, we're all elected officials — TxDOT is compelled by Texas law to speak with us."

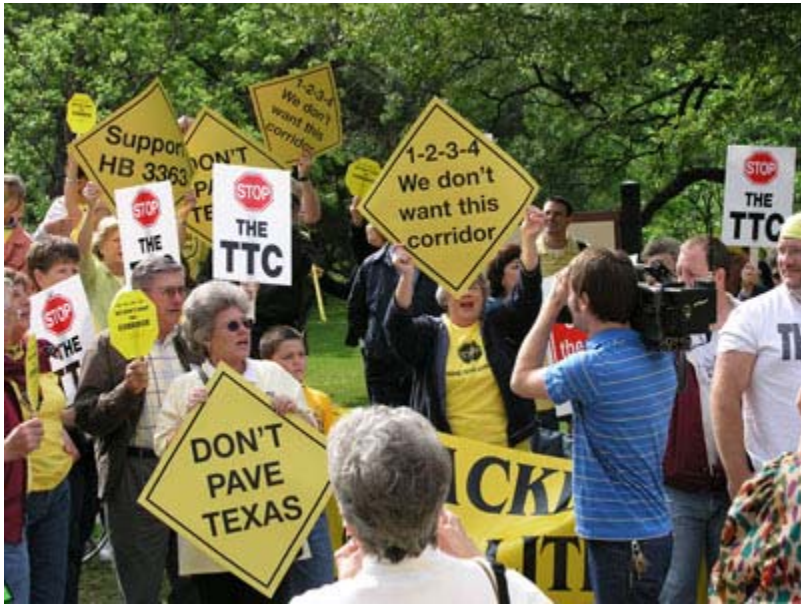
“We may not be able to stop a toll road,” she said. “But we set ourselves a goal when we formed: to get I-35 finished and expanded before anyone jumps into a toll road. And we believe that if that’s done, then people will see that a toll road isn’t needed at all.”



*A TxDOT map shows the agency’s ambitious plan for the Trans-Texas Corridor — now much in doubt. Courtesy TxDOT*



*As planned, the TTC would be 1,200 feet wide, and private companies would collect tolls and hold the rights to all roadside developments. Courtesy TxDOT*



*An Austin protest was one of the early indications of strong opposition to the TTC. Courtesy corridorwatch.org*