

THE BOOSTER NETWORK: A FRAMEWORK FOR ANALYZING  
STATE POLICY FORMATION IN AN ERA OF  
RESURGENT PRIVATE POWER

by

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ABSTRACT

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The continuing shift toward privatization has created new opportunities for private participation in transportation policy formation, infrastructure development, and service provision. The resulting high stakes have drawn a variety of traditionally powerful private players to overtly participate in Texas state policy making. Understanding policy formation in this era of resurgent private power is imperative because the outcomes will affect urban development, population distribution, and subsequent politics and policy.

With this paper, I analyze Trans Texas Corridor policy formation using a new framework, the booster network. The framework is based in policy studies and urban

development literatures, conceptualizes policy formation in five parts anchored to the legislative process, identifies players, and explains how they influence substantive policy outcomes. My methodology features an instrumental case study, designed to develop the framework, which includes a literature review and analyses of governmental documents and video of state legislative activity, supplemented by newspaper articles.

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PART 1  
HISTORICAL, METHODOLOGICAL, AND THEORETICAL DIMENSIONS  
OF POLICY FORMATION ANALYSIS

## CHAPTER 1

### TRANS TEXAS CORRIDOR AND BOOSTER NETWORK

#### 1.1. Introduction

This thesis was born out of curiosity about how society's varied interests come together to pursue their goals. Particularly, I am curious about how these pursuits, and the influence maintained by society's interests, create and change patterns of urban development. As a Texan with an interest in state politics, and who has seen Texas politics first hand while working at the legislature in 2005, I find the Trans Texas Corridor to be an excellent, readily accessible, and eminently relevant example for exploring these topics. The Corridor, which will eventually crisscross the state, is the planned \$175 billion, 4,000 mile transportation and communications network; in some places with an anticipated quarter mile wide footprint. It promises to have far reaching consequences for our population which depend on exactly how it alters the locational distribution of economic activity and human settlement.

A typical policy analysis might study the text and substance of the main bills that deal with the Corridor, House Bill (HB) 3588 and HB 2702, in an attempt to predict its possible outcomes, such as its potential effects on urban development patterns. Before these predictions can be made, however, one must make sense of the legislative provisions in terms of the policy's objectives and intended outcomes. This is a major challenge when studying the Corridor because

existing pronouncements on these subjects are broad and vague. Therefore, they are of little immediate use for guiding a traditional policy analysis, and could readily lead to predictions that are way off the mark.

This problem arose at the beginning of my research project, and has occupied it ever since. I have, therefore, used this thesis to undertake a policy *formation* analysis. It does not try to satisfy my initial curiosity regarding how the Corridor might eventually change urban development patterns, but instead attempts to answer the question, “How did the Trans Texas Corridor come to be?” The main part of my strategy for this was an attempt to defend my hypothesized Corridor policy objective by inferring what I call the policy principle from participants’ policy formation actions and statements. This task required a framework to structure and comprehend the empirical materials, and to provide a coherent analytical position from which to work. The objective obtained can later be used to complete a traditional policy analysis through further research. Also, I hope the results of the current research can eventually be used to help form a legislative strategy for ensuring the benefits produced by the Corridor are distributed as widely as possible throughout Texas’ population.

### 1.2. Booster Network Analytical Framework

To meet the research challenge, I developed a new framework which I named the booster network analytical framework. It was designed to respond to the research question in part by supporting or refuting my analytical position regarding the hypothesized policy objective, and in part by developing an explanatory narrative about the Corridor’s creation. I hope the framework can be used in other jurisdictions to analyze the formation of new transportation privatization policies—policies that are on the horizon if Texas’ role as national leader in this area continues.

My framework could hopefully provide a means to accurately assess the appropriate level of incentives required to ensure private participation, thereby allowing states and their citizens to retain as much benefit as possible from these initiatives.

My framework gains effectiveness for use on transportation issues over more general models of the policy process because material from the urban development literature has been included to highlight the most salient features of the former, thus leading to a new combination of portions of different existing models. It can be considered a specialized framework, a variation on Schneider and Ingram's (1997) policy design framework, which has been anchored to this specific type of policy process. Due to the extent of rearranging and the number of additional components added, my framework is more than a single application of their model, but less than a completely different understanding of the policy process.

To fully understand a concrete policy process, one must connect the public actions that create the substance of the policy to the influences moving those actions on the one hand, and to the explicit *and* implicit intended outcomes, or objectives, of the process on the other hand. The key to making this connection, to truly understanding how the policy came to be, is to provide a more complete answer for why it was pursued in the first place—to confirm its implicit objective. In the case of the Trans Texas Corridor, the explicit objective given by its progenitors is to provide much needed infrastructure to the state. To stop here when explaining why it was pursued is to give an incomplete answer. Its implicit objective, suggested by the literature, is to precipitate urban growth for profit generation. To test whether this is a reasonable assertion with the Corridor case, my framework was used to structure the empirical material in such a way as to allow the policy principle to emerge.

The policy principle, in my framework, is the principle that guides actions among the group of policy makers. With a booster network, as I will later explain, the principle gradually coalesces by tacit agreement to help coordinate their efforts on behalf of the policy. However, coordination of this sort is the product of each pursuing their own fundamental interests in the policy, not a command and control type coordination. The policy principle of the Corridor seems to have been to maximize private participation in policy provision by minimizing risk for these private sector participants. For a policy formation analysis, the emergent policy principle becomes the glue that holds together what otherwise might be thought of as unrelated empirical activities.

The first step toward discovering this principle, hence defending the analytical position, is to know who is typically involved in creating the policy type under study. Here, the booster network is an informal, state level, quasi-governmental policy making body. It is composed of government, financial, real estate sector, and developer-builder interests that, through what for now can be described as loosely collusive behavior, combines public action with private entrepreneurship to generate advantages for the member-interests. The set of interests here will be referred to as the booster network, and the individuals who do the work of the network will be called the players.

Besides helping to ascertain the policy principle, the booster network framework has helped structure a narrative for a case study to describe the creation of the Trans Texas Corridor. For a major case like the Corridor, the analyst faces several challenges upon digging into the empirical reality. These include difficulty identifying who the influential players might be, encountering policy ideas with deep roots and unclear beginnings, hidden or obscured

motivations, an extended, ongoing time period during which policy changes have occurred, large quantities of information to process, and long, complicated legal documents that enact and direct the policy. Also, the contours of Corridor creation are reminiscent of the processes responsible for urbanizing the western U.S. during the 19<sup>th</sup> century, so history became an early guide for my research.

### 1.3. Trans Texas Corridor Background

#### *1.3.1. History*

The Trans Texas Corridor was enacted in 2003 by the 78<sup>th</sup> Texas Legislature, and is a key initiative for then and current Republican Texas Governor Rick Perry. On January 28, 2002, Perry unveiled the proposal which, according to the *Houston Chronicle* (2002), had been “more than a year in the making.” A little over one year earlier, in December 2000, Perry had been elevated from lieutenant governor to governor just ahead of the 77<sup>th</sup> legislative session. During that session, a constitutional amendment establishing the Texas Mobility Fund (TMF) was passed, and it was subsequently approved by the voters the following November of 2001. The TMF was originally advocated as a way to increase funding so that ongoing highway projects could be completed (Okada 2002a). By January 2002, it would be transformed into a mechanism to fund the newly-proposed Corridor. That constitutional amendment and other measures passed by the legislature in 2001 commenced a sea change in state transportation policy that coalesced into the Trans Texas Corridor.

This group of measures was a response to a growing realization among policy makers that serious transportation problems lay ahead if nothing was done to preempt them. The root of



those problems was twofold. One was a booming population in the 1990s that was already outpacing, and by all accounts would continue to outpace, the state's capacity to provide adequate transportation infrastructure. The other was dwindling government revenues reinforced by the "no new tax" ideology that spread across the nation. Ric Williamson, appointed by Perry in 2001 to the Texas Transportation Commission (TxTC), the policy making body for the Texas Department of Transportation (TxDOT), placed the origin of the problem in the late 1980s. In 1986, he said, the Legislature moved dollars from transportation to general revenue to balance the budget. It was acting on faulty demographic projections. That misjudgment, combined with the fact that federal highway dollars are not distributed solely based on highest growth rates, resulted in the current predicament (Williamson 2005). Now, Texas has an overburdened system with a diminished ability to address its looming problems.

Upon unveiling his solution to Texas' transportation problems, Governor Perry immediately instructed TxDOT to develop an action plan for implementation by summer 2002. The plan included needed legislative changes which were forthcoming in the 2003 78<sup>th</sup> legislative session when Representative Mike Krusee, R-Williamson County, chairman of the House transportation committee, oversaw the passage of HB 3588—the measure that established the Trans Texas Corridor. In this omnibus transportation bill, innovative financing measures called toll equity, regional mobility authorities (RMAs), comprehensive development agreements<sup>1</sup> (CDAs), and the TMF were tied together for the first time. Toll equity is a provision

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<sup>1</sup> "CDA," comprehensive development agreement, was used here instead of "EDA," exclusive development agreement, which was the terminology used by the participants. EDAs, passed by the 77<sup>th</sup> Legislature, were the precursor to CDAs, but CDA language was in the enacted version of HB 3588 rather than EDA language. They are

that allows state revenues to be combined with private debt to lure private investment for building toll projects. RMAs are created to implement debt-financed toll projects that are backed by the project's future toll revenues. Comprehensive development agreements are contracts between the state or RMAs and private entities to facilitate faster delivery of infrastructure by promising the private entity all toll revenues generated by the project, after debt service, for a negotiated period of years or decades. These were originally termed “exclusive development agreements.” Finally, the TMF is a dedicated fund for servicing public bond debt for toll and other transportation projects. Additionally, its provisions allow the state to go into debt to build such projects—a practice previously prohibited (TxDOT 2002a). House Bill 3588 was designed to address Krusee and the governor's diagnosis that the state did not have the legal and financial tools necessary to pursue the full range of transportation options (Krusee 2003a). In 2005, HB 2702 (also authored by Chairman Krusee) was passed to revise the earlier legislation based on needs that arose during implementation (Krusee 2005b). To date, 3588 and 2702 are the two main policy statements on the Trans Texas Corridor.

### *1.3.2. Policy Context*

In Texas, the movement toward privatization is continuing to advance across the policy spectrum—and transportation is no exception. For years, private companies have built our highways. The newness of current changes lies in the extent to which they extend into financial management, design, operation, and maintenance of our transportation system. The debates surrounding transportation privatization are similar to those in education, child protective

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essentially equivalent except that CDA provisions update the old EDAs. Therefore, from here forward I will use “CDA” regardless of which is used by participants.

services, or health care, and they cover the range of privatization options. Many policy makers favor broad changes because private entities, they argue, will more efficiently use limited resources, more quickly provide badly needed infrastructure, and be able to bring extra resources to the table, thereby bearing the brunt of risks formerly borne by the public.

The measures that constitute the Corridor are built upon the wider privatization movement, and they apply in various capacities and differing degrees to transportation policy generally. On the whole, they offer increased flexibility to infrastructure provision, creating a policy landscape that will support everything from a minor road improvement to a massive initiative such as the Corridor that encompasses road, rail, air, and water transport. At the core of these measures are the innovative financing methods just discussed, all of which are geared toward enhancing financial flexibility. Since Perry came into office, he has presided over a shift in highway provision from a pay-as-you-go system to toll-based financing—what he and his allies consider user fees. Today, private entities can sign comprehensive development agreements to get a lock on toll proceeds, use this anticipated revenue as bond equity, then mingle state grants and loans with these funding sources to build projects with comparatively small direct outlays of their own.

Opponents ask if such financing mechanisms are necessary, whether the pay-as-you-go system is actually failing us or if we simply need to find the political will to put more money into it. Many argue that user fees are just a tax by another name. Such critics ask who is “really” benefiting from such measures, the general public or the private entities involved? Also, governance questions come to the fore, like whether the state should cede so much oversight and implementation authority to these entities. There are shadings of the past in this debate. One-

hundred years ago, private power had risen to supplant the public good, sparking the progressive reform movement which eventually increased the vigor and size of government to make it a countervailing force against that private power. Are we reverting back to the turn of the 20<sup>th</sup> century, overcompensating for the problems that resulted from decades of “big government?”

More generally, the shift to a toll revenue-backed, debt financed highway system raises a whole set of questions having to do with fairness and access to transportation. This is especially so because toll levels are under the control of private entities who have an incentive to raise tolls as high as the traffic will bear so debt can more quickly be retired, meaning pure profits will flow sooner. The previous gas tax financed, pay-as-you-go system did spread the financial costs and benefits relatively evenly across the citizenry by making both comparatively more generalized than the new system. Particularly when tolls levied in especially busy urban corridors will be used to extend not only highway but also rail and other systems into rural areas, some wonder if the benefits of the new, more direct toll user fees will accrue to those who pay them. Also, the new approach may curtail transportation access for those without the means to pay tolls. Therefore it would limit access to jobs, health care, and education, and lead to a two-tiered transportation and economic system.

There are also concerns related more strictly to the Corridor’s design. It centralizes our infrastructure to a degree that may compromise security, is so huge it may never be completed, and may inordinately disrupt our ecosystems. There are privacy issues with electronic toll collection systems, especially when administered by for-profit companies instead of government. Finally, there are concerns regarding urban development issues. Will urban sprawl increase? Will

existing cities have adequate access to the Corridor? These questions and many others will be decided largely by the private sector under this new system.

#### 1.4. Summary of Thesis Contents

This thesis is divided into two parts, Part 1. Framework Development and Part 2. Case Study. Part 1 includes this introductory chapter as well as chapters two through four. Part 2 includes chapters five through seven, and a final conclusionary chapter. Due to the massive scope of the Corridor initiative, and where its creators place their main focus, my analysis is limited primarily to the formation of its financing methods along with selected measures that directly support those. Furthermore, to simplify the analysis I discuss these measures, as much as possible, only as they relate to its highway provisions, although transit, rail, air, and water are just as important to the Corridor as highways.

Chapter Two, research methods, restates the main research question and related questions then explains the research design. My approach to the task was to gather material from the literature and newspaper articles. Then, after compiling a preliminary history of the Corridor, I prepared a provisional framework to be used for the study of my case. This initial framework, based in the aforementioned literatures, would later become the completed booster network analytical framework after findings from the case study had refined it.

In Chapter Three, I discuss the urban development and policy studies literatures. The former provides a well-established basis for identifying the interests we might expect to be involved with major growth-related policy changes. It also tells us what actions they could reasonably be expected to take, their likely motivations and goals, and the general nature of their relations to one another within the policy formation process. I went outside policy studies for

these because policy studies alone, provided too general a description of roles and functions to adequately guide the analyst in this regard. What policy studies do provide, however, is a comprehensive theoretical structure of the policy process, including how different parts fit together and interact, and explanations for how different substantive policy measures achieve the goals set out for them.

