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TRANSPORTATION CORPORATIONS AND ROAD UTILITY DISTRICTS: THE TEXAS EXPERIENCE

by

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Research Report 1270-1F

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Evaluation of Transportation Corporations and Road Utility Districts

conducted for the

Texas Department of Transportation

in cooperation with the

**U.S. Department of Transportation
Federal Highway Administration**

by the

CENTER FOR TRANSPORTATION RESEARCH

Bureau of Engineering Research
THE UNIVERSITY OF TEXAS AT AUSTIN

November 1992

SUMMARY

This report presents an analysis and evaluation of Texas Transportation Corporations (TTCs) and Road Utility Districts (RUDs). TTCs and RUDs were created to provide a new forum for private sector participation in road development. The experiences of the eight TTCs and two RUDs are examined. To date, on a project basis, TTCs have been somewhat successful in acquiring right-of-way and facilitating the development of several highway projects. The experiences with RUDs are more limited. For both, the economy and, more importantly, the depression in the real estate market, has severely undermined their potential for success.

ABSTRACT

Transportation Corporations (TTCs) and Road Utility Districts (RUDs) were authorized in 1984 along with several other legislative enactments to provide new resources to the Texas Department of Transportation for building and improving highway infrastructure. TTCs, in particular, are a vehicle aimed at encouraging greater private sector funding of highway improvements. To date, eight TTCs have been commissioned. Three have been somewhat successful, three have either been dissolved or are inactive, and two are relatively new. The principal factor affecting the success of TTCs has been the state of the real estate market in Texas. In the late 1980's, land owners and developers have not been in a good position to contribute land or resources necessary for the successful operation of TTCs. Two RUDs, one in Denton County and one in Harris County, have been authorized. The RUD operates very much like a municipal utility district. RUD approval is more stringent, since they have the power to assess property taxes and fees to support road improvements. Because of previous experiences with county road districts and other utility districts, there is little to report that is new regarding RUDs.

IMPLEMENTATION STATEMENT

Chapter 7 for Transportation Corporations and Chapter 10 for Road Utility Districts, presents issues and recommendations that TxDOT should consider in their on-going program. Most of these issues and recommendations are policy related and do not require legislative changes. Since this research project was an evaluation, implementation does not extend beyond these issues and recommendations.

NOT INTENDED FOR CONSTRUCTION,
BIDDING OR PERMIT PURPOSES

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The contents of this report reflect the views of the authors, who are responsible for the facts and the accuracy of the data presented herein. The contents do not necessarily reflect the official views or policies of the Federal Highway Administration or the Texas Department of Transportation. This report does not constitute a standard, specification, or regulation.

There was no invention or discovery conceived or first actually reduced to practice in the course of or under this contract, including any art, method, process, machine, manufacture, design or composition of matter, or any new and useful improvement thereof, or any variety of plant which is or may be patentable under the patent laws of the United States of America or any foreign country.

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METRIC (SI*) CONVERSION FACTORS

APPROXIMATE CONVERSIONS TO SI UNITS

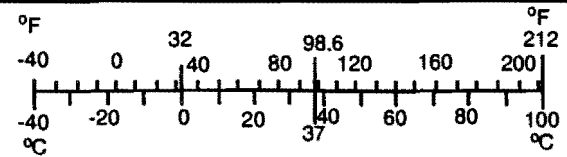
Symbol	When You Know	Multiply by	To Find	Symbol
LENGTH				
in	inches	2.54	centimeters	cm
ft	feet	0.3048	meters	m
yd	yards	0.914	meters	m
mi	miles	1.61	kilometers	km
AREA				
in ²	square inches	645.2	millimeters squared	mm ²
ft ²	square feet	0.0929	meters squared	m ²
yd ²	square yards	0.836	meters squared	m ²
mi ²	square miles	2.59	kilometers squared	km ²
ac	acres	0.395	hectares	ha
MASS (weight)				
oz	ounces	28.35	grams	g
lb	pounds	0.454	kilograms	kg
T	short tons (2,000 lb)	0.907	megagrams	Mg
VOLUME				
fl oz	fluid ounces	29.57	milliliters	mL
gal	gallons	3.785	liters	L
ft ³	cubic feet	0.0328	meters cubed	m ³
yd ³	cubic yards	0.0765	meters cubed	m ³
TEMPERATURE (exact)				
°F	Fahrenheit temperature	5/9 (after subtracting 32)	Celsius temperature	°C

NOTE: Volumes greater than 1,000 L shall be shown in m³.



APPROXIMATE CONVERSIONS FROM SI UNITS

Symbol	When You Know	Multiply by	To Find	Symbol
LENGTH				
mm	millimeters	0.039	inches	in
m	meters	3.28	feet	ft
m	meters	1.09	yards	yd
km	kilometers	0.621	miles	mi
AREA				
mm ²	millimeters squared	0.0016	square inches	in ²
m ²	meters squared	10.764	square feet	ft ²
m ²	meters squared	1.20	square yards	yd ²
km ²	kilometers squared	0.39	square miles	mi ²
ha	hectares (10,000 m ²)	2.53	acres	ac
MASS (weight)				
g	grams	0.0353	ounces	oz
kg	kilograms	2.205	pounds	lb
Mg	megagrams (1,000 kg)	1.103	short tons	T
VOLUME				
mL	milliliters	0.034	fluid ounces	fl oz
L	liters	0.264	gallons	gal
m ³	meters cubed	35.315	cubic feet	ft ³
m ³	meters cubed	1.308	cubic yards	yd ³
TEMPERATURE (exact)				
°C	Celsius temperature	9/5 (then add 32)	Fahrenheit temperature	°F



These factors conform to the requirement of FHWA Order 5190.1A.

* SI is the symbol for the International System of Measurements

CHAPTER 1. INTRODUCTION

OVERVIEW

In recent decades, Texas highway finance has come under increasing strain. One source of this strain is the increasing demand placed on transportation facilities by the state's above-average growth rate. Projections included in the State's Strategic Mobility Plan (SMP) for 1990-2009 indicate that the next 20 years will see dramatic growth in population, number of vehicles registered, and daily miles traveled on Texas roads. (Texas State Department of Highways and Public Transportation, Strategic Mobility Plan: Identifying Transportation Requirements 1990-2009, February 1989, page vii.) These developments, in turn, will place greater demand on the State for expanded highway lane miles, increased maintenance attention to existing facilities, and upgrading of overworked facilities, especially in high-growth urban and suburban areas.

Another source of strain is the increasing fiscal restraint as a result of efforts to reduce state and federal budget deficits. In an era when growth levels call for significant expansion of transportation spending, political considerations are actually militating toward reduced financing. First, federal support of transportation finance seems to be weakening. As of 1989, federal plans called for "shifting to the states an even greater share of the cost burden for building and maintaining the nation's highways and public transportation systems." (Texas State Department of Highways and Public Transportation, Transportation 2020: The Texas Perspective, April 1990, page 3.) In addition, State willingness to shoulder the increased financial load seems uncertain. The atmosphere of fiscal restraint which prompted a 1986 proposal to actually cut \$326.8 million from state highway funding has not dissipated. (Texas Good Roads/Transportation Association, "\$326.8 Million in State Highway Funding Cuts Are Recommended," Texas Transportation Update, August 1986, page 1.) The 1989 SMP estimated that current funding levels would meet only 63 percent of the Plan's identified needs.

(Strategic Mobility Plan... Identifying Transportation Requirements 1990-2009, February, 1989, page i.)

Obviously, then, there was and is a demonstrated need for alternative responses to funding requirements. Given the increasing strain on public finance, one obvious alternative is to involve the private sector in roadway development and finance. Accordingly, in 1984 the Texas Legislature passed House Bill 125, dubbed the Texas Transportation Corporation Act, and Senate Bill 33, called Road Utility District Act. These Acts may provide opportunity for greater private sector participation in funding highway improvements.

TEXAS TRANSPORTATION CORPORATIONS (TTCs)

The Transportation Corporation is a non-profit entity acting as an instrumentality of the state for the purpose of assembling right-of-way and financial support towards completion of state highways. It is aimed at encouraging private sector support for highway development and roadway improvements. Private property owners are given the opportunity to form a tax-exempt organization which can accept property and funding to support the assembly of right-of-way and engineering plans for highways. This gives property owners a greater incentive to obtain tax deductions for their land and dollar contributions, as well as expediting the completion of highway construction projects.

Since the passage of House Bill 125, several TTCs have come into existence. The intent of the legislation was to increase private sector financial support and facilitate the development of new roads, particularly in expanding urban areas. The TTC is seen not as a panacea for solving funding problems, but rather as an institution which can help to stretch the state's limited resources, further improving the efficiency and impact of state highway spending. The impact of this legislation has yet to be evaluated.

ROAD UTILITY DISTRICTS (RUDS)

RUDs are authorized for the purpose of financing, constructing, acquiring, and improving arterial and main feeder roads and related projects. Similar to municipal sewer or water districts, RUDs may issue bonds supported through levying property taxes or assessing fees.

RUDs are not new to Texas. Provision for County Road Districts (CRDs) has been in existence for several decades. The RUD operates exactly like the CRD with one very important exception: CRDs receive their authority from a County Commissioner's Court and the RUD receives its authority from the Texas Department of Transportation (TxDOT). As part of this authorization, the RUD is required to receive approval from 100 percent of the land-owners in the proposed district.

Experiences with RUDs are limited. To date, only two have been authorized in Texas. The experiences with CRDs, however, does provide some useful insight into the potential of RUDs in Texas.

REPORT OVERVIEW

The purpose of this report is to examine and evaluate TTC and RUD operations in Texas. Part I begins by examining the institutional structure and operation of the TTC, as well as documenting developments in TTC operation. It proceeds with a review TTCs formed to date and the key issues affecting their operation. Finally, TTCs are evaluated on the basis of the legislative intent of the Texas Transportation Corporation Act, concluding with the prospects and recommendations for future formation and success of TTCs. Part II begins with an examination of the institutional structure and operation of the RUD. The brief experience with RUDs are evaluated, as well as issues affecting their future success. (During the course of this study the Texas State Department of Highways and Public Transportation (SDHPT) became the Texas Department of Transportation (TxDOT). The new TxDOT designation is used throughout this report; even though many of the Minute Orders, etc. were approved during the pre-TxDOT period.)

PART I

**TEXAS TRANSPORTATION
CORPORATIONS**

(TTCS)

CHAPTER 2. TTC OPERATION

CREATION OF A TTC

The creation process for Texas Transportation Corporations is delineated in TxDOT Minute Order number 83417, dated August 29, 1985. The first step in the procedure involves filing an application for formation of a transportation corporation.

Applications must include several components. First, applicants must submit a transmittal letter which indicates that the application is for the creation of a transportation corporation under the Texas Transportation Corporation Act. Second, they must include a description of the proposed facility. Third, they must reference several attachments, including a diagram of the proposed facility, signed Articles of Incorporation, Bylaws, and applications for appointment and financial statements for each proposed director of the corporation. Finally, applications must be signed by at least three qualified electors and must contain general information such as the name, address, and telephone number of person(s) to be contacted for correspondence relative to the formation of the corporation.

As noted above, proposed directors must each submit an application for appointment and a financial statement. These forms are provided by TxDOT and include general background and resume information, along with a questionnaire establishing the applicant's knowledge of the corporation's purpose(s) and activities. It must also be accompanied by three letters of reference.

When a complete application has been compiled and submitted, the TxDOT Commission issues a Minute Order agreeing to consider the creation of a transportation corporation and the designation of a State Highway. This Minute Order includes the names and addresses of proposed directors.

The next requirement in the creation process involves the publication of notice on the part of the prospective incorporators. This notice, which

indicates that the Commission is considering the application and appointment of the proposed directors, must be published at least twice a week for two weeks in a newspaper with general circulation in each county in which the corporation is to be located. Incorporators must publish this notice at least twenty days prior to the Commission meeting at which the application is to be considered, and must furnish proof of such publication.

A further preliminary to creation of a transportation corporation involves informal contact by TxDOT, whose District Engineer may contact, at his/her discretion, appropriate governmental entities and/or community leaders with respect to the proposed corporation and appointment of its directors.

Finally, when all necessary information and documents have been filed and accepted and procedures have been followed, the District Engineer, the Right of Way Engineer, and the Administration will make a recommendation to the Commission relative to the creation of the corporation and appointment of Directors. If the recommendation is favorable, a Minute Order will be presented to the Commission for creation.

GOALS OF THE TTC

Texas Transportation Corporations are project-oriented, with the usual goal of assisting the State in the promotion and development of a specific transportation facility or facilities. Descriptions of the facility to be promoted and developed are included in the TxDOT Minute Orders creating each TTC.

Activities carried out in the pursuit of this goal include, among other things, feasibility studies, acquisition of right-of-way, environmental impact assessments, scenic easement acquisition, alignment determination, and preliminary engineering. Actual construction of the facilities remains, however, a responsibility of TxDOT.

TTC POWERS

The powers of a transportation corporation are defined in Section 16 of the Texas Transportation Corporation Act, which states:

The corporation shall have and exercise all of the rights, powers, privileges, authority, and functions given by the general laws of this state to nonprofit corporations incorporated under the Texas Non-Profit Corporation Act, as amended; but to the extent that the provisions of the general law are in conflict or inconsistent with this Act, this Act prevails. In addition, the corporation shall have the following powers with respect to the promotion and development of transportation facilities and system (projects) together with all powers incidental thereto or necessary for the performance of those powers hereinafter stated. (Vernon's Ann.Civ.St. art. 15821)

The Act then delegates the power to perform or promote specific activities. These activities are:

- (1) performing preliminary and final alignment studies;
- (2) receiving contributions of land for right-of-way and cash donations to be applied to the purchase of right-of-way and/or to be applied to the design or construction of the project(s);
- (3) reviewing candidates for advisory directorships and adding such advisory directors as may be appropriate;
- (4) retaining administrative, legal, and public relations staff, and engineering services as may be required for the development of the project(s) and paying such employees and consultants from funds donated for this purpose;
- (5) through staff and retained consultants, preparing such exhibits, right-of-way documents, environmental reports, schematics, preliminary and final engineering plans as may be necessary for the development of the project(s);
- (6) establishing a formula for determining the amount of cash donations from affected landowners (and others) to cover the costs of the services to be performed by the corporation and appointed consultants;
- (7) borrowing money to meet any expenses or needs associated with the regular operations of the corporation or a particular project;

- (8) making official presentations to the state and other affected agencies or groups concerning the development of the project(s);
- (9) issuing press releases and other material to promote the activities of the project(s); and
- (10) performing any other functions requested by the commission in order to promote and develop the project(s).

Finally, the Act reserves all other powers not prohibited by law which are available to nonprofit corporations in the state for the promotion and development of new and expanded transportation systems on behalf of the commission.

TTC LIMITATIONS AND CONTROL

Limitations on TTC powers, as well as provisions for TxDOT Commission supervision and control, are found in Article IV of the transportation corporations' Articles of Incorporation.

The first limitation is financial. The State reserves the right to receive any income received by the corporation beyond amounts needed to cover reasonable expenditures and to establish reasonable reserves for future activities. The Article states that "no part of the Corporation's income shall inure to the benefit of any private interest" and that upon dissolution or liquidation of the Corporation, "all assets shall be turned over to the Commission, acting on behalf of the State." These restrictions essentially ensure and protect the nonprofit nature of the corporation.

The Article further curtails the Corporation's powers by making all powers and authorizations subject to the following conditions: (1) they are to be exercised only in accordance with written request from the Commission; (2) the Commission reserves the power to resolve all matters concerning the priority of construction; (3) Corporations may borrow money only with the written approval of the Commission; and (4) contracts entered into by the Corporation are subject to the immediate availability of funds.

The Corporation is also subject to any directions and/or conditions imposed on it by Commission Minute Orders, as well as to State policies and guidelines on matters "including, but not limited to, fiscal and contract activities, environmental considerations, segment termini, alignment, typical sections, schematics, right-of-way determination and acquisition, design, landscaping, preliminary plans, and construction plans and specifications."

Finally, the Article requires the Corporation to consult, coordinate, and obtain approval from

TxDOT for any Corporation proposals concerning the above and all other matters involving the promotion and development of the project on a regular basis.

TTC ORGANIZATION

Texas Transportation Corporations are non-stock, non-profit entities with no members. Each is headed and controlled by a Board of Directors. The number of Directors and the length of their term of office varies, but in all cases they form the sole controlling entity of the Corporation. Directors are appointed by the Commission and are subject to removal by the Commission, "for cause or at will," at any time.

Each Board meets periodically, at its discretion, to conduct the official business of the Corporation. There are three types of meetings: regular meetings, which are scheduled by the Board; special meetings, which are called by the President or by a majority of the Directors; and annual meetings, which are mandated by the

Corporation's Bylaws. All meetings must be preceded by adequate public notice and fall under the purview of the Open Meetings Law. The Corporation's officers are elected at the annual meeting. Each Corporation has a President, one or more Vice Presidents, a Secretary, and a Treasurer. In addition, the Board may appoint such Assistant Secretaries or Treasurers as necessary.

To facilitate the task of organizing and directing Corporation activities, each Board of Directors is empowered to consider and approve the appointment of Advisory Directors. Advisory Directors have no votes in the conduct of Corporation business, and their consultations and advice are not binding. They do, however, constitute an important reservoir of expertise and knowledge for the TTC.

In addition to the Board of Advisory Directors, most TTCs are authorized by their Bylaws to appoint an Executive Committee or other committees as necessary. These committees may or may not be authorized to act on behalf of the Corporation.

CHAPTER 3. DEVELOPMENTS IN TTC OPERATION

Since the inception of TTCs, some important refinements have been made in their regulation. The most important ones deal with conflict of interest rules, financial management and reporting, and the issuance of county-backed bonds by the Corporation.

CONFLICTS OF INTEREST

On February 26, 1986, the *Houston Post* expressed concern over potential conflicts of interest for several members of the Grand Parkway Association's Board of Directors. (John Mecklin and Mary Flood, "Planners Have Financial Stake in Parkway Project," *Houston Post*, February 26, 1986, page 1A.) Three of the five Directors either owned land or land interests along the proposed highway, were involved with charitable organizations being asked to contribute to the Parkway Association, or were involved with a pro-development group which included members with financial interests in the Parkway.

The *Houston Post* article had immediate repercussions. On February 27, the *Houston Chronicle* reported that TxDOT Commission Chairman Bob Lanier asked the Commission's attorneys to clarify conflict of interest rules for TTCs. (Jan Rich and Rad Sallee, "Lanier Checks Conflict Laws Following Flap Over Parkway Land," *Houston Chronicle*, February 27, 1986, section 1, page 23.) On February 28, the *Houston Post* published an article describing proposed new conflict of interest rules which would result in changes in the Boards of Directors for all TTCs, including the newly formed MoPac South Transportation Corporation. (Mary Flood and John Mecklin, "New Rules Could Oust Members of Transit Groups: Changes Proposed," *Houston Post*, February 28, 1986, page 3A.) These rules were adopted and made official on April 1, 1986, with the release of TxDOT Minute Order 84305.

Minute Order 84305 was implemented to ensure that Transportation Corporations would conduct their affairs "in a manner which will foster and merit the highest degree of faith and confidence of

the public which they serve." To accomplish this, the Commission directed the Engineer-Director to implement a set of policies intended to curb potential conflict of interest abuses. The policies excluded elected officials and persons with financial interests from membership on TTC Boards of Directors, and allowed individuals donating land to the Corporation to serve only as Advisory Directors. It also made Texas' conflict of interest law for public officials (Tex. Rev. Civ. Stat. Ann. art. 988b), as well as the state's Open Meetings Law, applicable and pertinent to TTCs. Finally, it made all TTCs subject to immediate compliance with these policies and reiterated that TxDOT would make its location, design, and construction decisions without regard to the TTCs, which were to serve only as financing and advisory vehicles.

The Minute Order had an immediate and significant impact. It initiated a wave of resignations and replacements in the Directorships of the five TTCs in existence. The Grand Parkway Association was forced to replace three of its five Directors. The MOKAN Corridor Association lost five of its six directors; only four were replaced. The Plateau Region Outer Parkway and MoPac South Transportation Corporations, which previously had four- and five-member Boards of Directors, respectively, each lost all of their Directors and were able to replace them with only three new Directors apiece. Altogether, the new conflict of interest rules removed a majority of TTC Directors, initiating a sweeping turnover in leadership.

FINANCIAL MANAGEMENT AND REPORTING REQUIREMENTS

A second major change in TTC operation occurred in the field of financial procedures. The original legislation and subsequent regulations were somewhat vague with respect to financial management and reporting. To clarify the financial responsibilities of TTCs, the TxDOT issued Minute Order 85009 on October 29, 1986. This Minute Order dealt primarily with appropriate use of donations and/or funds by TTCs, contract

requirements for TTCs, and reporting requirements.

The Minute Order's first section, on appropriate use of donations, is intended to ensure that donations will be used for their legitimate and intended purposes. It states that TTCs, "in receiving cash, goods, or services from donors, . . . shall accept and use such cash, goods, or services only for specific purposes legally supported and authorized by the donors and shall be strictly accountable to such donors and to the Commission."

The second section deals with TTC contracts for goods and services. It states that no contract which creates a legally binding obligation may be entered into unless adequate funds to meet the obligation are available at the time of the contract's execution. If adequate funds are not available, the contract must indicate as such. It must also stipulate that the TTC is not legally obligated for goods and services beyond funds on hand, and that payment for such goods and services shall be made at the sole discretion of the Corporation's Board of Directors as funds become available. Furthermore, if available funds are inadequate, the contract must contain statements to the effect that

- (1) the contract does not create a legally binding obligation of the TTC beyond monies on hand;
- (2) the contractor waives his/her right to sue for non-payment if no monies are available; and
- (3) the contract is subject to termination upon 30 days written notice by either party.

The third section deals with financial and status reports. It requires Transportation Corporations to furnish the Commission with quarterly financial reports, quarterly status reports, and an independent audit of Corporation financial activities.

The required form, content, and procedure for submitting these reports are clarified in a subsequent TxDOT Administrative Circular. According to the Circular, quarterly financial reports must include the financial status of the Corporation at the end of the reported quarter, all of the financial activities of the corporation for the fiscal year being reported, and total income and expenditures both for the quarter and year to date.

Quarterly status reports must include the following: work authorized by the Commission; work completed; anticipated completion dates of the project and its various segments, where applicable; the status of coordinating activities with other entities; and comments on significant accomplishments, problems, and concerns for the Corporation. Quarterly reports are submitted in triplicate to the District Engineer, who reviews them and forwards two copies, with his/her comments and recommendations, to the TxDOT Right of Way Division (D-15).

TTC BOND ISSUE

An interesting recent development in TTC operation began in 1989, with the completion of a Joint Development Agreement between the Grand Parkway Association and Fort Bend County, Texas. Under the terms of the agreement, Fort Bend County agreed to fund a \$2 million shortfall on Segment D of the Grand Parkway Association's project. This funding was to take the form of four annual principal payments of \$500,000 and a predetermined amount of interest. These payments would be used by the Grand Parkway Association exclusively to retire a planned \$2 million bond issue, and would be secured through a tax levy by Fort Bend County. The agreement, completed on August 29, 1989, paved the way for the first issuance of bonds by a TTC. The County Commissioner's Court justified the agreement on the grounds that

- (1) \$2 million represented a significantly smaller amount than it would normally have to pay for a State highway in the County, and
- (2) the construction of the Parkway would significantly increase the County's tax base, thus yielding increased revenues in future years.

TxDOT subsequently issued a Minute Order (89675) approving the Grand Parkway's bond issue so long as it created no legal, moral, or financial obligation on the part of the State. Whether this precedent will lead to more bond issues by TTCs remains to be seen.

CHAPTER 4. TTCS IN PRACTICE

Texas Transportation Corporations have had widely varying results. Of the eight TTCs formed to date, three (Grand Parkway Association, FM 3083 Transportation Corporation, and MoPac South Transportation Corporation) have reached the construction phase for at least part of their respective projects. On the other hand, another three of the eight TTCs have been dissolved. The MOKAN Corridor Association, the Plateau Region Outer Parkway Association, and the Galveston-Alvin-Pearland Transportation Corporation have ceased to function. The remaining TTCs, the San Marcos Transportation Corporation and the newly formed Fort Bend Parkway Association, have not yet yielded conclusive results.

THE GRAND PARKWAY ASSOCIATION

The Grand Parkway Association formed in October, 1984, to assist the State in completing the proposed 155-mile Grand Parkway around the Houston metropolitan area. The Parkway was designated as a State Highway in the same TxDOT Minute Order (82325, dated Oct. 25, 1984) which created the Association. The proposed Parkway is a loop designed to ease traffic congestion around the greater Houston area and create additional hurricane and emergency evacuation routes from low-lying areas in Galveston and Brazoria Counties. The Parkway's proposed route includes parts of Galveston, Brazoria, Fort Bend, Harris, and Montgomery Counties.