Chapter Four begins with a brief statement of the booster network analytical framework. The framework describes how a special group of people, the booster network, makes large scale, state level transportation policy changes by defining the policy out of its contemporary setting, elaborating that issue definition into a full policy design, then ushering it through the legislative process into law. The rest of the chapter further explains the framework.

Chapters Five, Six, and Seven, the body of this paper, comprise the case study—origins of the Corridor, proposal development, and the legislative process, respectively. The case study begins with a description of important events prior to the beginning of the policy formation process, and a narrative analysis of Governor Perry’s Corridor unveiling press release which, according to policy design theory, provides information about the way the policy issue was defined. This issue definition was subsequently used for a content analysis of video recordings of legislative committee hearings and floor debates that dealt with the Corridor’s enabling and refining legislation. These analyses, once combined with historical and archival information, built a description of how the Corridor came to be. After that, the findings were fed back into the initial framework, enhancing its power to explain how transportation and other urban development related privatization policies are created.

Chapter Eight, the conclusion, recapitulates the findings of the thesis and offers commentary on them.

## CHAPTER 2

### METHODOLOGY

As discussed in Chapter One, this thesis research is a policy formation analysis. It uses qualitative, exploratory methods to meet a research challenge that mainly consists of identification, description, and reasoning. The research question, “How did the Trans Texas Corridor come to be?” was pursued by further asking, “Who were the players involved and what were their likely motivations?” Through this research, I wanted to determine whether and how the traditional players in urban development-related policy making might have influenced the creation of the Corridor. The project was designed to respond to the questions through development of its central component, the new analytical framework discussed at length in Chapter Three.

I initially created a literature-based framework simply to help make sense of this policy formation process so it could productively be researched. From there, the current research design in which this provisional framework would be tested grew into what can be called an instrumental and heuristic case study to refine the framework’s formulation. The case study was meant to solidify relations between the framework’s parts, reveal its weaknesses, and enhance it by supplying new empirically-based abstractions. The study featured a three-part plan, using narrative analysis techniques first, then content analysis, both supported by contextual evidence, to produce usable information from existing raw text and video data.



The research was designed to probe my provisional framework in the name of developing a plausible explanation of the Corridor policy formation process, rather than confirming or disconfirming the existence and extent of a hypothesized influence as a more typical research design might. Therefore, it works from an analytical position more so than a conventional hypothesis. The distinction lies in that what I call the analytical position does not deal with an independent variable whose strength of relationship to discrete dependent variables is subsequently tested. The analytical position represents a whole group of variously related independent and dependent variables (in the form of the provisional framework), so it is an embedded hypothesized answer to the research questions. These relationships are “tested” qualitatively by comparing the various framework components to empirical evidence, adding up the results to these several comparisons to reach a plausible explanation that either generally does or does not support the analytical position set out at the beginning of the exercise.

Specifically, the case study provided a preliminary test of my framework by applying it to empirical materials about the Trans Texas Corridor even though faced with imperfect information. In particular, I hoped that by studying the entire span of Corridor policy formation, I would be able to support my key argument that the process and likely outcomes were structured by the policy entrepreneur to constitute and enlist the participation of the booster network. I approached it this way because the case, as I saw it, had to be built from scattered pieces of evidence. Lacking a single explanatory thread that ran through the entire empirical process, I felt this type of framework was the best option for creating a plausible explanation. Difficulties inevitably arise when recounting past events in an attempt to explain them. Importance may be attributed to things that were not a factor for the players at the time, or things that actually caused

them to act as they did may be unwittingly left out by the researcher. This is, unfortunately, in the nature of this sort of analysis. Therefore, a strong analytical framework was useful for comprehensibly structuring the account.

### 2.1. Methodological Basis of Research Design

Bruce Berg (2004) defines case study as a general methodological approach that does not specify any particular data collecting technique. A heuristic case study is exploratory research aimed at more clearly formulating research problems and offering tentative theoretical solutions, thus “[tying] directly into theory building and... [being] less concerned with overall concrete configurations than with potentially generalizable relations between aspects” of the case (Mitchell 2000, 173). The theory building purpose of the heuristic conception of case study is underlined by the more general category of case research to which it can be assigned, Robert Stake’s (1994) instrumental case study. An instrumental case study is undertaken to “facilitate our understanding of something else,” (88). The researcher turns the case to a goal, such as refining theory, other than better understanding the case itself. “[The] methods of instrumental case study draw the research toward illustrating how the concerns of researchers and theorists are manifest in the case,” (Stake 1994, 99-100). My research design merges these two conceptions of case study.

The narrative and content analyses that constituted part of the case study were information producing, instead of strictly data collecting techniques, because the data were preexisting. These half analytical, half data collection activities can be compared to Miles and Huberman’s (1984) anticipatory data reduction. In the early stages of research, according to them, the researcher has a rudimentary conceptual framework on which decisions that “focus and

bound data collection” are based. This focusing and bounding, called anticipatory data reduction, “is a form of pre-analysis ruling out certain variables and relationships and attending to others,” (Miles and Huberman 1984, 28). In completing both these analyses, I reduced the data with a similar pre-analytic technique before fully analyzing the already once processed data to extract more pointed information. Later, each of these analyses forms the empirical anchor of the respective chapters containing them.

Narrative analysis, the first step in the case study, “identifies the basic story being told focusing on the way an account or narrative is constructed, the intention of the teller and the nature of the audience as well as the meaning of the story or ‘plot,’” (Ritchie and Lewis 2003, 200). My mode of narrative analysis was based on Stone’s (1988) work discussing how narrative and metaphor are used to define and achieve policy goals through symbolic representation, and Schneider and Ingram’s (1997) explanation of social constructions of target populations as well as other parts of their policy design theory. Content analysis is one “in which both the content and context of documents are analyzed: themes are identified with the researcher focusing on the way the theme is treated or presented and the frequency of its occurrence,” (Ritchie and Lewis 2003, 200). My research focuses on treatment and presentation rather than frequency. Ritchie and Lewis (*ibid.*) emphasize that narrative analysis is concerned primarily with the construction of concepts and ideas as represented by language in a text, while content analysis focuses on substantive meanings found in the data. My design links the two together feeding the second information produced by the first, then uses results from both for theory building work.

## 2.2. Description of Research Process

### *2.2.1. Beginnings*

I began the research by reading both the urban development and policy studies literatures, as well as newspaper articles about the Corridor. My provisional framework grew out of this work to form the central part of my research design. Before developing the research design, however, I formulated the aforementioned research questions. At that time, I additionally asked exactly how Corridor policy would work and what that might mean for future urban development in Texas. I also set forth a hypothesis about potential future development patterns. The hypothesis was to have been tested with a policy analysis of the most current Corridor legislation, an analysis that in turn would derive its emphasis from my cursory answer to the original research question (How did the Corridor come to be?): that a network of urban boosters was responsible for creating the Trans Texas Corridor. These bundled hypotheses, I believe, were not unsupported by the literature and news, but as a rule, each step of the research process from that point forward has generally involved separating the strands and narrowing the originally conceived project.

### *2.2.2. Research Design: Original vs. Revised*

The research design followed Denzin and Lincoln's (2003) advice that it should be a "flexible set of guideline" to link theories with research strategies and empirical materials. When the design was originally developed, I planned an attempt at definitively connecting the booster network to the initial problem/issue definitions established for the Corridor after which I would trace those definitions through the legislative process by observing who tried to change which

aspects of them during the contest. Finally, I would identify the (perhaps somewhat altered) definitions in the ultimately enacted version of HB 2702, the most recent major legislative statement on the Corridor, thus linking the booster network to potential future policy outcomes. The assumption that the substantive contents of a policy, its policy design, are causally linked to *and can be predicted from* particular processes that created the policy, borrowed from Schneider and Ingram (1997), is what was to hold the analysis together. Therefore, finding booster network policy definitions in the most recent “version” of the Corridor would support the initial bundle of hypotheses, and answer the research questions.

As the research progressed, it became evident there was not enough time to do a policy analysis as envisioned. Because the key to an analysis of 2702 would come from a required prior analysis of the Corridor’s formation, the research design was scaled back to include only the formation analysis. The original design had been built around the initial, provisional framework. That framework was the same one tested by the scaled back case study. It understood the Corridor as an idea that originated with agreement among the booster network, was initially defined as a set of social constructions during the early stages of policy design, crystallized for the first time in the proposed language of HB 3588, and was transformed through the legislative process into a finished product with a unique set of design elements. The framework was heavily based in Schneider and Ingram’s (1997) comprehensive policy design theory and borrowed its basic sequence of events from Kingdon’s (2003) agenda setting theory. The dynamics of interaction between the players described by the framework came from the urban development literature, for example growth machine theory.

The research objective that unfolded as I moved forward was to identify the network's guiding policy principle to provide more than tentative but less than definitive answers to the research questions. In particular, having the principle in hand for the analysis would provide the key insight of intended policy outcomes. I attempted to reveal the principle by applying the analytical framework to the empirical policy formation process via a content analysis, "triangulating" the principle by observing empirical data (video) of the legislative process to see which, if any, issue definition elements were emphasized. To do this, I first completed a narrative analysis, then further processed its results into "empirical referents." There were a broad range of items, or themes, many based on terminology from the issue definition, to be watched for during viewing of the legislature as it debated and enacted the Corridor. The referents were compiled into one-page reference sheets to have in front of me while analyzing the contents of video footage.

### *2.2.3. Narrative Analysis*

I conducted a narrative analysis of Governor Perry's January 28<sup>th</sup>, 2002 press release which accompanied the Corridor unveiling to discover and examine the policy's issue definition. The release was obtained from Perry's official website. The narrative analysis was the foundation of my attempt to link the booster network to the Corridor. This press release, aside from the (unavailable) press conference it accompanied, represents the first public exposition of Corridor policy. Because Perry was the policy entrepreneur on the Corridor issue, I thought this text would offer the best available glimpse into its socially constructed issue definition from the point of view of its creators—a press release is prepared with care to get a particular message out. Obtaining the definition in their own words would facilitate my following the network's

activities through the legislative process because their legal language and discussions should use the terminology carefully crafted by their leader.

Several newspapers from across the state that covered the unveiling, including Austin, Dallas, Fort Worth, Houston, San Antonio, El Paso, and others, were also consulted, primarily to enhance my interpretation of the press release by providing additional context. The articles did also offer some information on what probably was emphasized during the press conference. They, interestingly, showed the extent to which the press release shaped the content of the initial reporting, therefore the subsequent debate, on the issue, having distributed Perry's issue definition into the public consciousness.

#### *2.2.4. Additional Data Collection*

To supplement the narrative and content analyses, and to provide context and evidence, I tapped especially newspaper articles but also miscellaneous sources such as other press releases, Texas Transportation Commission meeting transcripts, and TxDOT publications. I wanted to get a feel for the timing of the issue definition activities, the focus of the narrative analysis. Also, I analyzed witness lists of Corridor-related bills from three consecutive sessions of legislative hearings covering the 77<sup>th</sup> through 79<sup>th</sup> Legislatures from 2001-2005. My research activities had revealed 77<sup>th</sup> Legislature precursors to the Corridor. I hoped the witness list analysis would show groups of interests that repeatedly battled over the issues involved. In all, the supplemental research enabled me to sketch a history of the process. It generally but inconclusively supported the provisional framework.

### *2.2.5. Preparation and Execution of the Content Analysis*

The legislative histories of 78(R) HB 3588, the legislation that established the Corridor, and 79(R) HB 2702, which revised 3588, were very important to this investigation because these bills, as indicated before, are the main legislation to date that deal with the Corridor. In addition, they are self described as being related to one another in both purpose and content (Krusee 2005b). Two parts of their histories were chosen for the content analysis, committee hearings and floor debates in the Texas House and Senate. To become law, all bills must go through these processes which are video recorded by the chambers, archived, and available online at the Texas Legislature website. These videos were reviewed, their contents analyzed for the case study.

Video data were chosen for review over textual forms such as the various versions a bill takes because they can better reveal the tone and nature of interaction between participants. The processes viewed are times when legislation is publicly heard and debated in the context of proposed changes. As such, they tend to filter discussion of the bills' content down to the more contentious provisions, as viewed by potentially affected parties, and the defenses thereof. A conference committee report, which most often does not have video documentation, leaves no rationale behind the changes made.

During hearings, the committee generally takes testimony from the public, state agencies, various experts, and other participants while deliberating and arguing a bill's contents. For floor debates, legislators argue amendments to the bill, and vote on various procedural motions which often have substantive importance. These debates bring the widest possible range of interests into view because legislators, who are also privy to much of the "inside" dealings that occur, are alerted to the multiple sides of contested issues, and are acting on others' behalf in debate. One



of the chief drawbacks of using floor debates is that interests not strictly related to the purpose of the proposal often pull the debate off topic, thereby somewhat limiting the amount of useful information for an analysis such as the present one.

A quick description of how to locate the exact desired video footage is warranted here. All necessary steps can be taken at the official Texas Legislature website. To access debate over a particular bill, one must know what dates important actions were taken, in which committees, and what the order of business was. First, from the Legislature's main web page, **www.capitol.state.tx.us**, one must pull up the bill's file through a search using its session and number. For example, HB 3588 was passed by the 78<sup>th</sup> Legislature during the regular session. Therefore, its official designation is "78(R) HB 3588." To pull up a bill, then, one must choose the correct session then search under "HB 3588." Once retrieved, a list of official actions with dates and, when applicable, corresponding chamber journal page numbers (which contain further details) should be in view. If not, click the "actions" link.

Links to archived videos are available at each chamber's website. For committee hearings, one must pull up the chamber's individual committee page then link to the video archives from there. A link labeled by the date of the hearing will allow the searcher to view the corresponding video footage as a RealPlayer file. The committee schedule for each day's hearings is also available at each committee page, but unfortunately the order is not always followed during meetings. The schedule is still helpful for ruling out bills as the video is fast-forwarded to find the content you are looking for. This procedure works for both chamber's committee hearings.

For floor debates, the procedure is slightly different, and it is not the same for the two chambers. For the House, calendars as well as videos are available for each day's floor proceedings at its main page. Check the date's latest calendar, the supplemental calendar, to see the accurate order of business. House practice in floor debates is to follow this order, so the calendar offers a rough idea of how far into the day's video footage the bill will fall. The Senate, however, does not follow the calendar order, so the easiest way to find when your bill was debated in relation to the others is to refer to the Senate Journal page number found at the bill's action history. Check the journal at the Senate's web page to see what the debate order was.