The Grand Parkway was the first Texas Transportation Corporation and, to date, the most ambitious. In 1986, it published a proposed 20-year construction schedule for the various segments (designated A through I) of the Parkway. With even this optimistic projection, not calling for full completion of the entire project before the year 2006, it seems obvious that an overall assessment of the Corporation's contributions and success would be premature. It is possible, however, to highlight some of the Association's achievements to date, as well as pointing out

changes and difficulties which have affected its progress.

The Grand Parkway Association has been, in many respects, a pioneer. According to Executive Director Jerry Coffman, there was about a one year learning curve which had to be completed before the Corporation's activities became fully operational. The Grand Parkway Association was the first Transportation Corporation to complete satisfactory Scenic Easement Agreements and Escrow Agreements with landowners. The Escrow Agreements were extremely important because they delineated the ownership and other rights pertaining to land between the time of its donation and actual roadway construction. Also, in 1989, the Association completed a Joint Development Agreement with Fort Bend County, making it the first TTC to issue bonds. By being the first TTC to confront many perplexing legal and technical issues, the Grand Parkway has provided an example for subsequent TTCs, sparing them from the same learning process and thus improving their prospects for success.

A more tangible way of measuring the Grand Parkway's contribution to the state's transportation effort is to quantify its financial achievements. The Grand Parkway has, without a doubt, been the most successful of all TTCs in raising funds. In the four fiscal years ending August 31, 1987 through 1990, the Association amassed total revenues of over \$4.1 million. In the same period, it expended over \$5.5 million in its promotion and development of the Parkway.

Even more impressive than these fund-raising and expenditure totals, however, are the Association's successes in amassing commitments for right-of-way donations. For example, land contributions for 19-mile segment D of the Parkway alone were valued at over \$44 million in October 1986. (Figures drawn from documents in CTR files on TTC development.) Construction is currently underway for a 6-mile portion from IH-10 to FM 1093, and construction on the rest of the segment has been let for bids. On segment E (13 miles long), all but three parcels of land have

been acquired and engineering is expected to begin by mid-year. On segment I-2 (11-12 miles in length), all right-of-way has been acquired, about 40 percent of engineering work has been completed, and a public hearing has been held. Both of these segments have been designated for construction funding by the state. In Segment G, all right-of-way has been acquired except for one parcel, which is owned by the U.S. Department of Housing and Urban Development (HUD). Negotiations for this parcel are ongoing, and efforts are underway to complete the funding effort for the segment's anticipated engineering costs. (Jerry Coffman, Executive Director of Grand Parkway Association, interview, Houston, Texas, March 5, 1992.) Obviously, then, the Grand Parkway Association is making significant progress in facilitating the development of its project.

On the other hand, the Association has not been without its problems. Its Directors were widely criticized in the conflict of interest debate in 1986. Three Directors, including the Association's President, were forced to resign. Another difficulty has been intransigence and indecision on the part of landowners. Failures to reach agreements have resulted in alignment changes, and have cost the Association both time and money. In one instance, a single landowner's actions set progress back by about one year and \$1.5 million. (Ibid.) The Association's lack of eminent domain and taxing powers have limited its ability to circumvent the resistance of landowners to its acquisition of funds and land.

The Association has also faced the difficulty of dealing with lands owned by government agencies. Relatively early in its existence, it managed the complex affair of securing right-of-way to an important section of land owned by the State Department of Corrections. Later, it managed to successfully acquire a right-of-way commitment in segment G from the Resolution Trust Corporation, which had taken over many properties along the Parkway's proposed route in the wake of the real estate market's collapse in the 1980's. Today it is making headway in similar negotiations with HUD for the last remaining parcel in Segment G, and hopes to conclude an agreement soon. (Ibid.) Probably the most important problems faced by the Grand Parkway Association have been related to the recent crisis brought about by widespread Savings and Loan Institution (S&L) failures. The resulting depression in real estate markets and land development activities has made progress more difficult, as has the loss of committed right-of-way due to bankruptcies and institutional failures. The impact of the S&L crisis on TTCs in general, as well as on the Grand Parkway Associa-

tion in particular, will be discussed in more detail later in this report. While many setbacks have occurred, project completion is still envisioned by the year 2010. (Ibid.)

Overall, the Grand Parkway has been fairly successful. There are many possible factors involved in its success. The project is located in the state's largest city and passes through five different counties, all of which have been supportive of the project. It serves an obvious public interest both by relieving potential traffic congestion and by providing improved emergency evacuation capacity for low-lying coastal areas. Many of the areas it passes through are controlled mainly by large landowners whose property values stand to appreciate considerably if the Parkway is built, and who are, consequently, likely to support the project. Its leadership appears to have been well-organized and, no doubt well-connected—its former Directors have included a State Representative and a Chairman of the TxDOT Commission. In addition to this high-powered energetic board, Executive Director Jerry Coffman cites the Corporation's extremely supportive engineering and legal consultants, as well as the obvious need for the project, as key elements in the Corporation's success. (Ibid.)

MOPAC SOUTH TRANSPORTATION CORPORATION

Another successful TTC, the MoPac South Transportation Corporation was created April 1, 1986, by TxDOT Minute Order 84307. Its purpose is to assist the State in promoting and developing

- (1) a 5.5-mile southward extension of Loop 1 ("MoPac South"), extending from the intersection of U.S. 290 and Loop 1, southwest to SH 45; and
- (2) a 2.7-mile westward extension of SH 45 from its intersection with Loop 1 to FM 1826.

As extensions of existing state highways, both projects were classified as state highways in the Articles of Incorporation.

In its first four years of operation (fiscal years 1986-89), the Corporation had nearly \$2.5 million in total revenues and just over \$3 million in total expenditures. (Figures compiled from MoPac South Transportation Corporation Financial Statements for periods ending 31 December 1986-1989.) Progress on the extension of MoPac South was extremely rapid. On April 27, 1988, the Corporation held a ground-breaking ceremony for the construction of a 3.7-mile segment. The Corporation had obtained over

80 percent of the right-of-way for the segment, and had progressed from preliminary engineering to construction bid-letting in under two years. The Corporation's cost participation was estimated at better than 50 percent. (Peggy Vlerebome and Bill Collier, "Despite Gap, Extension for MoPac Begins," *Austin American-Statesman*, April 28, 1988, page B1.) In December, 1988, the Federal Highway Administration (FHWA) presented an award for fund-raising to the Corporation, valuing its contributions to the project at approximately \$30 million. (Brenda J. Breaux, "MoPac Group Wins Award for Fund-Raising," *Austin American-Statesman*, December 21, 1988, page B10.)

Success in promoting the segment of the proposed Outer Parkway, as well as the remaining 1.8 miles of MoPac South, has been somewhat slower due in part to growing opposition to the Outer Parkway by environmental groups and also by the magnitude of the Outer Parkway project. Environmentalist opposition was a major factor in the recent demise of the Plateau Region Outer Parkway Corporation, and public support for environmental concerns has continued to grow in recent years. Nonetheless, the Corporation's efforts continue. Whatever the outcome of its more recent efforts, the MoPac South Transportation Corporation must be categorized as an overall success.

There are several reasons for this success. The residents of the affected area, as well as local groups like the South Austin Political Action Committee, generally showed strong support for the project. State and local support were also robust. The Board of Directors, like that of the Grand Parkway, was well-organized and well-connected. Corporation President Ron Mullen, for example, was a former mayor of the City of Austin. In this case, it appears that the combination of good leadership with political expertise, strong support from a combination of landowners, governmental entities, and the public were crucial to the Corporation's success.

FM 3083 TRANSPORTATION CORPORATION

Possibly the most successful of TTCs to date, the FM 3083 Transportation Corporation was created by TxDOT Minute Order 84920 on August 28, 1986. Its purpose is to assist the State in promoting and developing a 5.3-mile segment of farm-to-market road in Montgomery County. This segment was designated part of FM 3083, and extends east and south of IH-45 at Teas Nursery Road to SH 105 at FM 3083. The road already had substantial governmental support; on February 26,

1986, TxDOT issued a Minute Order (84168) authorizing its construction on the condition that the City of Conroe and the County of Montgomery furnish all of the needed right-of-way within 90 days. The right-of-way was evidently not provided, as the FM 3083 Corporation was founded about six months later.

This Corporation is unusual among TTCs in that its primary impetus came from industrial developers rather than land developers. The Conroe Chamber of Commerce and its subsidiary, the Conroe Economic Development Corporation, were joined by the Conroe Industrial Development Corporation and various other entities in providing early support for the project.

The two largest parcels of land acquired by the Corporation were donated by supportive banks, which had previously foreclosed the properties. The banks also contributed a combined 25.9 percent of landowner contributions through December 31, 1987. (FM 3083 Corporation Financial Statement for period ending December 31, 1987.) Thus, the wave of bankruptcies which so hindered many other Corporations may have actually worked to this TTCs benefit. Two other major contributors provided an additional 70.2 percent of contributions. (Ibid.) Thus, the Corporation was fortunate in being able to deal with a relatively small and cooperative pool of landowners. In fact, the Corporation was able to acquire all but four acres of its needed right-of-way, subsequently which the City of Conroe condemned and paid for this last parcel. (Numsen Hail, President of FM 3083 Transportation Corporation, interview, Conroe, Texas, April 24, 1992.)

While its fund-raising efforts were not as impressive as those of the Grand Parkway Association and the MoPac South Transportation Corporation, the FM 3083 Corporation was extremely successful. The Corporation managed to accumulate revenues of just under \$300,000 and expenditures of over \$420,000 in its 1987 fiscal year. Its receipts and pledges in that year were deemed sufficient to support the project, and no landowner contributions of cash were reported in succeeding years. Work progressed rapidly, fueled by the announcement late in the year that the Ball Metal Container Corporation was building a \$35 million plant adjacent to the proposed roadway. A section from IH-45 to Loop 336 was opened in September 1989. By the beginning of 1990, Phase I of the project was complete, and Montgomery County had agreed to handle the right-of-way acquisition for Phase II. The Corporation had essentially already succeeded in assuring the rapid development and completion of its project.

There were apparently few obstacles to the Corporation's success. Fund-raising and land acquisition efforts were, for the most part, completed promptly and effectively. The project itself was small enough and sufficiently well defined to be completed rapidly. No major opposition from public or environmental groups arose. The Corporation was extremely well organized, and benefited from a good deal of local government support.

Importantly, the most significant factor in the speed with which the Corporation succeeded was the February 1987 announcement by the Ball Metal Container Corporation that it planned to build a major factory on the proposed road. In a small city like Conroe, such a factory represented a significant economic boom to the community. As a result, support for the project was tremendous.

On April 22, 1992, Corporation President Numsen Hail was notified that the last remaining Corporation project was scheduled for July 1992 bid-letting, thus completing the Corporation's efforts with regard to the project. (Letter to Numsen Hail from Pate Engineers, April 20, 1992.)

GALVESTON-ALVIN-PEARLAND TRANSPORTATION CORPORATION

The Galveston-Alvin-Pearland Transportation Corporation was created November 26, 1985, by TxDOT Minute Order 83405. Its purpose is to assist the State in studying the feasibility and/or the promotion and development of a 43-mile Galveston-Alvin-Pearland Parkway (GAP Parkway). The Parkway was not designated a state highway in the Minute Order documents creating the Corporation. According to the Articles of Incorporation, the proposed route extends from Beltway 8, near State Highway 35, south and southeast to near Jamaica Beach.

The Corporation's early efforts were funded by grants from Galveston's Moody Foundation and Galveston and Brazoria Counties totalling \$150,000. These funds were used to complete a feasibility study of the project. The study, while positive in its assessment of the Parkway's feasibility, estimated an unacceptably high cost of \$411 per vehicle mile of travel for one important segment of the road. (Arlene Battista, "Study Released: Isle-Alvin Highway is Feasible," *Galveston Daily News*, February 13, 1987, page 1.)

The Corporation's subsequent failure was based largely on its inability to generate revenues after its initial grants had been exhausted. No revenues were received for the 1987 fiscal year, and the Corporation essentially ceased to function.

This lack of revenue may have been due in part to competing regional transportation facilities

being backed at the time. These included the New Bay Crossing, which received higher priority backing from Galveston County officials than did the GAP Parkway's proposed causeway near Jamaica Beach. Another rival facility was a proposed regional airport for the Galveston area. The drive for an airport was backed by many of the same individuals involved with the GAP Parkway project.

Another problem that surfaced in the feasibility study was the unusually high number of utility adjustments required before roadway construction. This greatly complicated the right-of-way acquisition process, as well as increasing the project's estimated cost. (Steve Shaw and Manny Francisco, Planners for Houston District, TxDOT, interview, Houston, Texas, March 5, 1992.)

With so many projects competing for funding and support, and with so many potential complications in right-of-way acquisition, the GAP Parkway seems to have faded into obscurity rather quickly after the release of its feasibility study. The official decision to disband the organization was made in April 1989. The project is not a part of current State highway development plans. (Ibid.)

PLATEAU REGION OUTER PARKWAY CORPORATION

The Plateau Region Outer Parkway Corporation was created by TxDOT Minute Order 84152, dated February 26, 1986. Its purpose is to assist the State in promoting and developing a 7 mile segment of proposed State Highway 45, known as the Outer Parkway. This segment, as part of the Outer Parkway, is already included in state development plans. According to the Articles of Incorporation, the segment, known as the Plateau Region Outer Parkway, is to extend "from near the intersection of FM 2222 and FM 620, northwest of Austin, to near the intersection of FM 620 and SH 71 West." The Corporation's primary goal is to acquire right-of-way along the proposed route, as the state planned to complete environmental and alignment studies.

The Corporation experienced only limited early success. It failed to generate substantial revenues, but did have some success in acquiring right-of-way commitments. It accumulated total expenditures of only \$49,312 in the 1987-1990 period. However, even these modest expenditures created a net debt for the Corporation, as revenue generating efforts proved completely unsuccessful. (All figures in this paragraph are drawn from the Plateau Region Outer Parkway Corporation Quarterly Financial Statements, as submitted to TxDOT Right of Way Division (D-15).)

From its inception, the Corporation faced many challenges. In addition to its failure to generate revenues, it was hampered in its efforts by turnover in leadership. It lost its entire initial Board of Directors as a result of the new conflict of interest regulations in 1986. This resulted in a new board with only three members, the minimum number required by law. Later, in mid-1989, the Corporation's President became unable to attend meetings and fulfill the duties of the office due to other obligations. This left only two Directors to run the affairs of the Corporation.

The most formidable problem to face the Plateau Region Outer Parkway Corporation was unrelated to either its leadership or conduct. On November 6, 1987, the black-capped vireo was officially designated a federally protected species. The bird's nesting areas included several parts of West Travis County, where the proposed parkway was to be located. On April 21, 1988, members of the environmental group Texas Earth First! filed notice of their intent to sue pursuant to the Endangered Species Act. While this notice made no mention of the Corporation, it did detail alleged violations by TxDOT, Travis County, and the City of Austin. The state requested that the Plateau Region Outer Parkway Corporation as well as the MoPac South Transportation Corporation and the San Marcos Parkway Association, suspend activities. (Tom Word, TxDOT D-14 Planning Engineer, interview, Austin, Texas, March 3, 1992.) As a result, development efforts were postponed pending resolution of environmental and endangered species issues. While the lawsuit, which halted activity on the project, has been decided in the State's favor, the resolution came too late for the Corporation to maintain operation.

Since the Corporation's primary task was right-of-way acquisition, which could not begin until alignment and preliminary environmental work had been completed, there was really never a working task available. Later, in the wake of the real estate crash and the environmental battle, most of the land in the area reverted to RTC ownership or conservation habitat. (Ibid.) There was thus little real prospect of success for the struggling Corporation.

On March 18, 1991, the remaining Directors of the Plateau Region Outer Parkway Corporation passed a resolution requesting that TxDOT dissolve the Corporation. Mentioned in the resolution were "environmental matters and the ability of those affected by the proposed roadway to support the efforts of the Corporation." It further mentioned contractual debts which could not be paid due to the Corporation's lack of available funds.

Lack of financial support was certainly a primary factor in the Corporation's failure, but environmental opposition was probably even more important. The Corporation was initiated by landowners interested in development, and discussion of development plans was not uncommon at Corporation meetings. Not only did the Texas Earth First! action threaten the Corporation's road building efforts, but it also reduced prospects for future land development in the area. As a result of this reduced attractiveness, the Corporation's mission was substantially diminished. This, combined with the general depression in the real estate market at the time, assured the demise of the Plateau Region Outer Parkway Association.

MOKAN CORRIDOR ASSOCIATION

The MOKAN Corridor Association was created on August 29, 1985, by TxDOT Minute Order number 83418, in order to assist the State in completing the proposed MOKAN Transportation Corridor. The plan is for a six-lane divided highway with rapid transit capability designed to relieve traffic congestion in the greater Austin area by providing an alternative route to Interstate 35. The Corridor was designated as a state highway in Article IV of the Association's Articles of Incorporation. Its proposed route was to extend from downtown Austin, through the cities of Pflugerville and Round Rock, to Georgetown. Much of the route was to follow the abandoned right-of-way of the Missouri-Kansas (MOKAN) Railroad. The project was strongly supported by the affected municipalities, and was eventually intended to link up with another proposed highway extending south to San Antonio.

The Corporation was fairly successful in its early efforts. It raised over \$550,000 in its three fiscal years ending August 31, 1986 through 1988. (Figures drawn from MOKAN Corridor Association financial reports as submitted to TxDOT, Right of Way Division (D-15).) Its right-of-way efforts focused on the acquisition of abandoned right-of-way owned by the MKT Railroad, which included almost the entire length of the proposed project. It was not possible to secure the donation of this right-of-way. The Corporation did, however, devote extensive effort to facilitating and helping organize its purchase by the TxDOT, Williamson and Travis Counties, Austin Capital Metro, and the cities of Austin, Pflugerville, Round Rock, and Georgetown. The Corporation was also active in preliminary engineering and alignment studies.

While it was strongly supported by governmental and business entities, the Corporation's public support was far from unanimous. In 1988, a petition drive and several public meetings were

organized to try to stop the development of the MoKan expressway. They claimed that the Expressway was a project originated by and developed for special interests, and that the public was being excluded from the decision-making process. Although it appears most of the public was behind MoKan at the time, the efforts of these activists may have been damaging to the Corporation.

The Corporation ran out of funds and essentially ceased to function in 1988. It is currently in the final stages of the dissolution process. The extent to which this dissolution was brought about by public opposition is uncertain. Probably more important was the nature of the project itself. Nearly all of the right-of-way being acquired was owned by the MKT Railroad, which was not interested in donating either land or money to the project. This made fund-raising extremely difficult, as contributions from affected landowners would be limited. The Corporation received most of its funding from the public sector, although it did manage to obtain significant contributions from the private sector.

Ultimate determination of the Corporation's value to the State cannot yet be made. The MoKan Corridor was envisioned as a long-term project from its inception. While it does not appear that the Corporation significantly accelerated the project's ultimate completion, it is conceded that the money raised by the Corporation did help to stretch the state's limited highway labor and dollar resources. (Tom Word, 1992.) On the other hand, since most of the Corporation's money came from county and municipal entities, the savings to taxpayers were probably not too great.

SAN MARCOS PARKWAY ASSOCIATION

The San Marcos Parkway Association was created by TxDOT Minute Order 84682, issued June 25, 1986. Its purpose is to assist the State in promoting and developing a 26-mile loop around the San Marcos area. The loop, known as the San Marcos Parkway, is to extend southeast and southwest from IH 35 north of San Marcos to IH 35 south of San Marcos. It has already been designated a farm to market road by TxDOT, and has both the endorsement of the City of San Marcos and the Travis County.

The original impetus for the Association's formation began with local developers, but their influence waned in the wake of the real estate market's collapse. Fortunately, there was enough popular support for the project, based largely on the project's obvious necessity, that community

leaders were able to take over the Corporation's operations and continue to push for progress.

The Association made significant early progress in obtaining right-of-way commitments, but complications surrounding the project's environmental impact and possible effects on endangered species have delayed further development. With the conclusion of the lawsuit which forced it to suspend activities in 1988, however, activity is resuming.

New efforts are currently envisioned, pending the outcome of Spring nesting research on birds in the project area. This research is an addendum to the preliminary environmental impact assessment, and is an important preliminary to the Corporation's next activity, the organization of a public hearing regarding the project. This hearing is currently planned to take place late in 1992 or early 1993. (Clovis Barker, President of the San Marcos Transportation Corporation, interview, San Marcos, Texas, April 16, 1992.)

While it has not yet reached the construction phase on any portions of its proposed facility, the Association continues to meet regularly and to pursue its goals.

FORT BEND PARKWAY ASSOCIATION

The most recently formed Fort Bend Parkway Association was created by TxDOT Minute Order 90618 on July 31, 1990. Its purpose is to assist the State in promoting and developing a 17-mile roadway between Beltway 8 (the Sam Houston Parkway) and State Highway 99 (Grand Parkway) in Houston. Information on the Association's progress is extremely limited, due to the comparative youth of the organization, and does not yet support any conclusions about its prospects for success.

EXTERNAL FACTORS AFFECTING TTC PERFORMANCE

Probably the single most important factor affecting the performance of TTCs has been the wave of bankruptcies, foreclosures, institutional failures, and losses in property values which accompanied the recent S & L crisis. The resulting distresses in the Texas real estate market have made acquisition of revenues and right-of-way more difficult, and have even resulted in the loss of substantial amounts of land previously committed for right-of-way.

Real estate developers and development-oriented groups have long provided a central impetus to the organization and efforts of TTCs.

Prior to the issuance of new conflict of interest regulations in 1986, many prominent developers and landowners served as Directors of the various TTCs. Donations of cash and land from large private landowning interests have been crucial to the success and failure of TTCs. These resources had been donated largely with the expectation they would eventually be repaid by increases in property value arising from the construction of the roadway in question. Since, however, highways traditionally take many years to build, donations to TTCs represent a speculative and long-term investment. As the real estate market plummeted in the wake of the S&L crisis, fewer developers and landowners proved willing to invest in TTCs. Furthermore, foreclosures and bankruptcies reduced the amount of land and money available for contribution to TTCs. Finally, the assumption of ownership of foreclosed properties by federal agencies like the RTC and HUD complicated the procedures for acquiring land. Thus, the S&L crisis has undoubtedly been a major hindrance to the land and money acquisition efforts of TTCs in recent years.

In addition to hindering land acquisition and funding efforts, the S&L crisis negated much of the prior achievement by TTCs. A dramatic example is the 13.6-mile Segment D of Houston's proposed Grand Parkway. A 1991 report on the Grand Parkway Association's efforts by District 12

Planning Engineer Donald R. Garrison contained the following summary of progress on the segment: "Developer bankruptcies and banking institution failures dropped the committed right-of-way total from 94 percent to 66 percent and stopped preliminary engineering studies in November 1988. While interest in the segment is very high, progress is at a standstill until the RTC and HUD sell the foreclosed properties."

Clearly, then, the S&L crisis has created an environment inimical to the success of TTCs. However, as the deleterious effects of the crisis wear off, the real estate market should eventually recover. If and when it does, the outlook for those TTCs which have survived this turbulent period should improve.

Another major factor impeding TTC performance has been a lawsuit filed by the environmental group Texas Earth First!. This lawsuit prompted complete cessation of efforts on three TTC projects from 1988-1992—MoPac South Transportation Corporation, the San Marcos Parkway Association, and the Plateau Region Outer Parkway Association. The Corporations essentially endured forced inactivity during this period, as the lawsuit dragged through the court system. The suit has now been decided in the state's favor, and progress is expected to resume in the immediate future, barring appeal of the case.

CHAPTER 5. ISSUES ASSOCIATED WITH TTCS

POLICY ISSUES

One important issue involving TTCs revolves around their sources of finance. Critics note that a substantial portion, and in some cases even a majority, of TTC revenues come from donations by counties, municipalities, and even state agencies. Furthermore, TxDOT still pays the actual construction costs for any roadways completed. Thus, critics claim, TTCs are merely a clever way of using taxpayer dollars to subsidize projects favorable to selected developers.

Several facts would seem to refute this assertion. First, most projects are initially planned and supported by TxDOT and/or local government entities. The TxDOT Minute Orders creating TTCs define the Corporations' projects as "essential government functions," while at the same time explicitly absolving TxDOT of any commitment for future construction.

Furthermore, the level of private contribution to TTC projects has been substantial. Affected landowners have proven willing to donate both land and money to TTCs, thus providing resources for road development which would otherwise have had to come from state and local governments.

Finally, even though cities and counties have donated a great deal to many of the TTCs, they have generally done so out of enlightened self-interest. They have sought to take advantage of the growth opportunities represented by TTC projects. They have also realized that it generally costs them less to help fund a TTC than to pay for their normal share of right-of-way acquisition and utility adjustment costs. For example, the Joint Development Agreement between the Grand Parkway Association and Fort Bend County states that the County would normally have been required to pay 10 percent of the value of acquired right-of-way (in this case, approximately \$4.3 million) in order to secure a State highway. (Grand Parkway Joint Development Agreement: Recitals, p. 3.) Instead, they agreed to pay the cost of a \$2 million bond issue by the Grand Parkway Association. (Grand

Parkway Joint Development Agreement: Article 3, Section 3.01.) This represented a significant cost savings to the county, and hence to its taxpayers.