To document each committee hearing reviewed, I recorded the chamber, committee name, date and time of meeting, time finished, members present, bill number and version discussed, and start and end time on the RealPlayer file. Additionally, I recorded witness name and affiliation, official and informal witness position (often the two are different), and the general tenor of each interaction. For floor debates, I documented the chamber, date and time of meeting, time finished, bill number and version debated, and start and end time on RealPlayer file. During note taking, when appropriate, I noted other general information such as who spoke when, amendments, procedural motions, and votes. For both processes, I reviewed the video as many times as necessary to get pertinent direct quotes. The forms I created to help document and direct note taking can be found in Appendix A to this thesis.

Once these preparations were made, I reviewed and took extensive notes from a total of five committee hearings and three floor debates over HB 3588, and one hearing and one debate over HB 2702. For the 2702 floor debate, I used notes taken as the original debate occurred May 11, 2005. The reason I did not view the additional main Senate hearing and debate, or the minor,

mainly procedural third reading House and Senate votes, was mainly to save time. These would have added several hours of video watching to my research, which was under deadline. However, I believe this does not compromise the analysis because often the main debates are repeated in both chambers, and furthermore because 2702 revised the original legislation. Therefore, many of the most contentious issues had been previously worked out. During note taking, I referred to the one-page reference sheets for reminders of specific referents to watch for. These included terms used for the important financing provisions of the Corridor, metaphors and underlying narrative, and reminders of other types of signs to watch for like contentious debates or procedural maneuvers that might indicate a fight over issues.

#### *2.2.6. Revision and Framework Adjustment*

After conducting the case study, I extensively revised all the writing done up to that point to clarify my purpose, process, conclusions, and the relationship between different aspects of the research. I especially spent a lot of time revising the provisional framework based on evidence and findings from the case study. Once this was done, it became clear that the framework needed adjustment beyond cosmetic additions and refinements. Especially, the case study had not revealed reason to believe that members of the booster network other than the policy entrepreneur had participated in the formulation of the Corridor. If true, this contradicted the literature on both 19<sup>th</sup> century and contemporary urban development. Although I removed early “agreement” among the network when formulating a proposal from the framework, I do not explicitly deny it as a possibility. What the change accomplishes, however, is to strengthen the model by allowing an analysis based on fundamental interests to explain motivations to early

(yet post-decision) policy formation participation by the private sector members of the network—an analysis now more strongly supported by the case study evidence.

CHAPTER 3  
URBAN DEVELOPMENT AND POLICY STUDIES LITERATURES

3.1. Urban Development

*3.1.1. 19<sup>th</sup> Century Urban Development*

Nineteenth century urbanization in the western United States resulted from was the coming together of several individual yet related economic pursuits aided by government authority. Businessmen of the day knew that community growth drove investment success in banking, real estate, transportation, and trade (Glaab 1967; Abbott 1981). Leading local citizens and business entrepreneurs were often one in the same, and typically had ties to eastern investors. These elites, motivated by personal financial ambition, forged personal relationships with and petitioned state governments to charter cities that they themselves would govern in the name of growth (Wade 1959; Glaab 1962; Glaab 1967; Abbott 1981; Judd and Swanstrom 2002).

Because adequate transportation infrastructure must precede large-scale business and community growth, railroads were at the core of urban growth strategies of the day (Wade 1959; Glaab 1962; Glaab 1967; Judd and Swanstrom 2002). Therefore, local businessman-officials also worked in concert with railroads to obtain state charters and favorable policies for the railroads in return for lines running through their communities that would connect them to the wider

economy (Heath 1954; Glaab 1962; Johnson and Supple 1967; Judd and Swanstrom 2002). Also, once city governments had been established, local elites in their roles as government officials combined forces with “strictly” business organizations, mingling public and private now at the organizational level to allow both sectors simultaneous influence in governing and business and community growth projects. These trends of the era blurred the distinction between public and private, and the fawning, salesman-like nature of local players’ tactics for dealing with state governments and railroad interests in pursuit of this urban growth has led them to be called city boosters (Glaab 1962; Abbott 1981; Judd and Swanstrom 2002).

On railroad projects, the various private and public players worked closely together at both local and state levels. On one hand, this occurred because building the infrastructure was a huge task that necessitated the use of all available public and private resources, including condemnation and charter authority, entrepreneurial and management skills, and huge capital investments (Heath 1954; Johnson and Supple 1967; Salsbury 1967). On the other hand, they did so to ensure their related real estate and other business investments would prosper since the choice of where to build the railroad determined the locational pattern of growth. Investment profits came from both actual railroad building and ancillary growth and development (Johnson and Supple 1967; Salsbury 1967). Over time in these three-way dealings between boosters, state governments, and railroads, the railroads and their wealthy backers gained the upper hand in the relationship, forcing exclusive rights, complete managerial control, and ever larger public financial commitments with fewer strings attached. This left governments vulnerable to private withdrawal if sufficient profits failed to flow quickly enough (Heath 1954; Glaab 1967; Johnson and Supple 1967; Salsbury 1967; Judd and Swanstrom 2002).

### *3.1.2. Growth Machine Theory*

Regarding late 20<sup>th</sup> century urban processes, Harvey Molotch (1976) introduced the notion to urban studies that modern cities are often governed by enduring coalitions, namely growth machines, that rule them over time always with an eye to using local government to encourage growth and development. These land-based elites are business interests such as banks, realtors, construction, and other development interests, and they become involved in government to enhance their business and personal investments by directing physical growth (Molotch 1976; Gottdiener 1985; Jonas and Wilson 1999; Logan and Molotch 2002; Reese and Rosenfeld 2002). Unlike the 19<sup>th</sup> century situation, growth machine elites occupy impersonal positions held by the established interests of the coalition, yet they are similarly bound to one another by growth-related concerns shared at a fundamental level—bound so closely that conspiracy is not necessary (Gottdiener 1985; Logan and Molotch 2002). In this situation, public and private have again merged (Gottdiener 1985; Cochrane 1999; Logan and Molotch 2002).

Growth machine theory has been extended and critiqued over the three decades since its introduction. Clarence Stone developed a regime theory typology that focuses on several different types of political coalitions, including a growth-based one, to explain community power and local governance (Reese and Rosenfeld, 2002). Also, the localist bias of growth machine theory has been critiqued in favor of a wider, particularly national and international perspective, that attempts to understand links between inequalities within cities and broad political patterns using the growth machine lens (Jonas and Wilson 1999).

Comparing and contrasting growth machine theory to scholarship on 19<sup>th</sup> century urbanization processes points to a different application of the literature on urban development, an

application that turns insights provided by these two to contemporary state-level policy making. Not all these insights necessarily apply, but they offer a good basis for further inquiry into potential linkages. Both urban development approaches revolve around the central idea of enduring land based coalitions of private interests that harness government to enhance private investment, creating an intermingling of public and private spheres which results in strong private power. Both understand the coalitions to operate using a closed decision making process accessible only to member elites. Additionally, both approaches deal with boosterism, the way these networks arouse public support for their activities while encouraging outside private investment. Jonas and Wilson discuss how the use of language to “boost” a city’s image is infused with political meanings and values: “This complex and potentially controversial process, not surprisingly, involves deploying such tropes as metaphors, sanitary coding, similes, and metonyms so as to maneuver and coerce,” (1999, 9).

By way of contrast, growth machine theory understands growth coalition interests to be represented by impersonal positions rather than depending on particular individuals and their ability to forge informal relations within which growth is pursued. This reveals the established nature of contemporary growth machines as well as, perhaps, a change in the way affairs are conducted compared to the 19<sup>th</sup> century. Also, scholarship on 19<sup>th</sup> century processes points to more direct state involvement in local growth. For one, personal relationships between state and local players were the norm during that time, but also the typical request of state legislators was different then, too. The focus then was on locating growth in nearly or completely undeveloped areas by obtaining state charters and other supporting conditions for cities and railroads as a prelude to expanding new or existing cities through growth. This is because outside interests



could more easily participate in various investment opportunities where existing investments were sparsely scattered or less well established. Growth machines, however, tend to focus more on capturing local governments for local purposes, approaching higher levels of government to obtain action to facilitate locally driven growth. For example, Judd (1986) discussed growth machine efforts to prevent Colorado state action that threatened local autonomy. The final key difference between the two eras is the 19<sup>th</sup> century concentration on transportation as the core strategy for producing and controlling growth directed at enhancing, primarily, land based investments. Today, growth machines spur growth in basic economic functions as a way to spark important industries such as services, housing, retailing, and wholesaling, in addition to land based investments (Logan and Molotch 2002).

### 3.2. Policy Studies

Lester Salamon (1989) describes the evolution of the policy studies field to just before its current focus on the tools and design approach. Classical public administration, the first traditional academic field to turn its attention to policy, focused on agencies while political science created broad, theoretical typologies of limited value for explaining the contents of policy. Policy analysis uses a case study approach for studying programs that is difficult to derive theories from. And implementation research, while concentrating on process, institutional arrangements, and the behaviors of actors, again uses a case study approach that makes a comprehensive implementation theory elusive. Policy design, however, focuses on how policy makers match a problem with a solution, emphasizing the role of the design's components in creating that match (Ingraham 1987). This approach prominently features policy tools, treating

the design of policies as a twofold problem-solving activity that involves solving the policy problem while maintaining political support for the solution.

According to Salamon (1989), a policy tool is the method the government uses to meet a policy goal, a concrete mechanism within a collection of programs aimed at ensuring a policy achieves the objectives set out for it. Schneider and Ingram see tools as “explicit incentives and other means imbedded in the policy that increase the probability of agents or targets taking actions in concert with policy objectives,” (1990a, 87). They divide tools into types based on the behavioral assumptions each tool relies on for its effectiveness. One of the main benefits of using such an instrumental conception of policy making is that it offers a clearer understanding of how policy objectives are actually accomplished (Elmore 1987).

Tools will not produce the desired effects, however, if they are not nested within a structure that supports their effectiveness (Edwards 1980). Weimer (1992) conceptualizes the use of an effective nested structure to be itself a tool-using act. In that case, a tool becomes a “system of incentives” that can be adjusted to produce desired outcomes. It leads him to focus on altering and creating organizational forms with such incentive systems in mind. This type of tool reallocates authority among individuals and agencies to achieve its ends (Elmore 1987). The main difference between this view of tools and Schneider and Ingram’s policy design conception is that it is a systems view that encompasses the individual tools that Schneider and Ingram describe. Either way, precise causal theory about social behavior is the main focus of the policy tools approach, and the core of achieving policy objectives (Mazmanian and Sabatier 1981).

Decision makers must be cognizant of implementation issues when designing public policy if they hope for it to be effective (Edwards 1980). The forward thinking required for this

fixes the relationship, through a policy's design, between the makers' original intentions and objectives and the likely outcomes of the policy. Because it is difficult to translate ideas into effective, coordinated action, maintaining assent among target populations and agents during implementation is crucial (Bardach 1977). During this period, public and/or private agencies have to convert policy into practice, that is, operationalize policy goals (Gerston 2004). Therefore, the various components of the policy must be organized into a coordinated structure, each piece directed toward the success of the whole. The design must take the political, cultural, social, and economic characteristics of those on whom the policy depends into account because objectives are only achieved through those people (Schneider and Ingram 1990a).

Policy design theory, with this focus on tools, is strong at describing how policy objectives are achieved, and is particularly well suited for the act of developing policy. The field of policy studies has increasingly enhanced knowledge of how policy objectives are to be accomplished, but offers little toward ascertaining existing objectives for an analysis of a particular formation process. Policy design theory identifies and analyzes, as Schneider and Ingram say, the "if...then inference" connecting the tool to the behavior because the "aspects of decisions and behavior that have 'policy handles'...are the *only entry points* for tools," (1990a, 88). If tools are chosen to ensure certain outcomes are achieved, then an analysis of a policy using policy design theory could explain how those outcomes are achieved. However, such an analysis would have to have foreknowledge of a relatively complete set of policy outcome goals and objectives (as a policy designer would be given for developing a new policy)—knowledge that is often obscured by political actors for strategic purposes. Can policy design theory be used to analyze a policy process to obtain those objectives, or confirm those suggested by the urban

development literature? Once in hand, a powerful analysis of potential outcomes could be performed by combining objectives with analysis of the policy design. This is because it can be assumed that the tools and design chosen by the creators of a policy are chosen because of their predicted or hoped for ability to produce desired outcomes.

### *3.2.1. Policy Design Theory*

Schneider and Ingram's (1997) policy design approach offers a framework for examining the formation process and content of public policy, even if the framework lacks in the ways just discussed. Their model is based on the idea that certain processes which occur during the early development of a policy cause predictable substantive features in its finalized version. The finalized version of the policy, the policy design, effectuates the desired outcomes of its creators by enlisting the participation and/or behavior changes of agents and targets. The finalized policy product contains six elements: (a) goals/problems to be solved, (b) agents, or the institutions responsible for developing and delivering the policy, (c) target populations, the people and/or groups whose behavior is intended to be changed, (d) rules, the procedures the agents and targets are supposed to follow in their actions, (e) tools, the aspects of the policy that are intended to cause behavior change, and (f) rationales and assumptions, the justification and explanation of the policy.

In conjunction with the description of policy design components, Schneider and Ingram (ibid.) modeled a three-part process that produces the design. The parts are societal context, issue context, and policy design, respectively, and can be thought of as functional states in the life of a policy from before its inception to maturity. The societal context, which provides the raw material from which the issue context is framed, "encompasses all aspects of the physical, social,

psychological, political, and historical world,” (Schneider and Ingram 1997, 73). The issue context is “the narrower, more specific (socially constructed) understanding that emerges from the societal context,” (ibid.). It includes social constructions of target populations and knowledge, power relationships, and institutional cultures. Both target populations and knowledge are established early on by leading players, forming the basis of the future policy. Target populations are group identities forged by linking commonly-held attitudes toward members of the target group to potential benefits or burdens the policy will confer. Knowledge, in the authors’ definition, is the authority on which the truth of the problem assessment, thus future solutions based upon that assessment, is established. Both social constructions interact with power relationships in the given institutional setting to produce the policy design, the policy’s substantive contents (Schneider and Ingram 1997).

In the policy design model, the policy process is disembodied for generalizability purposes from the concrete institutional process that decide issues in our society, so the explanatory power of issue context and policy design suffers, especially for use in studying a policy formation process as opposed to analyzing the final policy. Its strength at relating substantive contents to earlier processes, however, means that it might still be usefully applied to a policy formation analysis with some alteration. Of course, Schneider and Ingram (ibid.) include institutional cultures as an important part of the issue context, but when applying their framework to a real life institutional process, the boundaries between their three functional states blur, easily shifting chronologically forward or backward depending on how they are interpreted.