Another common argument advanced by critics of TTCs is that the projects serve the private interests of influential developers without regard to, and even at the expense of, the public interest. As a result, they claim that developers in charge of TTCs have been allowed to use public funds for personal financial gain. This sort of criticism has been largely responsible for the issuance of strict rules regarding conflicts of interest (issued April 1, 1986, discussed previously) and financial procedures (issued Oct. 29, 1986, discussed previously). While there has been no evidence of financial mismanagement by TTCs, the 1986 conflict of interest rules caused a dramatic turnover of TTC leadership. Many critics felt vindicated by the rules' impact, and many others felt that a critical blow might have been dealt to the TTC concept. However, the removal of financially affected individuals from responsible positions has failed to eliminate the TTC as an alternative method of highway finance. The fact that TTCs are able to function without the official involvement of those individuals who stand to gain from a project's completion seems to indicate that some elements of public interest are being served by TTC projects. This further indicates that critics' complaints of conflicts of interest are without significant foundation.

The conflict of interest argument overlooks a basic point. It is common knowledge that affected developers and landowners have a substantial financial interest in the development and timely completion of any given project. If they had no such interest, there would be no reason for them to support TTCs. In fact, the creation of the TTC is a direct attempt to identify and harness those private interests which stand to benefit from the creation of new public transportation facilities.

A final charge of activists opposed to TTC efforts is that TxDOT may be heavily influenced by important developers, who use their political leverage to obtain construction decisions favorable

to their interests. This is also not substantiated and intuitively is without foundation. If developers exercised such great control, then there would not be a need for the TTC to begin with. Generally, landowners put forth a great deal of effort and expense to promote and develop their Corporation's project. Their return on this investment is uncertain. There is no logical reason why they would make this effort if they believed that the State could be persuaded to undertake the entire project at its own expense.

In addition, most TxDOT construction decisions are based largely on a calculation of a facility's cost per vehicle mile traveled (VMT). This quantitative approach to road-building decisions makes it less susceptible to political influence. The appeal of a particular project is highly dependent on its lowering the State's total cost per VMT. This, essentially, is the purpose of the TTC, which seeks to reduce the State's overall cost by eliminating right-of-way acquisition, utility adjustment, and preliminary engineering costs. In doing so, they produce substantial savings for the State, thus saving taxpayers' money and serving the public interest. In addition, TTC participation facilitates the completion of projects by expanding the State's base of support to other interested parties.

ECONOMIC ISSUES

The simplest approach to economic analysis of TTCs involves a comparison of the costs incurred and benefits produced for the State of Texas. The TTC produces very little in the way of conspicuous costs to the State. The most obvious expense to the State involves the construction of various TTCs projects. Since, however, the projects are assumed to have been previously planned and/or approved by TxDOT, the expense of building a roadway should not be considered in evaluating costs incurred by TTCs. Another apparent expense to the State arising from TTC operation is the cost of land and money donated to TTCs by State agencies. This does not appear to have been a major factor in TTC operations to date, although it should be considered in a cost-benefit analysis of TTC financial impact upon the State. Expenses arising from the necessity of regulating and controlling TTC operations appear to be minimal. District Planning Engineer Tom Word, for example, estimates that even at the peak of the MoPac South Transportation Corporation's activities, he spent no more than about ten hours per month working on the project. While other departments may have devoted slightly more time

on activities like engineering plan approval, overall cost to the state are seen as minimal.

Benefits associated with TTC operation are more apparent than costs. As previously noted, substantial contributions have been made by TTCs. In terms of both land acquisition and preliminary engineering, TTCs appear to have saved the State a great deal of time, money, and effort. Right-of-way donations alone for the Grand Parkway Association and the MoPac South Transportation Corporation are estimated at \$546 million and \$20 million, respectively. (Figures drawn from documents in CTR files on TTC development.) Another important benefit arises from the inability of TTCs to create legally binding financial obligations which might eventually have to be assumed by the State. Thus, the State benefits from an organization's efforts without any risk of incurring debt. This "risk-free" aspect is especially important given the tight fiscal restrictions currently facing the State government.

Thus, it is obvious that TTCs have been very effective in terms of providing high benefit levels at low cost to the state.

A second economic issue involving TTCs is their ultimate social cost, or impact on the public good. An analysis of a project's overall social cost should include all of the positive and negative externalities its creation involves. For example, the creation of a roadway facilitates personal mobility for many individuals and enhances the values of the properties it abuts. On the other hand, it also results in increased noise, higher pollution levels, and segmentation or destruction of natural habitat areas. Of course, these are only a few of the many externalities associated with roadway creation.

An actual assessment of any project's social cost, or worth, would be nearly impossible to quantify, and is certainly beyond the parameters of this project. However, such an assessment seems unnecessary. Projects which are worthwhile enough to merit SDHPT backing and the formation of a TTC should generally contribute strongly to the public good. If they are not worthwhile, TxDOT should neither fund nor support them. The determination of a project's social cost is beyond the scope or intent of TTCs, which are merely vehicles for private sector financing of transportation projects.

A final economic issue involving TTCs involves opportunity costs. When a TTC is able to reduce its project's (say, Project B's) estimated cost per VMT enough to increase its priority on the TxDOT's project funding list, it enables its project to assume precedence over one or more other

important projects (Project A). Thus, it can be argued that the TTC distorts the allocation of State funds in a manner which causes worthy projects to be bypassed by less worthy projects in the State's funding schemes. Because the allocation is distorted, the public benefit from the completed project (B) is less than it would have been had the original project (A) been completed instead. The opportunity cost is the difference in social benefits between the completed project and the foregone project. Any inefficient allocation of resources creates positive opportunity costs, thus reducing overall public welfare.

The argument that TTCs create inefficient allocation decisions is theoretically plausible, but not very convincing. It overlooks the fact that the affected allocation decisions were not made by an efficient market mechanism, but rather were planned by a government entity. The willingness of the private sector to devote itself to reallocation of resources toward a project indicates that the project's potential benefits may have been underestimated by the public sector. Private involvement also results in a reduced overall cost to the State. As a result, it can be argued that the State's original decision was based on an overestimation of the project's cost and an underestimation of its benefits and/or necessity. It therefore follows that allocation efficiency is quite possibly increased by the operation of the private sector influence (in this case,

through TTCs) on road-building decisions. Current economic theoreticians and empiricists generally agree that private allocation mechanisms tend to be more efficient than those of the public sector. Thus, it seems fairly reasonable to claim that private involvement in transportation does enhance overall allocation efficiency.

In a more concrete sense, the argument that TTC projects create opportunity costs by drawing funds away from more worthy projects has not been validated by experience. In the case of the MoPac South Transportation Corporation, the state was able to begin construction on a project whose right-of-way donation, environmental impact studies, and engineering plans had already been completed by the TTC. This occurred at a time when construction funds were readily available, but were lying idle because relatively few projects had completed the preliminary planning stages. By donating a great deal of labor resources and financial backing, the TTC was able to significantly accelerate its project without further straining the District's resource needs. By presenting a project ready for construction, the Corporation actually yielded an increase in economic efficiency by providing a useful application for otherwise idle state funds. While this case is anecdotal in nature, it does show that TTCs can yield decreased opportunity costs in an environment where construction funds are more readily available than labor resources for preliminary work on projects.

CHAPTER 6. EVALUATING TTCS

Before attempting to judge Transportation Corporation performance, it is first necessary to establish a basis for evaluation. As the various issues discussed in the previous chapter indicate, this is neither a simple nor a superfluous task. The focus of this evaluation could vary widely depending on the basis for evaluation, whether it is something as straight-forward as cost-benefit analysis or something as ambiguous as the "public good." Fortunately, however, there is a fairly obvious solution to this problem. Since TTCs were enabled by a legislative act, the intent of the Act, as articulated explicitly in Section 3, can serve as the yardstick for evaluation.

The Act puts forth five specific declarations of purpose for Transportation Corporations. The first involves the "promotion and development of public transportation facilities and systems by new and alternative means." (Texas Transportation Corporation Act (H.B. 125, Texas Legislative Council File Copy), Section 3 (a).) Obviously, Transportation Corporations have enjoyed a degree of success in this respect. They have effectively promoted several projects using a variety of resources. The Grand Parkway Association in particular stands out as a prime example of flexibility and ingenuity in project promotion. The conclusion of complex negotiations for land and money, both with private landowners and with state, county, and federal entities, has been accomplished with great flexibility and willingness to innovate. Even those Corporations which failed to achieve construction of their projects did facilitate the planning process. Thus, in terms of this first statement of purpose, TTCs have clearly fulfilled the legislative intent which prompted their creation.

A second stated purpose of TTCs is to aid economic growth, serve the public interest, and "promote the health, safety, and general welfare of the citizens of this state by securing for them expanded and improved transportation facilities and systems." (Texas Transportation Act, Section 3 (b).) Two key evaluation criteria arise from this statement: serving the public interest and securing new and improved transportation facilities.

Issues surrounding the public good were discussed in the previous chapter. They appear to have been given little consideration by the legislators, who link improvements in the state's transportation facilities and systems directly with the public good. There is very little basis for arguments that improved transportation facilities and systems do not serve the public interest. It appears reasonable to concur with the legislators in accepting the conclusion that these projects are indeed in the public interest.

The second criterion generated by this subsection deals with securing "expanded and improved transportation facilities and systems." Corporations have had varying degrees of success in meeting this requirement. With the last portion of its project being let out for bids in June 1992, the FM 3083 Transportation will be the first TTC to achieve completion of its entire proposed project. The Grand Parkway Association and the MoPac South Transportation Corporation have both achieved at least partial construction of their projects. On the other hand, the Galveston-Alvin-Pearland Parkway has been removed from state planning consideration, and the Plateau Region Outer Parkway may well receive a "no construction" decision as a result of its possible environmental impact. The status of other projects remains uncertain. Despite varying levels of success in this area, however, it is apparent that TTCs in general have effectively accelerated the improvement and expansion of roadway facilities, and have actually been able to reach fruition of their projects in many cases. Thus, TTCs must be regarded as a qualified success in this area.

The third statement of legislative purpose is somewhat similar to the second. It calls for Corporations "to secure and obtain right-of-way for urgently needed transportation systems and to assist in the planning and design of such systems." (Texas Transportation Act, Section 3 (c).) This aspect of legislative intent requires very little discussion—the various TTCs have had impressive records in amassing right-of-way donations, and have also completed feasibility studies,

environmental impact statements, public hearings, alignment plans, and preliminary engineering and design.

The fourth statement of purpose calls for TTCs to "reduce the burdens and demands on the limited funds available to the commission, thereby increasing the effectiveness and impact of those funds available to the commission." (Texas Transportation Act, Section 3 (d).) Again, Transportation Corporations have fulfilled their duties in this regard. By completing preliminary work on their projects and amassing right-of-way donations, the Corporations are able to substantially reduce the overall cost to the state of constructing new facilities. This helps to alleviate the excessive demand for scarce state funds for new projects, enabling the department to complete more projects in a shorter time span and with less money than would otherwise be possible.

A fifth statement of purpose stipulates that Transportation Corporations are to "act as an instrumentality of the state in promoting and developing public transportation facilities and systems and . . . not act as the agent or instrumentality of any private interests even though many private interests may be benefitted by the transportation corporations, as will the general public." (Texas Transportation Act, Section 3 (e).) In other words, TTCs are expected to give their primary allegiance to benefitting the public. While collateral benefits to individual landowners, industries, or other private parties are inevitable, and are indeed a motivating factor for private participation in Corporation efforts, these benefits are only a secondary result of the TTCs efforts.

It is this aspect of legislative intent which underlay the strict promulgation of conflict of interest rules for Corporation Directors. These rules ensure the administration of the Corporations by financially independent individuals, thus helping to promote an emphasis on serving the public good as a primary obligation.

The fact that TTCs act as state instrumentalities, rather than as tools of private interests, is backed up by several facts. First, community support for most TTCs has been strong. In most cases, little or no public opposition to Corporation efforts surfaced. That resistance which has been met with has come primarily from environmental and public interest groups which tend to oppose transportation improvements on a regular basis anyway. In the case of the San Marcos

Transportation Corporation, public support has even been strong enough to become the primary driving force behind TTC efforts, following the demise of those developers whose efforts gave the project its initial impetus.

A second fact corroborating the role of TTCs as public, rather than private, entities, is the ability of the various TTCs to continue their efforts in the wake of the introduction of conflict of interest rules. The replacement of financially motivated Directors with civic-minded individuals has not seriously curtailed TTC efforts, as many critics might have predicted. The mere fact that individuals are willing to serve as unpaid Directors, in spite of the fact that they have no financial interest in a project's outcome, indicates an awareness on their part that the Corporation's project serves their interest primarily by serving the public good.

A third and final fact indicating the success of TTCs in acting as instrumentalities of the state, rather than of private interests, is their survival in the wake of the S & L crisis and the collapse of real estate markets in Texas. These events bankrupted many key supporters of TTC projects, as well as impairing the ability and willingness of others to lend material support for Corporation efforts. The fact that TTCs have continued to make progress in the absence of powerful developer interests indicates that the Corporations are indeed able to act as state instrumentalities even without the support of key self-interested private parties.

Overall, then, TTCs must be judged as a measured success in meeting all of the various expectations raised by the intent of the Texas Transportation Corporation Act. They have promoted roadway development by new and alternative means; they have promoted the general welfare by providing improved transportation facilities; they have secured right-of-way and assisted in the planning and design of projects; they have reduced the demands on commission funds and improved the effectiveness and impact of those funds; and they have acted as instrumentalities of the state rather than as instrumentalities of private interests. While perhaps not all TTCs formed to date have demonstrably met each and every one of these criteria, they do all appear to have been successful in at least attempting to meet them. Thus, the Transportation Corporation has proven to be an effective institution for carrying out the purposes for which it was conceived.

CHAPTER 7. PROSPECTS AND RECOMMENDATIONS

Prospects for future formation of TTCs appear to be uncertain. The TTC was originally envisioned as a vehicle for financing new transportation facilities and systems in major urban areas. To date, the only Corporations formed have been located in or near Austin and Houston. Further activity in Houston appears somewhat unlikely, as the district's emphasis is beginning to shift away from the development of new facilities and toward the consolidation and upgrading of existing facilities. In Austin, environmental opposition to roadway expansion has been virulent and highly effective. At least three Corporations (Plateau Region Outer Parkway, MoPac South, and San Marcos) have been impeded substantially by litigation brought about by environmental groups. It appears that the atmosphere in Texas' large cities is thus becoming less conducive to future TTC formation.

On the other hand, it appears that the continued growth of smaller cities may present new opportunities to use the Transportation Corporation as a financing mechanism. The complete success of Conroe's FM 3083 Transportation Corporation and the strong community support for San Marcos' Transportation Corporation seem to indicate a promising potential for TTCs in smaller urban areas. In both of these cities, community support has rallied strongly around what was perceived as a necessary and highly beneficial project.

Nonetheless, it seems unlikely that widespread formation of TTCs will occur until the Texas real estate market rebounds from its late-1980s slump. While real estate developers may not be indispensable to a Corporation's success, they have certainly tended to be the primary instigators of TTC formation. Without the presence of affluent landowners willing to provide a project with donations of land and money, TTCs face extremely difficult circumstances. Thus, a revival of real estate values and interest in development will almost certainly be required before Transportation Corporations can begin to have substantial impact as alternative vehicles for roadway promotion and development.

In the meantime, however, there are some steps which could be taken to improve the operation and chances for success of future TTCs.

The first such step involves greater selectivity in formation and clearer tasking for Corporations. Several factors should be analyzed prior to TTC formation in order to judge both the Corporation's chance of success and the State's likely benefit from Corporation activities. Projects should be examined to make sure that they have strong support from both state and local governmental entities. They should also have strong backing from the private sector, based largely on the readily apparent need for the project. The number and types of landowners along the project's probable route are also important; any project which involves a relatively small number of large owners with relatively strong interests in the project's completion is likely to face a relatively easier task in acquiring donations of land and money. Another factor which should be taken into consideration is the possibility of environmental obstacles to a project's completion. The reason for this is twofold: first, events have shown that Corporations formed in ecologically delicate areas have reduced and/or retarded rates of success; and second, public confidence would probably be best served by state control of projects in such areas, anyway. A final factor affecting a prospective TTCs likelihood of success is the overall state of the economy, and of the real estate market, at the time of formation. TTCs operate with voluntary contributions, which are likely to be more generous when they are solicited from affluent (or at least solvent) developers and landowners. In conclusion, an examination of these important factors can lead to a preliminary assessment of a Corporation's chances for success. Only if this assessment indicates a reasonable possibility should the Corporation be allowed to form.

Furthermore, TTCs should not be formed unless they have clearly defined tasks to perform with regard to their projects. Timing is also important. Corporations should not be created until their task is ready to begin. In some cases, such as those of the Plateau Region Outer Parkway and

the San Marcos Transportation Corporation, entities whose primary purpose was right-of-way acquisition were created before preliminary environmental work had been successfully completed. As litigation dragged out the environmental assessment process for these projects, the respective Corporations were essentially unable to act until land acquisition could commence. This delay gave rise to some frustration on the part of the Corporations, and in one case contributed to a TTCs ineffectiveness and ultimate dissolution. Thus, TTCs should not be formed unless they

- (1) have a clearly defined task or set of tasks,
- (2) have a reasonably high likelihood of succeeding in their tasks, and
- (3) have an opportunity to begin work on their tasks within a reasonably short period following their formation.

A second improvement in the creation of Transportation Corporation involves preliminary orientation of prospective TTCs by the Department prior to creation. Potential TTC founders should be made aware in clear detail of the lengthy and complicated nature of the roadway development and creation process, and should understand clearly their role in this process. An information packet or one day orientation program could easily and effectively achieve this goal. Also, Corporation tasks should be clearly defined in the context of overall activities associated with a project, as should the role and involvement level of the Department. This simple step can avoid a great deal of frustration on the part of Corporations who find their projects temporarily stymied by unfamiliar administrative requirements and procedures.

Finally, it has been suggested by several Corporation Directors that the Department should show greater flexibility and consideration in dealing with TTCs. Each Corporation is a unique entity with its own problems and peculiarities. TTCs were conceived as unique and innovative entities for development and promotion of new facilities, and they should be treated accordingly. While no major incidents have arisen as a result of department inflexibility, there are several anecdotal cases in which adherence to tight regulations constituted real sources of annoyance for Corporations.

One such case involved a parcel of land donated for the Grand Parkway's right-of-way. The landowner grazed cattle on his land and had therefore erected fences, one of which had to be moved a short distance in order for work to commence. The owner, who had already freely donated the land along with a considerable sum of

money to the project, felt that the state should move the fence. The Department, on the other hand, was prohibited by regulation from moving the fence. The result was a situation in which a landowner, who had already donated considerable resources to the Corporation, was brusquely informed that he would also have to move his fence. While this seems like a small affair, it gave rise to a good deal of irritation which could otherwise have been avoided.

Another such case involves the financial reporting requirements for TTCs. While no one has had any argument with the necessity of these requirements as oversight measures, there appear to be cases in which they could be relaxed somewhat. For example, the San Marcos Transportation Corporation has been inactive for several years, at the state's request, because of an environmental lawsuit. The Corporation has a minimal cash balance which has not changed substantially for several years. It does not carry on regular expenditures, nor has it received any recent revenue. Nonetheless, the Corporation is required to undergo an expensive annual audit each year in order to comply with state regulations. The cost of this audit represents a significant burden in relation to the Corporation's bank balance, and thus creates a financial strain. Thus, a Corporation which is currently inactive, through no fault of its own, is nonetheless being strained by the onerous task of complying with strict regulations which serve no real purpose in this instance.

The solution to this flexibility problem is not as simple as it might seem. Flexible interaction with TTCs on an individual case-by-case basis would increase the amount of time and effort required to maintain liaison and oversight with the Corporations. On the other hand, it would decrease the alienation of landowners and Corporations which arises out of the current regulatory environment. Moreover, there is a legal basis for dealing more loosely with Corporations. Section 3(f) of the Transportation Corporation Act states clearly that the "Act shall be liberally construed in conformance with the legislative findings and purposes set forth herein."

Some government flexibility has been shown in dealing with Transportation Corporations. The Grand Parkway Association, for example, has been allowed to innovate freely in its creation of a Joint Development Agreement with Fort Bend County, its negotiation for donation of Department services in lieu of money for right-of-way segments donated by the state, and its negotiations with the Resolution Trust Corporation and HUD.

Nonetheless, the department might want to seriously consider the possibility of setting up

some sort of procedure by which Corporations can appeal for special exceptions to normal rules regulating state entities. The mere existence of such a process could greatly ease the perception of bureaucratic rigidity experienced

by some Corporations. While inflexibility has not yet been a major problem, it has the potential to become one should TTCs proliferate into a wider array of locations and environments throughout the state.

PART II

TEXAS ROAD UTILITY DISTRICTS

(RUDS)

CHAPTER 8. RUD OPERATION

BACKGROUND

Like Texas Transportation Corporations, Road Utility Districts (RUDs) are project-specific organizations which allow private sector participation in the funding and completion of new transportation facilities. Unlike TTCs, however, RUDs are vested with limited power to issue bonds and levy taxes, and are intended to actually build the facilities which they were organized to develop. Upon completion, these facilities are to be conveyed directly to a specified government. To date only two Road Utility Districts have been formed under the Road Utility Districts Act in the state of Texas—Denton County Road Utility District No. 1 and Northgate Crossing Road Utility District.

CREATION OF A RUD

Because RUDs are given the authority to effect limited property tax increases within their boundaries, the creation of a RUD can only take place after strict requirements have been met. Probably the most prohibitive requirement involves landowner approval of the new RUD. Petitions for the creation of a RUD must be approved and signed by all holders of title to land within the proposed improvement area. The failure of the petitioners to gain unanimous support from its constituent landowners makes creation of the RUD impossible. As a result, attempts to form RUDs would seem most likely to succeed in small land areas owned by a relatively small number of people.

Another important concern is approval and modification of the RUDs plans and activities by affected governmental entities. Prior to the submission of the RUDs petition for creation, the potential RUDs founder(s) must submit preliminary plans for its proposed facilities to the governmental entity to which the facilities are ultimately to be conveyed. These plans must meet the requirements and regulations of the governmental entity, as well as any city or cities in whose extraterritorial jurisdiction the proposed

facilities are located, prior to the entity's granting its approval of the plans. If facilities are to be conveyed to more than one entity, all such entities must review and approve of the RUDs preliminary plans.

Once it has received approval from the governmental entity or entities, the petitioners may formally prepare to petition the Commission for creation of a RUD. The petitioners then create a petition including the name of the proposed RUD; the county or counties in which the proposed RUD is to be located; the boundaries of the proposed RUD; the names of petitioners and a statement that they are holders of title to all land within the proposed RUD; a list of suggested temporary directors for the RUD; a brief description of the proposed facilities to be constructed, acquired, or improved; the amount of bonds estimated to be necessary; the current appraised valuation of all real real property within the RUD; and the governmental entity to which facilities will be conveyed upon their completion. The petition must be signed by holders of title to all land within the RUD.

The petition is then submitted to the Commission in a packet including the following:

- (1) the signed petition, along with a \$5,000 non-refundable filing fee;
- (2) a map showing RUD boundaries, a metes and bounds description, and a computation sheet for survey closure;
- (3) a plan sheet showing RUD boundaries, existing topography, all proposed facilities, and any other applicable information;
- (4) the preliminary plans;
- (5) an approval statement from the governmental entity or entities;
- (6) an engineering report including the following:
 - (a) a vicinity map;
 - (b) estimated cost of right-of-way;
 - (c) projected useful life of facilities and anticipated maintenance costs;
 - (d) a comprehensive analysis and study justifying the creation of the RUD and

demonstrating that the proposed facilities are feasible, practicable, necessary, and beneficial to the land included in the RUD;

- (7) a financial study of the proposed RUD and surrounding area, including projected bond requirements;
- (8) a certificate from the central appraisal district indicating the owners and tax valuation of real property within the RUD;
- (9) certificates that copies of the RUDs preliminary plans were received by the city or cities in whose extraterritorial jurisdiction all or part of the proposed RUD might lie, as well as by the commissioner's court of the county within the RUD is located;
- (10) a specific chronological history showing compliance with the Act;
- (11) a specific order of the Commission providing for a public hearing and giving a notice thereof;
- (12) a list of at least five potential temporary directors, with accompanying resumes; and
- (13) any other data forms, and information as the Commission may require.

The next, and final, step in the RUD creation process is a public hearing on the creation of the district. Adequate notice of this hearing must be given to the public, as well as to any involved governmental entities. After the hearing, the Commission decides whether or not to approve the creation of the district.