Societal context clearly refers to the general milieu existing prior to policy making activities. The authors say that “framing dynamics” carve the socially constructed issue context

out of that amorphous state. However, they do not detail who might do this, how they do it, or exactly when it occurs—or what actions cause the boundary between societal and issue context to be crossed. These things are important to know when analyzing policy formation because the inception of the policy is a crucial milestone. Similarly, it is possible to confidently assert that the policy design is complete once an authoritative decision is made (such as legislative enactment of a proposal), but their model does not identify the point at which a finalized policy design first emerges. Certainly, “finished” design components such as goals/problems, rationales and assumptions, target populations, and perhaps even agents must be fixed at some earlier point; otherwise there would be no coherent proposal to debate and enact.

### *3.2.2. Politicians and Experts*

While Schneider and Ingram (ibid.) remark that people with a stake in policy outcomes will often become involved early during issue framing and construction, Kingdon (2003) takes that train of thought a step further asserting that policy entrepreneurs will often take a policy solution then work backwards, constructing the issue so the “solution” seems to be the perfect fit for the “problem.” Policy entrepreneurs may be politicians, lobbyists, or other players in the policy arena. They are called entrepreneurs because of their role in organizing the policy process at opportune moments—just as business entrepreneurs organize economic processes, often aided by unexpected opportunities as they arise. Policy entrepreneurs pull together three “streams” flowing through the public world to create and enact a policy. These are problems, solutions, and politics. Problem recognition, the first stream, is essentially the same process of issue framing Schneider and Ingram describe. The “solutions” stream represents ongoing efforts to formulate and refine policy alternatives that await problems. “Politics” is the process that leads to an

authoritative choice of the alternative that is eventually pursued and implemented. In Kingdon's framework, politicians and other entrepreneurs play a distinct role from experts:

If any one set of participants in the policy process is important in the shaping of the agenda, it is elected officials and their appointees, rather than career bureaucrats or nongovernmental actors...[A] visible cluster made up of such actors as the president and prominent members of Congress has more effect on the agenda, while a hidden cluster that includes specialists in the bureaucracy and in professional communities affects the specification of the alternative from which authoritative choices are made (2003, 19).

Policy alternatives are, importantly, most often developed over a long period by the gradual accumulation of knowledge and perspectives among policy experts, and entrepreneurs often construct policy problems to fit these readymade solutions.

## CHAPTER 4

### ANALYTICAL FRAMEWORK

The booster network framework is a description of the policy formation process, the period prior to and including authoritative enactment, which serves as an analytical tool for comprehensibly organizing the particular policy formation reality and drawing conclusions about it. The framework applies to policies that are expected to spawn large scale urban development, and requires that privatization to mobilize the booster network into action be a major element of the policy. It features empirical “landmarks” that anchor a real world case, in particular the pronouncements of the issue definition and the familiar legislative process.

#### 4.1. Booster Network Framework Statement

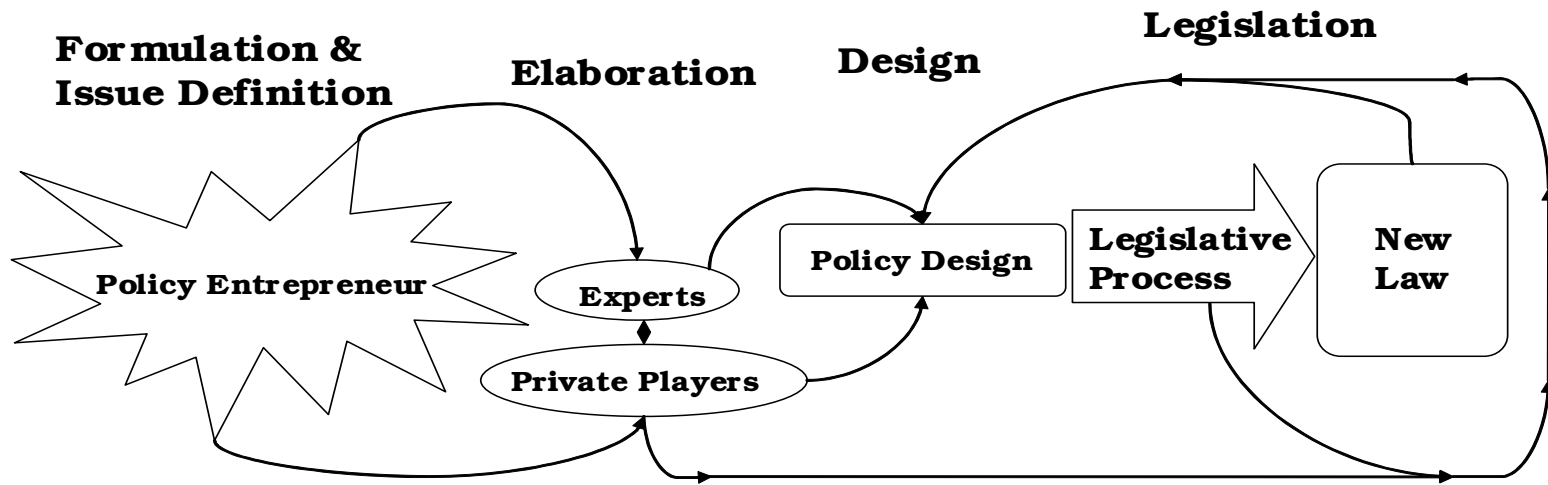
Before the policy formation process is said to have begun, the setting, equivalent to Schneider and Ingram’s (1997) societal context, exists. The setting is the background milieu before the formation process begins. It functions mainly to supply the policy problem and other preexisting conditions the players refer to, and in contrast to activities described by the framework, to be the state of affairs that precedes the nascent policy. The beginning of the booster network policy formation process is marked by the start of proposal formulation, which acts as the first part of my five-part framework, and the new law punctuates the end of the process. The five parts are as follows: (1) the booster network, (2) formulation and issue



definition, (3) proposal elaboration and policy design, (4) legislation, which culminates with the new law, or finalized policy, and (5) goal structure and network coordination.

# Booster Network Framework

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\*My framework is based in the policy design model (Schneider and Ingram 1997).

Figure 1. The Booster Network Framework

#### *4.1.1. The Booster Network*

The booster policy network as described by my framework has its origins in the urban development literature. The modern network operates like a growth machine, and is constituted at the state level. As opposed to its 19<sup>th</sup> century predecessor, it is not so much a clique of particular individuals, but like its predecessor, is organized around a common interest in urban growth. Another of its defining characteristics is its closed nature. In this sense, it is an elite group that does not include a full cross-section of society. However, in today's political atmosphere, outright elite, cliquish exclusion is not tolerated. The booster network avoids direct political enmity by precluding participation of groups that would otherwise be expected to claim a right to participation on authority that they represent wider, public interests. Preclusion is accomplished through careful, one could say narrow, definition of the policy issue at hand, thereby preempting claims to participation on the grounds that the issue is not strictly "public," but instead has a narrower focus—implying that it does not extend to directly impact all societal interests. When challenged on this point, the booster network retorts with the narrow definition, insinuating that the time to represent these other (public) interests is through another, specific initiative directed to that purpose.

The booster network consists of all sorts of development-related concerns, which can be divided into a small number of main categories: government and politicians, finance, real estate, and construction/developers, and it exists latently before being informally constituted when the policy entrepreneur mobilizes it to help develop the formulated solution into a comprehensive policy. For this framework, experts, be they public or private, are also included. Government players include officials and the bureaucracy at all levels, and finance covers banking and bond

markets. Real estate interests in the booster network range from investors and other large landowners to speculators. And construction/developer interests are made up of a variety of players from big developers, construction and engineering firms, materials suppliers and other subsidiary industries to businesses that would local along a major new transportation line such as retail stores, hotels, restaurants, gas stations, garages, and manufacturers and distributors of goods.

#### *4.1.2. Policy Formulation and Issue Definition*

The booster network's policy entrepreneur begins the policy process by formulating the solution s/he desires, one that s/he believes the network private business interests would also like to see implemented. A comprehensive policy, including the problem to be solved, is later erected around this solution. Solutions and problems exist independently of one another, allowing them to be constituted as an actionable pair when the time is right. Although choosing the solution logically precedes issue definition, the time that elapses between them is perhaps unknowable for the analyst. The two may occur simultaneously as the proposal is being formulated.

Issue definition is the act of deciding and articulating basic conceptual components of a policy proposal. It is marked by pronouncements or some sort of public discussion about the proposed policy, and is the responsibility of the policy entrepreneur. This activity serves two main functions. First, it gauges public opinion and helps develop the policy's rationale. As such, it is a singularly important activity that marshals political support for the solution it points to—a solution that makes intuitive sense because the problem has been diagnosed to be fixable by the solution. Next, it activates the booster network to engage in the policy formation process. In this role, the issue definition also supplies players with a vocabulary for discussing the initiative, and

serves as a refuge for what they intend for the proposal because it is here where the flexibility of language allows multiple goals to coexist.

In order to activate the network, the policy solution that is to be pursued must appeal to the network's interests. It must promise enough new development, and enough private involvement in that development, to enlist private actors in the policy formation process. Because both the development and implementation of the policy depend on strong private involvement to succeed, the initial solution must be designed to act as the organizing principle for the previously nonexistent network. In other words, it is a leadership device for a policy entrepreneur who wants to enact a successful privatization policy.

#### *4.1.3. Proposal Elaboration and Policy Design*

Issue definition brings the involvement of private boosters to policy formation in part by defining them as partners for implementation, thus directly leading to proposal elaboration. Elaborating the policy means expanding the issue definition into a full proposal replete with details and technicalities, in other words into a full policy design. During the elaboration period, there is a division of labor among the policy entrepreneur, public and/or private experts, and business entrepreneurs. The policy entrepreneur justifies and organizes the effort, the experts work out the details and technicalities of the policy, and business entrepreneurs offer advice based on their experience in the field. Perhaps more importantly, business entrepreneurs signal their support by undertaking and investing in projects made possible by a policy's new provisions. These latter activities are particularly important as successive versions of a policy are revised during subsequent legislative sessions. A repetitive legislative strategy such as this, well suited for booster network-led privatization policies, enables new ideas to be tested on a small

platform before being implemented on a wider scale. These improvements by both public and private participants are part of the policy's elaboration that leads to the complete policy design. A full policy design, but not necessarily a finalized one, is a functional requirement that must be met if there is to be a coherent, debatable proposal for the legislature.

#### *4.1.4. Legislation*

The design, which may be peripherally but not fundamentally altered during the legislative process, is merged with the legislative proposal (bill), thus it does not have to exist in another documentary form. Legislation, the institutionally defined portion of my framework, begins with the introduction of the policy holding bill in the legislature. The bill is shepherded through the legislative process, and the network attempts to preserve the thrust of its policy while others have the opportunity to change or defeat it. Because of the structural opposition built into the institution, pressures will force the network to reveal its aims in at least some limited fashion during questioning and debate. This stage is where power relations, non-booster network participants, and opponents of the policy are explicitly considered in my framework. That said, most have limited to no influence on the policy. The enactment of the policy into law at the end of this stage is the culminating moment of the policy formation process. It settles the policy until the law is changed again, thereby representing the finalized policy.

#### *4.1.5. Goal Structure and Network Coordination*

As discussed in Chapter One, to properly understand the policy formation process, the analyst needs to have some confidence about the policy's implicit objective. This objective is one type of goal nested among many, including the explicit objective, within what I call a goal

structure. The goal structure must be elucidated to interpret the meaning and probable real world effects a policy will have. The task is complicated by the fact that players often intentionally hide their motivations and goals for strategic purposes. In light of these challenges, for my framework to work I have assumed the policy's issue definition contains some version of its "true" objective—even if deeply encoded. The key to uncovering it is to judge the meaning of players' statements in a context such as the legislative process, where they are pressured to explain their actions and aims. I also assume that actors are driven by their fundamental interests which they pursue in the context of the particular policy initiative. This means that private actors are assumed to be profit maximizers.

To begin with, every member of the booster network seeks growth—growth benefits both government and private players. The private sector players particularly seek growth under their control, directed toward profit maximization for their firms. Coordination in pursuit of growth results from each pursuing their own interests, both in terms of policy and business entrepreneurial activity. Such coordination is not necessarily collusive, but instead reflects the interlocking structure of the urban development market as well as a sort of cue following that enables the group to ascertain a tacitly agreed upon guiding policy principle. The market, furthermore, needs the activities of each part of the booster network to produce growth. These individual yet related interests can be viewed as immediate, ever present goals for these actors. The booster network politician needs to make sure infrastructure is provided for the public at the least possible cost to the public coffers. The finance sector always looks for new, reliable, profitable investment opportunities for its money. The real estate sector seeks the predictably appreciating land values associated with infrastructure improvements. And developer-builders

look to organize projects that will employ their industries as much as possible while attracting outside investment to defray up front costs. These goals generate ongoing economic activity that feeds off these interrelated interests.

Government policy has become an important tool to facilitate and coordinate infrastructure provision. To generate the desired growth and development, the immediate goals of the booster network must be converted through public policy into probable outcomes. These outcomes, if the network is successful at enshrining its interests in policy, will be booster-controlled growth patterns. They become the end objective, a long-range goal, of the network, and policy passage itself becomes the mid-range goal by virtue of its ability to bring about the outcomes. Policy formation actions are governed by the guiding policy principle, which might be understood as part of the craft of policy making in a context where public and private sectors mingle, although they are nominally separate. The principle is the criterion for judging whether the decision or action will likely enhance the effectiveness of the policy design at achieving the desired outcomes. In other words, specific measures stand or fall based on whether they line up with the principle, and as discussed in Chapter One, it is the important key to inferring the policy's intended outcomes (long-range goals). The principle, obtained empirically, is the important link between the goal structure and the policy design. If the principle does indeed support the analytical position, it allows for a robust analysis of how exactly the policy, through the policy design, is expected to work. Having the complete objective in hand forms the premise for drawing such conclusions.