RUD ORGANIZATION

Once a RUDs creation has been approved, the Commission appoints five temporary directors for the district. These directors serve until they can be replaced by the regular board of directors, who must be elected. The temporary board is required to call an election within 15 days of the confirmation of all of its members. This election takes place within the newly created RUD, and is not subject to ordinary election law which requires elections to be held on uniform or specific dates. The election must be advertised at least 35 days in advance, and must provide not only for election of the candidates for directorship, but also for voting for or against the creation of the new RUD. In addition, it may include a separate ballot concerning approval of a bond issue to be paid for by the levying of ad valorem taxes on properties within the district. If the majority of voters approve the RUD, the temporary directors officially declare the creation

of the RUD, and also declare the five candidates receiving the most votes to be the winners of the election for regular directors.

As in the case of a TTC, the board of directors of a RUD acts as the sole governing body of the district, carrying out all duties and exercising all powers of the district within the parameters established by the Act.

To assure a degree of continuity on the board, electoral terms are staggered. Those directors receiving the fourth and fifth highest vote totals in the initial election are to serve only until the next regular election, while those with the three highest vote totals remain in office until the second regular election. These regular elections are to take place annually on the first Saturday in April. Thus, for all but two of the initial directors as well as for all subsequent directors, the designated term of office is two years. Any vacancies occurring on the board between elections are to be filled by an interim director, appointed by the remaining board members. This interim director is to serve for the duration of the unexpired term.

Directors must take the same constitutional oath required of Texas Transportation directors and other public officials under state law. They may receive no more than \$25 a day as compensation for their services, as well as reimbursement for reasonable expenses incurred while carrying out duties associated with the district or the post of director.

Upon its installment after each regular election, the new board of Directors organizes itself by electing officers from among its members. These officers are: a chairperson, who presides over meetings; a vice chairperson, who presides in the chairperson's absence; a treasurer; and a secretary. These officers serve one year terms ending with the first regular meeting after each election, at which new officers are elected.

In addition to its governing body of elected directors, the district may choose to employ other personnel. The board is entitled to appoint a general manager, as well as necessary engineers, attorneys, and accountants. The general manager, if the board chooses to appoint one, serves as the chief administrative officer of the RUD and may be delegated full authority to run the the affairs of the RUD, subject only to board approval. In addition, the board may choose to employ any other personnel whose services are believed to be necessary to the function of the RUD. The general manager and all other appointed employees may be entitled to compensation for their services.

RUD POWERS

General Powers

The general powers of a RUD, as delegated by the initial legislation, are to:

- (1) acquire facilities, acquire property for facilities, and construct or improve facilities, whether inside or outside RUD boundaries, as provided by the Act;
- (2) provide financing for facilities and their construction, acquisition and improvement from money available under the Act;
- (3) advise, consult, contract, cooperate with, and enter into agreements with the federal government and its agencies, the state and its agencies, local governments, persons, and private entities;
- (4) apply for, accept, receive, and administer gifts, grants, loans, and other funds available from any source;
- (5) assume the contracts and obligations of previous owners of facilities and property acquired by the district and perform those contracts and obligations to the same extent that any other purchaser or assignee would be bound; provided, however, only if such contracts and obligations of previous owners were created pursuant to the competitive bidding requirements provided for by state law, Chapter 770, Acts of the 66th Legislature, Regular Session, 1979 (Article 2368a.3, Vernon's Texas Civil Statutes);
- (6) contract with any person for construction, acquisition, and improvement of facilities; and
- (7) exercise such authority, powers, rights, duties, and other functions which will permit the accomplishment of the purposes for which the district was created.

Specific Powers

The RUD is specifically empowered to annex land contiguous to the district, subject to several conditions. First, the owner or owners of the land in question must file a petition describing the land in question and requesting its inclusion in the district. Second, the board may require these petitioners to assume their share of any bonds, notes, other obligations outstanding, or bonds payable by tax revenue, and it may also request them to authorize the district to levy a tax on their property in each year that such obligations are outstanding. Finally, both the board and the TxDOT Commission must approve of the

annexation. The TxDOT Commission's approval must be furnished in writing, and must be preceded by consultation with the governmental entity to whom the proposed facilities are to be conveyed.

RUDs are specifically authorized to construct, acquire, or improve facilities in a manner consistent with the plans approved by the Commission. Any construction, acquisition, or improvement of facilities outside of district boundaries must have demonstrable benefits for the district in question, and must be approved by both the Commission and the governmental entity to whom completed facilities will be conveyed.

In addition, districts are specifically authorized to enter into contracts with TTCs.

Finally, districts are both authorized and required to monitor contractors' work on the facilities in question to make certain that the conditions of any contract are being met. It may do so by having inspectors, engineers, or other district personnel monitor the work and report periodically to the board of directors, which may act immediately when any deviation from the contract occurs. On completion of the work, the personnel responsible for inspection must submit to the board, and to the governmental entity to whom the facilities are to be conveyed, a written report which includes information showing whether the completed facilities comply with:

- (1) the RUDs plan as approved by the TxDOT Commission;
- (2) the contract requirements; and
- (3) the requirements of the governmental entity to whom the facilities are to be conveyed.

LIMITATIONS AND OVERSIGHT

Probably the most important limitation on RUD powers is the fact that both board members and bond issues are subject to electoral approval. This makes RUDs much more responsible to the general public than, for example, a TTC. The reason that the RUDs creation, organization, and fund raising authority are all contingent upon popular mandates is that districts are granted far greater powers than TTCs. The power to levy and collect taxes carries with it a great potential for producing popular resistance and indignation. As a check on this power, voters are given the ability to approve or disapprove of bond issues and subsequent tax levies before they occur.

The ability to issue bonds and levy taxes makes RUDs much more autonomous than TTCs. Because of this relative autonomy, RUDs are controlled more by various rules and regulations than

by actual TxDOT Commission oversight and involvement. In essence, the RUD is directly responsible to its constituents, rather than to the TxDOT Commission.

BOND ISSUANCE

RUD boards are authorized to issue and sell bonds in the name of the district in an amount not to exceed one-fourth of the assessed property valuation of all real property in the district. The proceeds of the bond issue are to be used to construct, acquire, and improve facilities. The principal and interest on the bonds may be paid for by the levy and collection of an ad valorem tax on all taxable property within the district; by pledging all or any part of any fees assessed by the district; or by a combination of these sources.

Bonds not secured by taxes may be issued at the discretion of the board, but bonds secured by taxes must be authorized by a two-thirds majority of qualified voters participating in an election called within the district for the purpose of authorizing the bond issue. The board must provide adequate notice of the bond election; including the nature and date of the election, the hours during which the polls will be open, the location of the polling places, the amount of bonds to be authorized, and the maximum maturity of the bonds. Ballots must be printed to provide for voting either for or against the issue of the bonds and the subsequent levy of ad valorem taxes for payment of the bonds. The bonds may be issued only if the results of the election, when tabulated, show a two-thirds majority in favor of the bond issue.

The various series and issues of the bonds, as well as their forms, denominations, manners, terms, conditions, and details, are to be signed and executed as approved by the board as provided in the resolution or order authorizing their issuance. The bonds' interest rate may be within any range permitted by the constitution and state law, while their maturity is limited only in that it cannot last more than 50 years from the issue date.

All bonds issued by the RUD must also be submitted, along with all records pertinent to their issuance, to the attorney general for examination. If the attorney general finds them to be authorized in accordance with law, they are approved and registered by the comptroller of public accounts. After their approval and registration the bonds become valid and binding and are incontestable in a court or any other forum.

RUD bonds are legally authorized investments for banks, savings banks, trust companies, savings and loan associations, insurance companies, fiduciaries, trustees, guardians, and sinking

funds of cities, counties, school districts, and other political subdivisions of the state. They may also be used to secure deposits of funds by various political subdivisions of the state. Since RUD bonds are issued by an agency performing an essential public function, they are free from any tax levied by the state or by any city, county, school district, or other political subdivision of the state.

The district may also issue bond anticipation notes, either to serve any purpose for which bonds have been voted previously or to refund previous bond anticipation notes. They may bear any legal interest rate and may be issued in denominations and repaid at intervals chosen by the district. These notes may be secured and repaid either by proceeds from the anticipated bond issue or any other available source.

In addition to refunding its bond anticipation notes, the RUD may issue refunding bonds for the purposes and in the manner provided by general law.

Districts may use the proceeds from bond issues to construct, acquire, or improve facilities; to pay any expenses related to their operation; to pay or establish a reasonable reserve to pay not more than three years' interest on the bonds and notes of the district; and to pay any expenses related to the sale and issue of the bonds. The portion of the purchase money of bonds and notes which represents capitalized interest must be placed in a special account in the district's depository, and used to pay interest that comes due on the bonds or bond anticipation notes.

TAXING AND FEE ASSESSMENT AUTHORITY

The most important revenue source for the RUD lies in its taxing authority. Subject to two-thirds voter support at an election called for the purpose of approving taxes, the district may annually levy taxes to pay the principal and interest on bonds it has issued. It may also, subject to voter approval, levy a maintenance tax of no more than 25 cents per \$100 of assessed property value within the district. The board is entitled to levy taxes on all properties within the district, and to set tax rates on the basis of the anticipated tax income necessary to supplement other income in fulfilling the district's obligations and purposes.

The RUD is also empowered to adopt and enforce fees to supplement its taxes in funding bond issues and retiring its debts. These fees may not, however, be imposed on the traveling public or used to encumber any facilities.

FINANCIAL REPORTING AND CONDUCT

Like TTCs, RUDs are subject to many regulations regarding the conduct and reporting of their financial activities. Each RUD must be operated on the basis of a fiscal year to be determined by the board of directors, provided that the fiscal year cannot be changed more than once in a 24-month period. The board must also prepare annual budgets and subject itself to annual financial audits. Each annual budget must contain a complete financial statement, including statements of:

- (1) outstanding obligations of the RUD;
- (2) amounts of cash on hand in each of the RUDs funds;
- (3) the amount received by the RUD from all sources during the year;
- (4) the amount of money available to the RUD from all sources during the year;
- (5) the amount of balances expected at the end of the year in which the budget is being prepared;
- (6) the estimated amount of revenues and balances available to cover the proposed budget; and
- (7) the estimated tax rate that will be required.

Any amendment of the budget or expenditure not included in the budget must be authorized directly by the board.

With regard to the disposal of its funds, the board is authorized to select one or more banks as depositories, subject to the limitation that it must execute bonds or otherwise secure any of the district's funds that exceed the amount insured by the Federal Deposit Insurance Corporation (FDIC). In addition, the board is authorized to invest district funds in a variety of government and government backed securities, including various types of bonds, demand deposits, repurchase agreements, interest-bearing time deposits, and certificates of deposit.

The RUDs directors are authorized to pay all necessary costs and expenses incurred in the creation, organization, and operation of the district, as well as legal fees and other incidental expenses. The RUD may also borrow money for any purpose authorized under the Act.

CONVEYANCE OF FACILITIES

When a RUDs project is completed and the final monitoring report is received, the board must give notice and schedule a public hearing to determine whether the facilities have been completed as originally designed and should be

conveyed to the governmental entity. At the public meeting, the board may require the presentation of any additional information or testimony needed to make this determination. In addition, the governmental entity may send a representative and present any necessary information or testimony. Finally, if the facilities are being conveyed to a county but lie within the jurisdiction, normal or extraterritorial, of a city or cities, these cities may also send representatives and present relevant information or testimony.

If, after this hearing, the board concludes that additional work is necessary, it is to take actions to effect the completion of all facilities as required by the RUDs plans and contracts. In other words, it must return to work until the project has been completed in a satisfactory manner.

If, on the other hand, the board determines that work on the facilities has been completed as planned, it is to issue an order to convey the facilities to the governmental entity, subject to the provisions of the Act. It is to file copies of the order and the instrument of conveyance with the TxDOT Commission. Furthermore, this conveyance is to take place free and clear of any outstanding obligations or indebtedness on the part of the RUD.

Upon conveyance of the facility, the district is absolved of any responsibility for the facility, or for its upkeep and maintenance. This burden passes to the governmental entity, which becomes owner and assumes the responsibility for maintenance and upkeep of the facility. Despite its absolution from further responsibilities related to the conveyed facilities, however, the district is not absolved of its duty to pay in full both the principal and interest on outstanding bonds and debts and also fulfill the conditions of any orders or resolutions authorizing those bonds or other forms of indebtedness.