#### 4.2. Application of the Framework

Although it was developed especially for the Trans Texas Corridor, this framework has other applications. In a narrow interpretation, it can be applied to state level, development related, privatization policies. State level jurisdiction is needed because large scale urban development, particularly the long, narrow development associated with transportation, requires assembly of vast areas of relatively undeveloped land. Such development will most often cross local and county jurisdictions, making state government a single arena for facilitating this type of development. My framework, depending on the specific initiative, might be applied to other development related policy areas such as utilities, housing, land use, or economic development. Furthermore, it is easier to see at the state level that this framework, at least insofar as it deals with one particular set of interests, does not describe the long-term capture of a government and the attendant governing style as with the growth machine at local levels. It describes the way a group pursues individual initiatives that deal with a slice of the subject matter state government handles. The promise of privatization is required to elicit the entire network's participation, offering reason for early participation in anticipation of later involvement during implementation. If a broader interpretation is taken, it is easy to see that "booster networks" exist in all policy areas, and are driven by their fundamental interests and particular structures of their markets. Therefore, my framework could be adapted to other, non-development related policy areas by focusing on the particular interests involved—with the caveat that sufficient incentive and opportunity for private sector participation exists in the area as well as the specific initiative chosen for analysis. My framework thereby rejects a completely elitist view of policy making,

one that holds that one elite group controls an entire government, in favor of a more pluralist view, although each group may be itself elite controlled.

### 4.3. Further Explanation of Framework Procedural Stages

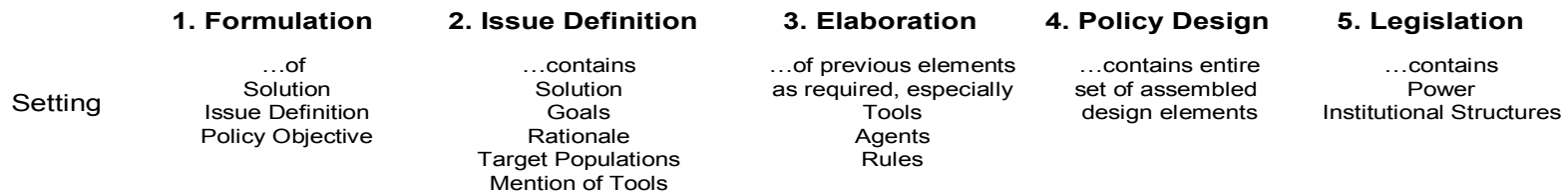
#### *4.3.1. From Policy Design Theory to Booster Network Framework*

Before further explaining my framework, I must quickly discuss how I adapted Schneider and Ingram's (1997) policy design model, on which I rely particularly to describe the stages of the process and to explain the contents of policy. Theirs is a three-part model beginning with societal context, moving to issue context, then the policy design. Mine is a five-part model whose application begins after the societal context, which I renamed the "setting," with the formulation of the proposal. It is followed by issue definition, policy elaboration, policy design, and legislation. To adapt their framework, I first divided the components of their "issue context", renamed it "issue definition", then deposited "power relationships" and "institutional cultures" at "legislation"—a new explicit component of my framework. That left "social constructions of target populations" at the newly named issue definition. "Knowledge" does not form an explicit part of my framework. Next, I pulled their "goals/problems," "rationales and assumptions," and "target populations" (which I folded into the earlier category of the same name) from their position in the finalized "policy design" again to the issue definition stage. Finally, I moved "policy design" to an earlier point, chronologically, between my policy elaboration and legislation stages—both new explicit components of my framework. This means that my framework features an essentially complete yet not finalized policy design before legislation can begin in addition to a complete *and* finalized policy design, implicit in the model, ensconced in

the new law. On the whole, I did not change the meanings of these terms except insofar as changing their relationships to one another within the policy process changes their meaning. Otherwise, the minor changes to them will be noted throughout the rest of this paper.

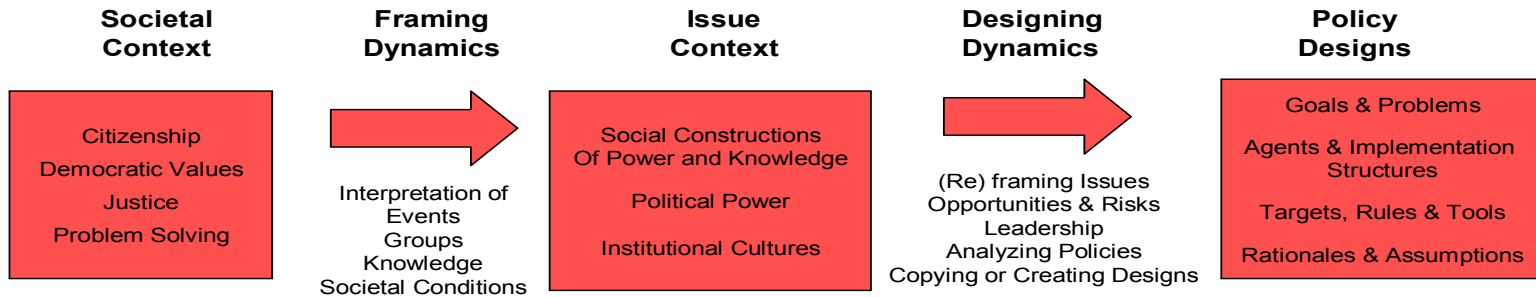
Comparison of Elements in Booster Network Framework to Policy Design Model

**(A) Booster Network Framework [loops only from legislation to policy design]**



50

**(B) Policy Design Model [forms a continuous loop]**



Policy Design Model quoted from (Schneider and Ingram 1997, 74)

Figure 2. Comparison of Two Models

#### *4.3.2. Policy Formulation and Issue Definition*

Both formulation and issue definition are primarily undertaken by the policy entrepreneur. The term “policy entrepreneur” comes from Kingdon’s (2003) work. This entrepreneur is distinguished from private sector business entrepreneurs, who also play a prominent role in my framework. The policy entrepreneur chooses the solution from available alternatives before publicly diagnosing the policy problem, allowing the issue to be intellectually constructed to be a perfect match with the solution. Solutions are one policy “stream,” combined with the freestanding problem when the political opportunity arises (ibid.). Because the entrepreneur who is attempting to utilize the booster network must do so in the context of privatization, and must additionally end up with a coordinated set of measures that ensures all necessary private capabilities are brought to bear for success, s/he cannot risk being forced into a solution that fails to properly activate the network. Such a solution would be one that has gained support but has been misdefined in the eyes of the network—in other words a solution that has grown out of the issue definition but that is different from the desired solution. In that sense, the solution must precede the defining of the issue. As a result, this framework describes a policy process that contravenes what is often thought of as the normal sequence of events—that is, it does not diagnose the problem before developing the solution.

Occurring after formulation, issue definition, often called problem definition, is a vitally important second step in the policy formation process. It is carried out by the policy entrepreneur, who also publicly justifies and advocates for their issue definition. A successful one has several elements. It must include the proposed solution and at least mention the tools that will make the solution work. Rationales justify the problem diagnosis, and goals set the course of

the policy. Target populations are the future recipients of the measure. The policy entrepreneur must assemble all these elements so that other boosters are encouraged to join the policy formation process, so the issue definition organizes the psychological portion of the overall policy formation process even as it structures the engagement opportunities of participants. My conception of issue definition, with its socially constructed nature and narrative reliance on symbolism and metaphor for developing a policy, is based in Deborah Stone (1988) and Schneider and Ingram's (1997) treatment of these materials.

Empirically, issue definition is a complex activity requiring flexible calculations of past, current, and future conditions to design a policy that will be both publicly accepted and, relatedly, achieve the goals set out for it. In terms of this framework, the term “issue definition” indicates the central role this intellectual activity plays in bridging the conceptual with the actual, keeping in mind that social behaviors and understandings are what is primarily acted upon through policy—even when those behaviors are, say, building a highway. Because of the dual, sometimes conflicting purposes an issue definition fulfills (eliciting desired behaviors *and* gaining political and psychological acceptance), it must be constructed so that the public, policy targets and agents will go along with its premises while not adding them by creating a disconnect between the policy's stated goals and the direction its incentives push them to act.

#### *4.3.3. Proposal Elaboration and Policy Design*

At the proposal elaboration point in the process, the elements that have not yet been tackled are the agents that will implement its provisions, the policy tools that will cause desired behaviors, and the rules (such as the legal text of the document) that spell out permissible and prohibited behaviors. During elaboration, the issue definition and policy design elements are also

translated into a legislatively actionable form. At this time, the private sector interests involved play a business entrepreneurial role, offering suggestions to improve the policy design after attempting to achieve their goals under the law in effect prior to enactment of the new policy. In that context, they find portions of the law that if changed would allow them to more fully pursue their interests, then they transmit suggestions to the people who are drafting the legislative proposal. Concurrently, public and/or private sector experts are involved in more abstract elaboration and drafting activities. The thrust of both the content and means for implementing the policy, to have private players become its agents, contributes to the blurred border between entrepreneurial activity and governance. As underlined by the urban development literature, this mingling of public and private spheres makes it difficult to distinguish exactly who is governing.

The policy design portion of my framework is its crux, a puzzling problem requiring resolution, and fulcrum, providing central support for its logic. It has thrust a theoretical problem onto my efforts that I will now attempt to solve. The problem is one of how as yet unrealized future circumstances can cause (prior) actions in any predictable way. It must be resolved because it forms the basis for analyses of the policy formation process and resulting design, thereby for assertions derived from these—assertions that are supposed to explain policy originating motives. In this subsection, I will work on the problem using the ideas of American pragmatist philosophers Charles Peirce and William James, supplemented by the work of Peter Winch, another American philosopher.

In my framework, the promise embodied by the expected policy design is imputed the power to draw booster network participants into the policy formation and implementation processes to secure desired policy outcomes. As discussed in Chapter Three, policy design

theory argues that causal theory about social behavior is what enables a policy, through tools, to achieve its objectives. These “if...then” inferences connect the tool to the aspects of peoples’ decisions and behaviors that have “policy handles,” enabling the design to move people to action on behalf of the measure. This element of policy design theory focuses especially on policy implementation after enactment. The model also relies on another causal relation, the idea that early policy processes cause predictable design features, to explain how particular designs come about (Schneider and Ingram 1997).

These two separate but related causal processes explain how the players’ design activities, which they hope will produce desired outcomes, substantively shapes the design features, the components of the issue definition and other elements like tools and agents. Simultaneously, the causal processes explain how the design induces confidence in players that the desired outcomes will actually result, due to effective use of well thought out policy tools. My framework combines the logic of these two causal explanations to argue that the particular use of the tools selected by the designer, the policy entrepreneur, not only moves people to act on behalf of the policy during implementation, but also enlists certain (booster network) participants to act on behalf of policy formation. The entrepreneur’s early choices thereby solidify the policy design into a form that helps ensure the desired outcomes will actually result. In this double way, the policy design “delivers the goods”—to the booster network during implementation, and to the policy designer during policy formation.

I discussed earlier in the chapter how fundamental interests supply the motivation for booster network players to participate in this process. But how could the initially proposed policy design transmit that these interests will likely be fulfilled? What exactly makes the booster



network move into action? In a related question, by what mechanism does an understanding of the guiding policy principle emerge? This is where pragmatism comes in.

Charles Peirce, in 1878, introduced the pragmatic method for determining the meaning of a notion, a method William James' discussed in a lecture originally titled called "A New Name for Some Old Ways of Thinking" (James 1948). Henry Aiken (1962) called the same method an operationalist theory of meaning. Under the pragmatic method, Peirce (1962) believed that thought serves solely to "produce habits of action." [As an aside, he considered mental activity of a different nature, such as listening to music, not to be "thought" in this strict sense.] A thought's meaning is derived from the habits it engenders, due to its sole service to produce these habits. "What the habit is depends on when and how it causes us to act," (1962, 112). That is, the thought is identified or labeled by the actions it causes us to undertake. Actions, by Peirce's definition, exist in the practical, or empirical, world. Distinctions of thought, therefore, are based on *possible* practical differences (ibid.).

James slightly reformulated Peirce's argument when he defined the pragmatic method as an attempt "to interpret each notion [about the meaning of an object] by tracing its respective practical consequences," (1948, 142). If these consequences are not different, "then the alternatives mean practically the same thing." Since thoughts are "rules for action...we need only determine what conduct [they are] fitted to produce" to discover their meaning (ibid.). Again, this meaning is by his definition a practical meaning because a thought's function is its meaning, nothing else.

James also discussed how pragmatist meaning forms the basis of theories about reality, rejecting the notion that *a priori* reasoning can offer a suitable foundation to understand and

explain reality. Through this concept of meaning, meaning defined by practical effects, abstract thoughts are tied to empirical reality. James argued that abstract, theoretical thoughts express themselves in concrete facts as well as actions that arise from those facts. These concrete actions are “imposed on somebody, somehow, somewhere, and sometime,” (1948, 144). By making this argument, he solidly connects theory about empirical reality, as long as its meaning is correct, to the reality itself. Additionally, he underscores how meaningful action operates in the social world. In such a way, theories are not solutions to problems, but instruments that enable us to create future social realities in the empirical world (ibid.).

Thus theories explain thoughts, whose mechanisms are inherently practically oriented, and by extension are amenable to future orientation. This notion of theory and meaning is applicable to my analytical framework. Under operationalist meaning, the policy’s explicit and implicit objectives (which can be thought of as its meaning) as expressed in the issued definition and fulfilled by the policy design, if they are actually different, will produce distinct actions. These actions differ based on “when and how [they] cause us to act (Peirce),” or in James’ words by the particulars of their imposition “on somebody, somehow, somewhere, and sometime.” Therefore, a policy objective’s meaning is “what conduct it is fitted to produce (James).” We need only analyze the practical differences inherent in the meaning of the issue definition, along with the remaining components of the policy design, to know what habits will be activated by the design. These habits, I believe, are equivalent to the booster network’s fundamental interests as already discussed, and those on whom actions are performed are the various populations affected by policy implementation, particularly its target populations as defined by the issue definition.

The causal theories embodied by the selected policy tools create the future empirical reality of booster network participation in policy formation and implementation. Booster network participants become involved, and the booster network itself is constituted, because they understand the (practical) *meaning* of the policy provisions. The provisions are publicly presented in the form of the proposal's issue definition, at which time the network interests, because they closely monitor policy developments, tune in to the possibilities suggested by the proposal. The policy entrepreneur formulates the issue definition with an eye toward policy formation and implementation, and knows that translating initial ideas into effective action requires assent and participation of policy target populations and agents, who are relied upon to operationalize policy goals. The causal theories the entrepreneur uses fix the relationship between his or her original intentions and objectives and the likely outcomes of the policy through the future oriented policy design. As I discussed in Chapter Three, this is why the various components of the policy must be organized into a coordinated structure, each piece directed toward the success of the whole. Furthermore, they must express the intended meaning to potential targets and agents. If the policy entrepreneur coordinates the actions of the booster network thus constituted by projecting the meaning of the policy (its objective) to the recipient-participants, by what mechanism does an understanding of the coordinating, guiding policy principle emerge amongst the network? From this point, my argument relies on Peter Winch's work, which I believe is consonant with the pragmatists.

Winch argues that understanding plays a central role in human activity, which would include policy formation and road building. "Social relations," he believes, "are expressions of ideas about reality," (1990, 23). Our understanding of social relations reflects our group

understanding of reality, and both are bound up with “the difference the possession of such an understanding may be expected to make to the life” of a person (pp. 22-3)—that is, the possible practical effects (the meaning) of our understanding. The reason is because the nature of meaning and understanding are closely linked to the relation between thought and reality. This relation takes on a symbolic character, having an ability to mean something. Furthermore, the symbol transmits meaning that others understand by the application of rules learned in previously (socially) experienced concrete contexts. We learn to understand rules, to judge whether our applications of them are correct, by taking in others’ reactions to our applications in different but similar contexts (Winch 1990).

The coordination of social relations achieved by the guiding policy principle is a manifestation of the booster network’s ideas about reality. The meaning of the implicit policy objective is conveyed socially by rules that are learned in concrete contexts. Members of the booster network, for example, have learned in other contexts how to apply the rules governing their fundamental interests, in pragmatist terms their habits of conduct. In a situation such as the one described by my framework where tacit agreement on the meaning of the policy objective is the mechanism by which the network’s actions are coordinated, fueled by their various fundamental interests, its players interpret the practical meaning of the objective as though it were a rule the meaning of which was being judged by others. In so doing, they constitute the meaning of the rule amongst themselves, whereby what I call the guiding policy principle emerges. What is a rule but a guiding principle? And the particular principle guiding the booster network process, as I have asserted, is to maximize private participation by developing and adopting provisions that minimize risks to those participants.

The pragmatists' operationalist concept of meaning is what allows the transactions just described to occur, in both a theoretical and real sense. To directly quote a passage from James paraphrased earlier,

*Theories thus become instruments, not answers to enigmas, in which we can rest. We don't lie back upon them, we move forward, and, on occasion, make nature over again by their aid. Pragmatism unstiffens all our theories, limbers them up and sets each one at work (1948, 145).*

#### 4.3.4. Legislation

Strictly speaking, the legal language that embodies a policy is not the object of analysis. The policy design is. Still, theoretically and practically, legal language is important because it fixes the early policy decision before acting as a vehicle through which players' motivations, issue definitions, and social constructions are funneled into the legislative process into a form that can be contested and eventually enacted into statute. As Schneider and Ingram say, "[t]here is a continuing struggle to gain acceptance of a particular construction of events, people, history, and contemporary conditions that will become widespread and accepted," (1997, 73-5). The struggle that occurs during the legislative process can be understood as the booster network protecting its early policy decision from erosion at the hands of its opponents. During this stage, legislator-members of the booster network play the most publicly prominent role.

Although power relations and institutional cultures more or less shape all stages of the policy formation process, I highlight them at legislation because their salience is heightened in the comparatively, and actually, formal legislative process. It is then that institutional structures impose limits on actors' range of motion, creating bottlenecks where relative power in large part determines what will and will not be legal with the finalized policy. Political power is therefore

obviously a central determinant for the overall policy making process. Its existence and importance can hardly be disputed (*ibid.*). It is a constant backdrop to the activities being described and analyzed here.

Hamm and Wiggins (2000) write about how interest group power in particular is essential to any informed analysis of Texas politics. They say that even though such influence plays an important role in any state, “the power they exert could hardly be more significant than that wielded by their counterparts in the Lone Star State,” (1992, 152). Aside from this general importance, the main specific role power plays in my framework is to differentiate among the non-legislator participants in the policy process. Such participants join the process, after the booster network has undertaken much of the important decision making, to lobby the legislature on behalf of their interests, and they wield differing degrees of influence that depend on their timing and function. I reserve the name “player” for those representatives of booster network interests who are intimately involved in the policy formation process. The booster network players, with their early entry into the process and central influence on the developing policy, can be considered first tier participants. Other second and third tier participants thus exercise respectively less influence with later involvement in the process.

The more powerful set of latecomers is defined by their strong power and consistent organization. Once they become aware of a proposal that might adversely affect them, they immediately send their people to negotiate ways to ameliorate potential problems. They most likely will do this within the formal and related informal contexts of the legislature, and are powerful enough that they are more likely than not able to effect alterations on threat of opposition to the proposal—however, they otherwise do not have a strong position for or against

the policy. These participants are “big interests” like oil or school teachers, and their main goal is to remain untouched by changes in any area of the law. To ensure this is the case, they have professional staffs that monitor all legislation for potential problems.

The less powerful participants enter the game even later and may have some, although little, influence over the process. They are consistently organized, but loosely so. While they may represent large constituencies such as farming associations, urban homeowners, or environmentally-concerned citizens, they are not powerful, wealthy, or organized enough to wrest fundamental changes in the policy. They typically enter the fray relatively late in the legislative process at which time they well may express outright opposition to the measure in an attempt to emphasize their level of concern. They do not have the resources to dig into the details of major initiatives to request more targeted changes. Therefore, their influence is less than the second tier participants. There are also various individuals or small groups who participate in the process, but their support or opposition do not affect the outcomes.

Finally, as far as power dynamics are concerned, there are groups that may otherwise wield a certain amount of power in the political process generally who, in the booster network process, are essentially non-players. These are organized interests such as the urban poor or minorities. In a policy area such a public education or mass transit, such groups wield considerable influence. But as discussed in the framework statement, these groups are precluded from participation through narrow definition of the policy issue at hand. In a way, these groups have such a broad definition that, often relying on encompassing concepts such as the “public good” to gain representation, they are unable to directly plug into a booster network policy as their interests are defined. In other words, their interests are in a sense defined so closely with

(broad) notions of the public good that the narrow booster network definition successfully eludes their inclusion. This is not to say that they do not attempt to expand the issue definition during the legislative process to have the proposal include their needs and interests. They do. However, if the policy is to remain in a form that can still be called a booster network policy, these groups will not succeed. Therefore, they are included in my framework only insofar as they are excluded, or more accurately precluded, from the actual process, which is closed to them.

In addition to power dynamics within the institution, institutions' ways of operating manifest in policy outcomes. Formal and informal rules and institutional practices are, therefore, materially important to policy outcomes (Skocpol 1992, Schneider and Ingram 1997). Take a legislature, for example, where the author who creates a bill retains control of it. When a bill reaches committee or floor debate, opponents are restricted to arguing within the issue definitions that are embedded in its language. Also, according to the rules governing legislative bodies, there are only a few opportunities to change the text (therefore determine the substantive policy content) of a bill. These formal opportunities are often further constrained by informal protocols. Speaking on the example of Texas, an author can offer a complete substituted version of a bill for committee consideration, or the committee can vote to amend the original bill. In either case, even if the author does not sit on the committee, changes are often substantially under the author's control due to informal protocols that encourage deference to his or her wishes. Another major opportunity to insert changes to a bill is during floor debate in each chamber. This is the best opportunity for opponents to amend a bill. Although the author does retain some informal privileges, such as receiving deference from the body concerning whether or not an amendment should be passed, floor debate often relies on well-established group voting



alliances which militate against personal influence. These examples illustrate only a few of the many institutional practices that can affect policy content. Additionally, not only rules and practices, but the very nature of an institution can affect policy outcomes. Take the oppositional nature of argument and debate built into a legislature. This means that contentious provisions will likely rise to the surface, bringing public scrutiny and potentially altering outcomes.

PART 2

CASE STUDY: TRANS TEXAS CORRIDOR

## CHAPTER 5

### POLICY FORMULATION AND ISSUE DEFINITION

Chapter Five recounts Corridor formulation and issue definition, as well as the setting that preceded them. Beginning with the setting, Section 5.1, the chapter describes two central Texas highway projects as antecedents to the Corridor by virtue of their association with the legislator who later pulled them into the Corridor's orbit. Section 5.2 argues that the formulation of the Corridor began at the time of the 77<sup>th</sup> Texas legislative session of 2001, when transportation policy shifts occurred that made the Corridor initiative possible. In Section 5.3, I discuss the Corridor's issue definition as constructed by Governor Perry, the progenitor of the initiative. The discussion examines his definition's explicit and implicit contents. The issue definition, as expressed by the narrative analysis of Perry's 2002 press release that accompanied the Corridor proposal, is the foundation of the policy formation analysis expounded in this thesis. Similarly, the definition's empirical contents were the basis of the Corridor's policy formation process.

#### 5.1. Setting

The setting is the background milieu from which the policy is formed, the origin of a process that necessarily grows out of it. The setting I have constructed here loosely takes Perry's construction as its parameters, filling in additional details. In a nutshell, he concentrates on three

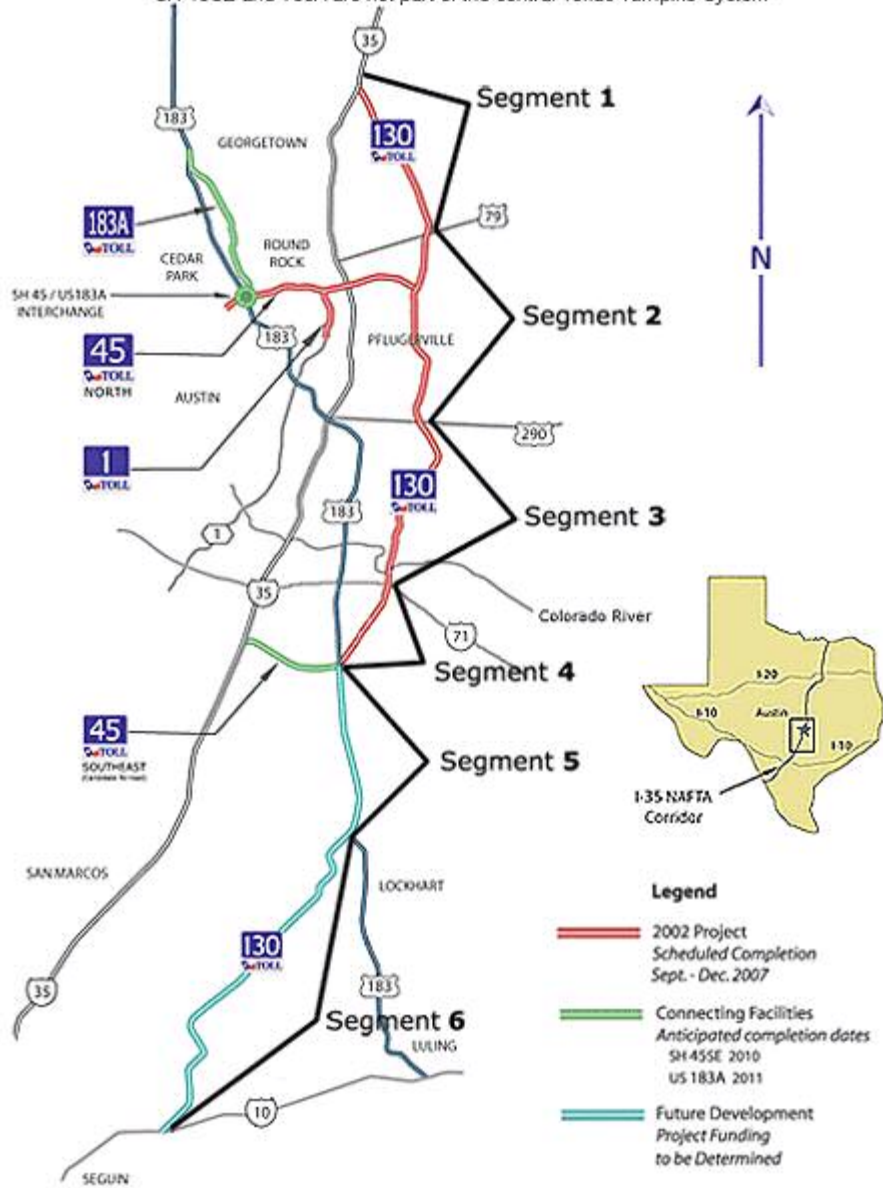
things, Texas' population, which is projected to more than double in the coming decades, already severe urban and suburban traffic congestion, and increasingly tight government budgets (Perry 2002). I also include details about this situation as it developed in central Texas around Austin, focusing on two long sought after projects for dealing with these transportation challenges: Texas (TX) 130 and U.S. 183-A. Their histories are important as setting components, antecedents to the Corridor, because they provide background insight into how transportation demand was channeled by the booster network into support for different aspects of the Corridor solution via local political leaders' desires to meet their constituents' needs.

#### *5.1.1. Texas 130 and U.S. 183-A*

This case study will often feature the story of two originally unrelated highway projects, both near Austin, that eventually became closely bound to one another and to the Corridor, TX 130 and U.S. 183-A. Work toward obtaining both these projects was begun during the 1980s (Daniel 2002b, Heinauer 2002a). Texas 130, now under construction as the first leg of the Trans Texas Corridor, will be an eastern north-south running bypass of Austin's I-35 traffic congestion, and U.S. 183-A will be a northwest-southeast running alternate route to the highly congested Highway 183 designed to relieve traffic in the northwestern portion of the Austin metropolitan area.

# Central Texas Turnpike System

\*SH 45SE and 183A are not part of the central Texas Turnpike System



(TxDOT 2005b)

Figure 3. Central Texas Turnpike System

In the late 1980s, the Texas legislature permanently diverted transportation funds to general revenue based on faulty, conservative population projections (Williamson 2005). This diversion combined with the no new tax ideology that grew to permeate state and national politics in the late 90s resulted in both highway projects languishing for lack of funding—even in the face of rapid growth. The transportation challenges Texas faces cannot be adequately understood without describing this marked urban growth. Over the last three and a half decades, the population center of the United States shifted from the Frostbelt of the northeast and Midwest to the Sunbelt of the south and west, which includes Texas. From 1970 to 1995, the Dallas-Fort Worth metropolitan area grew from 2.35 million to 4.45 million, and the Houston-Galveston-Brazoria metropolitan area grew from 2.17 million to 4.45 million (Gottdiener and Hutchison 2000). Today, over 80 percent of Texans live in urban areas generally while over 60 percent of Texans live in the densely populated triangle, which includes Austin, cornered by the Dallas-Fort Worth, San Antonio, and Houston metro areas (Crain and Perkins 2003).