RUD DISSOLUTION

After completed facilities have been conveyed to the governmental entity, and after all bonds and other debts of the RUD have been paid in full, the RUD may petition the TxDOT Commission for dissolution. If the TxDOT Commission finds that all work of the RUD has been completed satisfactorily, all facilities have been conveyed, and all bonds or debts have been retired, it issues an order dissolving the RUD. Any surplus funds of the RUD are transferred to the governmental entity or entities accepting conveyance of facilities. The district then ceases to function, with the board continuing to serve only as long as is necessary to dispose of all district assets and transfer all RUD funds.

CHAPTER 9. RUDS IN PRACTICE

To date, only two Road Utility districts have been formed—Denton County Road Utility District No. 1 and Northgate Crossing Road Utility District. Unfortunately, the lesser degree of Commission oversight and involvement in the affairs of RUDs, as compared with Transportation Corporations, leads to a relative dearth of documents available on these districts. As a result, the information which follows gives only a sketchy portrayal of these entities.

DENTON COUNTY RUD NO. 1

The first RUD formed in Texas was Denton County RUD No. 1, which was created September 24, 1986, by TxDOT Minute Order 84987. The district, as originally proposed, included 1,343.99 acres within Denton and Dallas Counties, and entirely within the city of Lewisville, Texas. The original assessed value of all land in the District was \$14,174,708.00. This value increased rapidly as work began on the projects, with total appraised value reaching \$32,741,319 in 1986 and \$85,159,346 in 1987. Title to all land in the district was vested in nine entities, including a Pool Trust, a Mortgage and Realty firm, two Joint Ventures, and five individual landowners.

The goal of the Denton County RUD, in general, is the construction of two frontage roads and initial interchange with IH-35E, and connecting the frontage road with IH-35E frontage roads. More specifically, this project has nine parts. First, is the improvement of Round Grove Road (FM 3040) with 2,000 feet of six-lane divided road with 120' of right-of-way. Second, is improvement of Denton Tap Road with 2,100 feet of three-lane road with 120' of right-of-way. Third, is MacArthur Boulevard, which is to receive 6,370' of six-lane divided road and 120' of right-of-way. Fourth, Roadway "B" involves about 1.4 miles of four-lane undivided road and 70' of right-of-way. Fifth, Roadway "C," about 0.5 miles of four-lane undivided road with 70' of right-of-way, is to run between Round Grove Road and Roadway "B." Sixth, Roadway "D" is to be about

a 1.2 mile section of four-lane undivided road with 70' of right-of-way. Seventh, two frontage roads for Spine Road (a designated State highway), each about 2.2 miles of three-lane, one-way roads located on a minimum right-of-way of 350'. Eighth, is an interchange for IH-35E and Spine Road. Ninth, and final, is storm drainage for all roadways and additional drainage from Roadway "D" and Spine Road to Denton Creek. All roadways are to be constructed with curbs, gutters, and storm sewers.

The projects are to be financed by a proposed bond issue authority of \$45.8 million, repaid with proceeds from a taxing authority of \$0.43 per \$100 of assessed property valuation through 1987, decreasing thereafter. The bond issue was approved in an election on November 22, 1986. The first bond issue of \$8.1 million, dated April 1, 1987, was approved by the Attorney General on April 23, 1987. The second bond issues of \$6.5 million, dated February 1, 1988, carrying a BBB+ rating, was approved by the Attorney General on March 28, 1988.

Actual construction of the facilities, was contracted to the developers under a Facilities Construction Agreement.

NORTHGATE CROSSING RUD

The Northgate Crossing RUD was created by TxDOT Minute Order 85864, issued May 27, 1987. The RUD is located in Harris county and comprises 646.627 acres. The appraised value of the land was \$16,975,700 as of January 1, 1985, \$27,960,200 as of January 1, 1986, and \$40,192,840 as of January 15, 1988. Title to all land within the District was vested in 20 different entities, including 11 individuals and 3 trustee's. The District overlaps two Municipal Utility Districts (MUDs), Northgate Crossing MUD No. 1 and No. 2.

The Northgate Crossing RUDs general goal is to construct and finance arterial and main feeder roads in the district, specifically including the construction of three facilities. The first

is a six-lane overpass, located approximately 3 miles south of the Montgomery county line at IH-45. The second is Northgate Crossing Boulevard, about a 12,800 foot stretch of four-lane divided road with a 100' of right-of-way. The third, and final, goal is the construction of about 9,000' of two- and four-lane roadway with 50-60' of right-of-way on either side of the Hardy Toll Road's 200' of right-of-way.

Financially, the RUD requested debt authorization of \$12,975,000, to cover estimated construction costs of \$8,080,000 and non-construction costs of \$4,895,000. This debt is to be repaid using taxing authority of \$0.68 per \$100 of property valuation from 1987-93, falling to \$0.47 per \$100 valuation in 1994 and decreasing additionally in following years. The District's first bond issue, dated March 1, 1988, totaled \$4,225,000 and carried a BBB+ rating. It was approved by the Attorney General on April 15, 1988. The need for a second bond issue of \$2.7 million was discussed in a meeting on March 13, 1989.

Work on the RUDs roadways proceeded rapidly. At the District's meeting on August 17, 1989, it was reported that the first phase of construction was nearly complete, and that a Grand opening was planned for October of that year. At the same meeting, a resolution authorizing modification of the development plan for the IH-45 overpass was approved. Under this modified plan, the State was to finance the construction of the overpass, and would be reimbursed by the District as bond funds became available. This arose from the poor condition of the bridge, which necessitated its replacement earlier than originally scheduled and would save the State an estimated \$500,000 in repair costs on the old bridge. By January 4, 1990, all "work in the Road Utility District was basically done except for the frontage roads for the Grand Parkway, additional guard rails next to the Hardy Toll Road frontage roads, and the bridge" (Minutes of Public Hearing, Northgate Crossing RUD, January 4, 1990). At a meeting on January 31, 1990, a status report indicated that frontage roads on the Grand Parkway would be the District's next project, and that the District would pursue

acceptance by Harris County for all completed roads. Also, the State had began reconstruction of the bridge over IH-45.

Two new developments were reported at the District's November 21, 1991 meeting. The first was a traffic fatality at the intersection of the Hardy Toll Road and Northgate Crossing Boulevard, which created some concern over potential litigation. The second was a report on the advisability of annexing 30 to 40 acres to help support the District and add to its tax base. By the district's May 8, 1992 meeting, the District had decided to proceed with the annexation of 110 acres. As this was the first time a RUD had annexed land, the procedure was taking some time. Plans are underway to "start single family housing and . . . to construct 900 to 1,000 homes." Tax collections for 1992 were ahead of schedule, and the RUD appeared to be operating smoothly.

SUMMARY

In both of these RUDs, the primary impetus for creation seems to have come from developers. Their motivation in forming the District is simple; they wish to achieve construction of roads which will increase both the value and marketability of their land. When the district is formed, it has been the developers themselves who generally perform the actual construction of facilities, on the understanding that their costs will be reimbursed by the district when its bonds are issued. This is a mutually beneficial arrangement for the District, whose ability to tax is limited by the assessed value of the District's land. Without the work performed by the developers, land valuations would probably not rise sufficiently to provide adequate tax revenues at the low rates permitted to the Districts. As stated in the Facilities Construction Agreement between Denton County RUD No. 1 and Vista Mortgage and Realty, Inc., "in order for the District's taxable valuations to increase to a level to support the debt service requirements on the Bonds and future bond issues by the District to acquire to acquire and construct the Facilities, the Developer must complete the facilities."

CHAPTER 10. ISSUES ASSOCIATED WITH RUDS

The limited experience with RUDs, and the dearth of reported information makes it difficult to make specific recommendations regarding the future use of RUDs. Given that they are a very controlled process with tremendous accountability, it is unlikely that the state will experience problems with RUDs. However, there is the potential for adverse impacts from RUDs if they are allowed to form without comprehensive review of their requests for authorization. Texas experiences with County Road Districts (CRDs) provide a valuable lesson into the potential shortfalls of special financing districts. An example of a troubled CRD will be explored in the latter part of this chapter.

EVALUATING RUDS

While the opportunity for observation is limited by the fact that only two RUDs exist, it appears that they have been effective in implementing the timely completion of their projects, in issuing bonds and levying taxes, and in obtaining electoral approval for their actions. Two issues are particularly relevant in evaluating RUDs—fairness and impact.

Fairness

An important question in evaluating any entity with taxing authority is fairness. There is a fundamental question as to whether it is fair for developers to pass on road-building costs to taxpayers who move into the District after its development is complete.

As evidenced by voter turnout in RUD elections, these Districts have been populated sparsely, if at all, prior to RUD formation. The apparent goal of development is to improve, subdivide, and sell the land within the District, thus passing the costs of road development onto new residents of the District. It can be argued, from the point of view of a new home-buyer moving into the District, that the higher tax rates within the District represent a significant hidden cost, and that the rates are

unfair because new residents were not represented in the elections which authorized them.

On the other hand, it can be argued just as cogently that the taxes levied by the RUD are extremely fair in their impact. They place the financial burden of road development and construction squarely on the shoulders of those individuals who benefit most from the use of the facilities. To argue that anyone besides the new residents should be forced to pay for the roads seems grossly unfair in this light.

Impact

Probably the most credible criticism of Road Utility Districts is their limited usefulness. They are a very highly specialized type of entity, and only one of a number of special district types found in Texas. In more than eight years since the passage of the Road Utility District Act, only two districts have been formed. Much of the reason for this may lie in the fact that the real estate market crash of the mid-1980s has dramatically reduced development activity in the State, but it still appears unlikely that the RUD will ever be a widely used method of roadway finance.

Probably the most important criterion in evaluating Road Utility Districts is an assessment of their ultimate cost to the State. The success of a RUD is contingent on a stable property tax base. Declines in the tax base can create a severe financial strain on the district. This is the principal factor effecting the demise of several County Road Districts around the state. This issue is specially addressed in the following section.

COUNTRY ROAD DISTRICTS

The County Road District (CRD) is a vehicle nearly identical to the RUD in purpose and in form. It is the most extensively used road financing district in Texas. Eleven such jurisdictions have been created in Travis County alone. The CRD is very similar to the RUD with a few exceptions. Foremost, the CRD does not require 100

percent land-owner approval for its authorization, only approval from the County Commissioner's Court. Additionally, road taxes for the district must be initiated by petition of 50 district electors. The tax, which cannot exceed 15 cents per \$100 of assessed value, must then be approved by a majority of the voters. The experience of one CRD highlights the potential problems with road district financing.

The Southwest Travis County Road District No. 1 (SWCRD) was authorized by the Travis County Commissioner's Court in 1985. The SWCRD was created in order to develop a 6.8 mile parkway connecting Texas Highway 71 with Loop 1. The parkway bypasses the congested 71 and U.S. 290 split in southwest Travis County. The district issued bonds amounting to \$20.2 million for construction of the 6-lane parkway to be repaid by road district property taxes. The facility finally opened in 1991 but at a tremendous cost. Including interest, the total cost of parkway will likely exceed \$234 million. Depressed real estate values and identification of adjacent lands as nesting areas for endangered species contributed directly to the demise of SWCRD.

In 1989, the SWCRD road district taxes were raised as high as nearly 15 times the county level. This was still not enough to complete construction, and the County was required to lend the District \$3.5 million to finish construction. In order to promote economic growth in the area, the County Commissioners stepped in and refinanced the road bonds over a 30-year period, reducing the taxes from \$2.82 per \$100 of assessed value to 95 cents in 1990. If development does not occur, interest payments could force an

increase in taxes by nearly 600 percent. In this case, all tax payers in Travis County, and not just the members of the road district, would be forced to pick up the tax bill for the road district bonds, estimated at \$234.3 million in 1991. The road is now referred to as "the trail of tears." (Texas Transportation Act, Section 3 (e).)

CONCLUSIONS

While the SWCRD represents the worse case scenario, it nonetheless can happen. Importantly, great care must be taken by persons responsible for authorizing the creation of RUDs that optimistic projections of property values be kept in check. Additionally, it may be of value to conduct a preliminary environmental assessment prior to authorization of the district. The assessment is not on the right-of-way where the road development will occur; this is already required by law. But, the assessment should be made on properties within the district which developers plan to promote and which serves as the principal tax base to the district. Failure to do so could lead to a situation similar to SWCRD.

Overall, the effectiveness of RUDs in Texas are limited. When controlled for properly, they can be a vehicle for infrastructure development at little or no cost to the state. The RUD is consistent with the user pay philosophy of TxDOT. In fact, road districts force the major benefactors to pay directly for the infrastructure, rather than spread the costs over all highway users throughout the state. The financing vehicle can be a sound instrument; however, it is unlikely to be widely used.

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