In 1999, Dell Computer Corporation decided not to expand in Central Texas, citing severe traffic congestion as an important reason. This loss of numerous high-paying jobs to the region caused Austin area legislator State Representative Mike Krusee, who would later be the legislative architect of the Trans Texas Corridor, to become engaged in transportation issues. He felt as though government had failed citizens by not providing adequate infrastructure (Daniel 2003). Krusee's engagement in the transportation arena was an important development leading up to the Corridor policy formation process, and it marked a turn of events for TX 130 and U.S. 183-A. These two roads today are financially and operationally connected via the Corridor. It now looks as though they will be built as soon as they are because of the Corridor, while the

Corridor has received in them its test case at organizing massive, regionally connected infrastructure projects that will radiate from Texas' cities, bringing massive new urban development with them.

### *5.1.2. Eastern or Western Bypass?*

In the early 1990s, U.S. Representative Jake Pickle, D-Austin, obtained federal money to study an eastern route for the TX 130 bypass of Austin (Wear 2003). This was one move in the long-running bickering disagreement over the route and other projects that once characterized Austin area transportation politics—disagreement that is partially blamed for the stalled projects (Daniel 2003). This disagreement had led to the region being denied state funding in 1996 (Martinez and Daniel 2001). Texas 130 is now being built on an eastern route, but a western route may just as easily have resulted. In 1997, the Texas legislature created the Texas Turnpike Authority with the eastern bypass to be its inaugural project. Advocates for East Austin did not want it there because of fears it would disrupt the neighborhood, and bond investors would not support the route because of weak predicted demand (Wear 2003). Similarly, the Turnpike Authority ended up officially recommending a western route which was expected to be supported by 50 percent higher demand than the eastern route. However, the western route was not without opposition though. It would affect more neighborhoods, historical sites, and parks (Daniel 2000d). In February of 2000, the Capital Area Metro Planning Organization (CAMPO) unanimously voted to support the eastern route. It was an important vote because the organization had to include 130 in its long range plan for the highway to be eligible for federal money (Daniel 2000a). Representative Krusee, an increasingly influential member of the board, had long advocated for the eastern route (*Austin American-Statesman* 2000b).

The February CAMPO vote supporting the eastern route was an attempt to influence Texas Turnpike Authority (TTA) engineers before they recommended a final route for TX 130 later that summer (Daniel 2000a). The planning organization's vote was a nonbinding recommendation, but was important because the Federal Highway Administration (FHWA) ultimately decides whether to fund a road (*Austin American-Statesman* 2000a). If CAMPO "names a specific route in its plan that differs from the final route recommended by state and federal agencies, TX 130 could be killed," (Daniel 2000c). CAMPO was supposed to vote in March 2000 to put 130 in its 3-year short term transportation improvement plan to seek federal funding (Clark-Madison 2000; *Austin American-Statesman* 2000a). However, TTA officials convinced CAMPO to delay its vote on the specific route until June, when the long range, 25-year plan would be adopted (Daniel 2000b). TTA officials were concerned that CAMPO's political leadership would kill the project by specifying the eastern route while TTA would be required under federal law to recommend a western route based on stronger traffic demand forecasts for the latter (Daniel 2000b and 2000d). But if the highway did not get included in the June 2000 plan, TTA worried the project would be aborted. This is because federal law also requires that projects must appear in the long range plan in order to receive state or federal funding (Daniel 2000b).

The vote delay gave TTA officials extra time to try to convince CAMPO officials to accept a compromise, which would have them include 130 in the long range plan without designating a route (*ibid.*). It evidently worked, because the CAMPO executive committee voted in early June 2000 to put TX 130 in the 25-year plan with two routes, then negotiate with state and federal planners to remove one upon project approval. The long range plan, largely based on



population forecasts for the Austin area, was adopted June 12, 2000 (Daniel 2000c). It included several major Round Rock streets that had not previously been included (Daniel 2000d).

At the same June 12 meeting, CAMPO considered a contract with Massachusetts-based private consulting company Cambridge Systematics, Inc. to review all Central Texas transportation plans, checking them for reasonableness, including reasonableness of statistical data and assumptions on which plans rely (Clark-Madison 1999; Daniel 2000c). The “peer review” idea had first been vetted, surrounded in contention, at the December 24, 1999 CAMPO meeting. Then, the suggestion was to have a consultant actually prioritize Central Texas transportation projects. It was advanced by TTA chair Pete Winstead and Austin Chamber of Commerce chair Gary Valdez, and supported by CAMPO members north and south of Austin as well as area state senator Gonzalo Barrientos, D-Austin. A sharply divided vote against the proposition was won by all Austin and Travis county members except Barrientos, both Republicans and Democrats, voting nay (Clark-Madison 1999).

Clark-Madison (*ibid.*) noted at the time that those pushing the peer review idea were the same people pushing the hardest for TX 130, including Winstead who, incidentally, was simultaneously serving as chair of the TTA and the Real Estate Council of Austin (Daniel 2000e). “The peer review was pushed by a group of area business leaders who questioned how accurately planners were predicting where to spend limited transportation dollars in our region,” (Daniel 2000f). The report by Cambridge Systematics, begun in summer of 2000 and eventually released on October 16, 2000, was billed as affecting not only CAMPO plans, but TxDOT’s as well (Daniel 2000f and 2000g).

One month after the June 12<sup>th</sup> CAMPO meeting, on July 17<sup>th</sup>, Winstead and the TTA “stunned” local elected officials by making a “u-turn” on its prior western route support, settling on the eastern route for its final TX 130 route recommendation even though it was projected to make \$4.4 million less in toll revenue than the western route as far out as fiscal year 2007 (Daniel 2000d). In his announcement, Winstead said he supported the new TTA staff recommendation that “reflects updated population demographic information from Austin and San Antonio planning organizations that we have used to take a super-regional look at projected use of [TX] S[tate] H[ighway] 130,” noting his staff determined both options would “more or less equally meet the key purpose of the new highway—congestion relief for Interstate Highway 35,” (TxDOT 2000).

The new traffic forecasts, based on planning organization (including mainly CAMPO) projections of population and travel in San Antonio, Austin, and Travis, Hays, and Williamson counties, expected 9,000 ~ 18,000 fewer vehicles on the eastern route compared to the western route. The previous 1998 forecasts had been based on “smaller portions of Central Texas,” and had projected a difference of 43,000 vehicles. The eastern route, however, would still remain \$66.1 million cheaper at \$847.8 million versus \$913.9 million (Daniel 2000d). The new “super-regional demographics model” considered the effect of 5 million trips per day in the 90-mile corridor between Austin and San Antonio, according to TTA planners, while the 1998 model only considered 438,000 daily trips in the three-county Austin area. The planners also later said in November 2000 that the model was based on 25-year population projections for each central Texas county in that corridor, presumably the same projections put in the revised MPO long-range plans (Daniel 2000f).

### *5.1.3. U.S. 183 History before the 77<sup>th</sup> Legislature*

By the late 1990s, central Texas leaders had also envisioned improvements up and down U.S. 183 from the new international airport in East Austin all the way to the emerging exurbs Cedar Park and Leander northwest of Austin. North and northwest Austin were rapidly growing so the planned improvements would provide a continuous freeway along the corridor. Area leaders had begun to assemble a consistent package of improvement requests (Martinez and Daniel 2001). Leading up to April 1999, there had been movement on U.S. 183 with leaders putting together a unified front in a delegation behind Turnpike Authority chair Pete Winstead to ask for significant funding from the Transportation Commission for various improvements along 183. At the meeting, David Laney, the Commission's chair, surprised the delegation by publicly suggesting they change the planned freeway from I-35 east to the airport into a toll road (Daniel 1999).

## 5.2. Policy Formulation

Formulation of a solution proposal entails pulling together the outlines of an initiative that will appeal to the fundamental interests of those whose participation the policy entrepreneur calculates is necessary for success. I posit the Corridor's formulation occurred as the 77<sup>th</sup> Legislature passed the four financing provisions which are the focus of this paper. Their passage later enabled Perry to arrange them into a single initiative with a unified purpose. This section puts together an empirically-informed argument that solution formulation actually did occur prior to issue definition. That order of events facilitated Perry's effective use of the issue definition for enlisting future booster network participation. The section helps establish the

immediate context and role of the issue definition, thus lending support to my particular interpretation of the Corridor definition's narrative structure.

### *5.2.1. The 77<sup>th</sup> Legislature: Formulation*

In December of 2000, then Lieutenant Governor Rick Perry was elevated to governor when Texas governor George W. Bush clinched the White House. It was the month before the 77<sup>th</sup> Texas Legislature convened, and it was probably during this period that Perry began formulating the Corridor. In its coverage of Perry's late-January 2002 unveiling of the Corridor, the *Houston Chronicle* reported the proposal had been "more than a year in the making," (2002). This timing is plausible considering the combination of Perry's ascension at the time (he naturally would have been on the lookout for new opportunities) plus the fact that precursors to the four financing provisions Perry pointed to as keys to the Corridor at the unveiling, RMAs, CDAs, toll equity, and the TMF, were all first established by the 77<sup>th</sup> Legislature with Senate Joint Resolution (SJR) 16 (later confirmed by the voters), Senate Bill (SB) 4, and SB 342. The provisions were later tied together then extended under Perry's leadership to become what we know as the Trans Texas Corridor.

Because the core provisions/tools of the future Corridor were first enacted before the Corridor was proposed, there is reason to be skeptical that the booster network operates the exact way suggested by my framework. It could be that the network had the idea in mind before the 77<sup>th</sup> Legislature, but I do not have evidence of that. An explanation that better fits with my framework is that although the main tools were passed in 2001, the boosters took advantage of what was already available from policy shifts of the day, simply refining the specifics to make the tools do exactly what they wanted. This underlines the importance of the policy goals and

objectives. The issue definition uses goals and objectives to define what the tools will do, thereby activating the booster network because it understands this meaning. This understanding stems from the Corridor's specific issue definition, and its unique assembly of design elements, being constructed around its explicit and implicit policy objectives.

Even though it seems likely that formulation of the Corridor was made at this time, it is still not possible to be sure. Developments nonetheless were fertile for such early policy making efforts—even if the “efforts” were merely watching and slowly formulating a plan over time. The ideas behind the four provisions mentioned above, built on policy shifts occurring at TxDOT, were coming into their own in the transportation policy community as the 77<sup>th</sup> Legislature got underway. Transportation watchers were cognizant of the state's looming problems (Okada 2002a). Having previously been Lieutenant Governor, Perry would have had a large staff that included transportation specialists or advisors, not to mention being lobbied by transportation interests, so he was most likely also following the issue. As governor, he signed the aforementioned bills into law once they were passed. The situation presented an opportunity because with the passage of those laws, and with the campaign under way to confirm the constitutional amendment that supported them, a fundamentally different solution to the transportation issue was then possible. And a half year could be spent developing the Corridor idea out of these changes before being unveiled to the public.

Whether or not active formulation was underway, the 77<sup>th</sup> Legislature was definitely a time when the booster network began to tune into the possibilities inherent in the issue, yet before the Corridor was a firm idea. Besides Governor Perry, the bond market was part of the booster network interested in the provisions at this early stage. Bond lawyers from Salomon

Smith Barney appeared at both senate and house committee hearings to support both SJR 16 and SB 4 (Texas Senate 2001a; 2001b). Senate Joint Resolution 16, a constitutional amendment, and SB 4, its enabling legislation, allowed the state to take out bond debt to fund transportation projects and also to mix state tax revenues in a project with bonds a private company takes out to build the project. These provisions are called the Texas Mobility Fund and toll equity respectively (TxDOT 2002a). They allow the state to part with the long-standing pay as you go highway building practice. In fact, both Salomon Smith Barney and Goldman Sachs were interested enough to give \$10,000 each to the campaign to pass the constitutional amendment (*Amarillo Globe-News* 2002). These are the fundamental interests of the financial booster network players, explained later in Chapter 6 under concession financing, which drove their involvement in the Corridor policy formation process beginning with the 77<sup>th</sup> Legislature.

### *5.2.2. U.S. 183 after the 77<sup>th</sup> Legislature*

In May 2001, the 183-A alternate route at the far northwest end of the stretch of highway under discussion cleared the federal environmental process, a major milestone. The route had by then already become a toll road and was then part of the Central Texas Toll Project (CTTP), a project that will be fully discussed in the next chapter (Martinez 2001). In September 2001, the Commission unexpectedly pulled requested money that TxDOT staff had recommended approving for a part of 183 east of I-35 near the airport. It voted unanimously in a surprise to Austin area leaders saying the project needed further study, but did not offer any more specificity by way of reasons (Martinez and Daniel 2001). In light of the preceding events, it can be reasonably argued that the money was withheld because 183 was a viable toll project. Due to rapid population growth all along the stretch, strong demand was projected at the time. One

study predicted a 176 percent increase in traffic near the airport by 2020 (Daniel 1999). Because in the end they created pressure to do so, these events can be considered antecedents to the creation of the first RMA, the Central Texas Regional Mobility Authority (CTRMA), and due to the role RMAs were later designated to play implementing the Corridor, antecedents to the Corridor too.

### 5.3. Issue Definition

Issue definition involves building a conceptual structure, which provides elements and form to the full policy design, around the scaffolding supplied by the proposed solution. It was used by the network's policy entrepreneur to justify the proposal while structuring the remainder of the policy process—that is, pointing the way forward for policy elaboration—including opportunities for participation by network players.

#### *5.3.1. Trans Texas Corridor Unveiling*

Playing his role as the booster network's policy entrepreneur, Governor Perry unveiled the Trans Texas Corridor on January 28, 2002. He did so at the beginning of the election cycle for the November 2002 state elections, which was his first election test as governor. Incidentally, these were the same elections that solidified Republican power in Texas politics—when they took over the statehouse for the first time in decades. Observers and opponents noted at the time that Perry's announcement was an attempt to shore up support among part of his business political base including freight companies, road builders, and utilities (Herman 2002, Okada 2002a). This analysis may miss the mark somewhat. Of course, any political initiative has the dual purpose of solving a problem while solidifying support. I believe this particular initiative

was meant to go beyond these purposes by actually enlisting participation of expected supporters in the policy formation process.

Two members of the Transportation Commission, John Johnson and Ric Williamson, said during the unveiling that work on Perry's plan "is underway," (Associated Press 2002). As discussed earlier, the Corridor idea may have been coming together for about a year. Therefore, a certain amount of planning would have gone into the proposal. If my framework is accurate, Perry designed the proposal to appeal to the fundamental interests of the not yet constituted booster policy network. By taking up leadership on the issue and announcing, then pursuing, his plan, I believe he attracted the network's major interests (finance, develop-builder, and real estate interests) to the policy process. Such an approach serves all network interests because it enhances the resources dedicated to the policy, which will increase the likelihood of new opportunities for these growth-related industries. At the same time, it also brings actively engaged participants to bear on making the proposal succeed, rather than just passive supporters. Issue definition, an activity Perry undertook as part of making the proposal, was key to ensuring booster network activation.

### *5.3.2. Narrative Analysis of Perry's Press Release*

Deborah Stone (1988) uses the concepts narrative and metaphor to explain how policy ideas resonate with our understanding of the world to elicit support for those ideas, having been constructed to simultaneously create followers while gaining the upper hand on opponents. A policy's underlying narrative houses the issue definition, which includes the policy solution (the Corridor), a statement of the tools that will make it work, the rationale, goals, and target populations. Words allow the policy maker to publicly articulate the policy issue, which Stone



refers to as the policy problem, thus providing the means to achieve policy goals. The ambiguity of symbolic representation accomplishes all this. Flexibility is instrumental to achieving the political support necessary to overcome difficulties that stem from battle, compromise, and the multiple goals that accompany any large scale policy initiative (Stone 1988). Stone sums this notion up in the following quote:

Problems, then, are not given, out there in the world waiting for smart analysts to come along and define them correctly. They are created in the minds of citizens by other citizens, leaders, organizations, and government agencies, as an essential part of political maneuvering (Stone 1988, 122).

Therefore, the policy narrative and corresponding issue definition are highly complex conceptual tools which establish the basis to successfully bring about a variety of real world outcomes.

In her discussion of metaphor, Stone (ibid.) emphasizes how the device is a simple, yet powerful way to allow the listener to draw the intended preconceived conclusion by encapsulating an entire issue narrative and solution through the simple articulation of a problem. She uses the example of a problem framed in terms of fragmentation which will naturally lead the listener to conclude that coordination or integration is the proper solution. Similarly, near the outset of his Corridor-unveiling press release, Governor Perry said, “[w]e need a transportation system that meets the needs of tomorrow, not one that struggles to keep up with the needs of yesterday,” (Perry 2002, 1). This wording suggests that our current system has fallen behind, and that the solution is to leap ahead, skipping the middle course. He supported this conclusion in his associated speech before the press and others, saying, “Some might ask, ‘Is this too big?’ I say nothing is too big for Texas when our economic security, our environment and our quality of life is at stake,” (Sallee 2002a). Again, he metaphorically diagnosed a serious crisis through

suggestion, and the metaphor he invoked was that Texas-sized problems require Texas-sized solutions. The tone of the press release suggests Perry's backing to his implicit claim that he has the right knowledge to fix the problem extends beyond the authority naturally conferred on elected political leaders. It combines common sense observation with professional policy expertise.

The transportation crisis Perry depicted was one resulting from precipitous growth. Again from the press release, "With population projections showing that Texas could grow from 21 million residents today to 50 million over the next few decades, Perry stated that planning for tomorrow's transportation needs is essential," (Perry 2002, 1). Once the listener matches this thought with the ones quoted in the previous paragraph, the extent of the challenge, and the need to meet it, begins to coalesce in his or her mind. Later in the release, Perry went on to describe how the Corridor will enable this challenge to be met through the four financing methods introduced earlier:

The Trans Texas Corridor plan utilizes innovative and fiscally sound methods that will allow the state to construct the system with a minimal expenditure of public money...[so that] Texas can use increasingly tight state and federal funds to partner with public and private entities to design, build, operate, and manage the innovative system—without new taxes (ibid.).

This passage invoked a second metaphor: that we can get something for nothing. Thus he diffused charges that the Corridor would be too expensive while building political support for the proposal he promised would create lots of jobs by sparking an era of economic growth and bringing new businesses into the state (ibid.).

In sum, the Trans Texas Corridor would be a transportation network that bundles multiple highway lines, rail lines, water, oil, and gas pipelines, and electric and telecommunications into

several individual corridors that together will crisscross the state on 4,000 linear miles of rural and exurban land. It would be implemented using public-private partnerships under a rationale that argues our current government-dominated mode of infrastructure provision is inadequate, particularly in the face of an impending population explosion, so we must turn to the private sector. The private partners were defined around the policy's tools, the four financing provisions (first passed by the 77<sup>th</sup> Legislature): RMAs, CDAs, toll equity, and the TMF, innovative financing measures that would not require new taxes (ibid.).

Perry (ibid.) expressed two major goals to guide the initiative: to meet future transportation needs and to significantly increase economic development statewide. Goals are an important organizing principle for any policy idea. The Corridor's goals were played off its rationale in the press release. "Goals emerge from human perceptions of existing conditions as measured against some preferred state of affairs," (Schneider and Ingram 1997, 82). Schneider and Ingram (ibid.) discuss how goal choices result in the distribution of benefits and burdens to target populations via the tools chosen to make the policy work. Of course, the central purpose of the Corridor is to provide transportation and communications for Texas, but upon further analysis, there is a competing, more obscured, distributional goal involved. Growth, it has been known for years, generates profits—especially for those sectors that constitute the booster network. Transportation projects are particularly good at generating growth.

Target populations are the receivers of these benefits and burdens. The target populations constructed in broad strokes within Perry's (2002) issue definition were citizen-residents of congested cities and suburbs to which relief will be directed, citizens in rural areas who will be asked to give up land in return for efficient transportation connection to economic centers, and

private sector partners who will invest in and implement the Corridor. These population constructions were implied by the rationale set up by the policy narrative. As will be seen later, the populations become more strongly, or clearly, constructed as the policy formation process advances. For example, as the private sector's agent role for the Corridor was elaborated, its target construction as equal, or even superior, partner to government was clarified. This occurs during the policy elaboration and legislative portions of the process as other parts of the policy design, tools, agents, and rules, are developed. These will be fully discussed in the next chapter. Finally, my analysis that Perry's source of authority for his implicit claim that he has the right knowledge to fix the problem is a combination of common sense observation, professional policy expertise, and the authority conferred on elected political leaders.

## CHAPTER 6

### PROPOSAL ELABORATION AND POLICY DESIGN

Chapter Six describes the process that elaborated the Corridor’s issue definition into a complete policy design. Section 6.1 discusses the TxDOT’s important role in this process, as well as the histories of both the Central Texas Toll Project (CTTP) and related Central Texas Regional Mobility Authority (CTRMA), examples of dual implementation/elaboration. Section 6.2 explains the remaining policy design elements not developed by the issue definition, which are tools and agents. I do not go into rules in this discussion because they constitute the legal language of the bills that enacted and refined the Corridor, so an analysis of them is beyond the scope of this paper. These two sections empirically illustrate how and why the booster network participated in Corridor policy formation, establishing the important link between the network’s fundamental interests and its actual actions. This link is logically required to support the next chapter’s content analysis methods as well as conclusions reached about what specific policy principle guided the network’s actions.

#### 6.1. Proposal Elaboration

The TxDOT leadership and bureaucracy, as part of the booster network, played an indispensable role in elaborating the Corridor idea into a full policy design. The agency developed RMA administrative rules and the Corridor action plan, began implementing the

CTTP, and made decisions that encouraged CTRMA establishment. As such, it served as the governor's executive arm not only in implementation, but also the policy formation process. Its activities facilitated private booster network participation both directly and indirectly, informing the Corridor policy design later enacted by HB 3588. They were the pre-enactment opportunities for the network to influence Corridor policy to further its several growth related interests, and are examples of how business entrepreneurial activity undertaken by private players outside the administrative control of the policy entrepreneur can aide his policy formation process. The examples lend crucial empirical material that has enhanced the analytical framework.

#### *6.1.1. Promulgation of Regional Mobility Authority Rules*

Regional mobility authorities received substantial amounts of elaboration before the Corridor was unveiled. Based on laws passed by the 77<sup>th</sup> Legislature, an entire chapter of administrative rules for this key Corridor component was promulgated less than a year later at the January 31, 2002 Transportation Commission meeting, held three days after the Corridor unveiling (TxTC 2002a). The Turnpike Division at TxDOT, the responsible entity for preparing the rules, made great efforts to quickly produce the rules (TxTC 2002c). When adopted by the Commission six months later in June 2002, Ric Williamson spoke about how the new rules were necessary for moving the Corridor forward. He referred to RMAs as the framework within the broader Corridor framework that would really bring the proposal to reality, saying the “whole pattern of RMAs is part of this maze of the Trans Texas Corridor,” (TxTC 2002c).

### *6.1.2. TxDOT and the Action Plan*

At the same time as the RMA rules were being promulgated, Perry was directing TxDOT to elaborate the Corridor proposal by developing an implementation plan, within 90 days, that included identifying action items and public involvement opportunities, environmental studies, financing options, public-private partnerships, and an implementation strategy (TxTC 2002c). He did so through a three-page letter sent January 30, 2002 to John Johnson, chair of the Transportation Commission, asking him to put the department's top talent to the task (TxDOT 2002a). Deputy TxDOT Director Steve Simmons outlined the action plan process to the Transportation Commission during his June 2002 presentation of the completed action plan. He explained how after Perry announced his "vision," TxDOT appointed seven committees to develop the plan: design, right of way, environment, rail and utilities, tolls, and logical routes. The committees then developed a timeline of future actions beginning August 2002 through December 2003, including state and congressional legislative actions needed to bring the Corridor to fruition. The identification of logical routes, high potential revenue corridors, by TxDOT staff can be seen as a cue to enlist booster network participation. There was an indication at the meeting of private booster network involvement in plan elaboration. Simmons thanked Union Pacific, Burlington Northern-Santa Fe, and Kansas City Southern railroads for their input to the plan (TxTC 2002c).

It appears that there was little consultation on the Corridor proposal, outside of Perry's circle, before its announcement. When TxDOT was mandated to develop the plan, the idea was publicly untested, lacking much substance beyond the financing mechanisms and a vaguely envisioned design. There seems not to have been an open systematic process of evaluating

alternatives to choose the best idea before pressing ahead—the design and implementation of the policy was truly only in “vision” form at the time. References by TxDOT agency officials also point to a lack of foreknowledge of the proposed Corridor. Simmons referred to Perry’s January 2002 vision as the “preliminary concept” when he was presenting the action plan to the Transportation Commission (TxTC 2002c). In an April 2002 *Star-Telegram* article, Maribel Chavez, TxDOT Fort Worth District Engineer, said they were “working furiously to develop an action plan for the governor,” and that they were given “no choice” but to meet the summer deadline, further indicating that the concept had not been developed beyond the preliminary stages before its announcement (Okada, 2002b). Also, cities were blindsided by Perry’s announcement. After being initially caught off guard, they scrambled and approached TxDOT about how they could become involved (TxTC 2002c).

Regarding TxDOT’s role in the early elaboration of Corridor policy, it embodies a mix of planning seen as a political activity with the apolitical, rational planning ideal. By bringing TxDOT planners into the political realm to plan for implementation of his idea, including legislative strategies, Perry accepted the political nature of the activity. However, he also tried to use the bureaucratic, “apolitical” position of TxDOT planners to shield this action from political disagreement, as though the planners would then be making purely technical decisions. At the June 2002 Commission meeting, Williamson explained why Perry gave TxDOT such a short period of time to complete the plan, emphasizing his knowledge of Perry’s intentions due to his personal relationship with the Governor. He said, “Once the Governor decided that this is where we needed to head, he wanted to remove it from the political flow of the state, he wanted it to become policy as opposed to politics, and that was one of the reasons he asked us to move so



fast,” (TxTC 2002c). By directing TxDOT to become involved, he politicized planning, not the other way around.

### *6.1.3. Central Texas Toll Project: A Key to the Evolving Corridor Proposal*

The \$3.6 billion Central Texas Toll Project, under the Texas Turnpike Authority and TxDOT engineer Bob Daigh, includes TX 130, Texas 45, and the Mopac extension. It once included 183-A, which is now slated for the CTRMA, the first RMA, to implement. However, 183-A and the CTTTP are still financially related. The CTTTP is discussed in relation to this part of my framework because although it more strictly represents implementation-type activities, a group of related advances that occurred as part of it can be understood as elaboration activities. This is so because the advances enabled experience-based enhancements of HB 3588.

The CTTTP uses four financing sources, toll revenue-backed bond sales, low interest federal Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA) loans, state highway dollars, and local contributions (TxDOT 2006). The bond sale will be discussed in detail shortly. The TIFIA funds, \$800 million authorized in 2000 for the CTTTP, were more than the state contribution of \$700 million (Huddleston 2000; TxDOT 2002b). In 2002, the City of Austin along with Travis and Williamson counties sold \$150 million in voter-approved bonds for right-of-way purchases for TX 130. At the time, the state was holding out for at least \$300 million more (Daniel 2002a). The state made a 2002 summary CTTTP financial statement that showed estimated local contributions to be \$512 million. The statement also included the \$700 million from TxDOT, \$163 million from interest, \$2,268 million from toll-backed bond sales, but only \$16 million from TIFIA (TxDOT 2002b). This seemed to contradict the earlier newspaper reports citing \$800 million in TIFIA dollars until I found the details in a TxDOT

financial report for the Central Texas Toll System. It turns out almost \$917 million in TIFIA loans were extended for the CTTTP, but only the \$16 million would be used early on. “The system anticipates that \$16,760,000 will be drawn under the Secured Loan Agreement in 2006 to pay costs of the 2002 Project [CTTP] and that the balance will be drawn down in 2007 and 2008 to retire the maturing BANS [Bond Anticipation Notes, the toll revenue-backed bonds, issued on August 29, 2002],” (TxDOT 2005, 35). The Department, therefore, used the smart accounting practice of retiring higher interest bonds using lower interest debt.

It was in the context of the Central Texas Toll Project that the first RFP process to decide the winner of a Corridor CDA project, TX 130, was completed. Also, the same TX 130 CDA is supported by a regional toll system, the first of its kind. The regional system would not work if the state had not made the related decision to spin off the CTTTP’s most lucrative toll-revenue raiser, 183-A, to be implemented by the then newly-forming CTRMA. This decision simultaneously advanced the Corridor on several related fronts by focusing state resources directly on its first leg, providing fundamental impetus to the creation of the CTRMA—which would become a core component of Corridor implementation once enacted, and in doing so ensuring the key financial relationship between 130 and 183-A would later be established. Finally, the state sold its first bonds based on (proto-Corridor) innovative financing measures negotiated into the CDA. The sale offered a valuable opportunity to discover through related negotiations the true requirements and limitations set by the finance portion of the booster network, and to improve the Corridor-originating statute based on that experience. All these advances were intimately related through the Central Texas Toll Project.

On April 6, 2002, the winner of the RFP contest between three consortia for the TX 130 implementation CDA contract was announced. The contract was later awarded and details released at the following April 25 Transportation Commission meeting before actually being signed June 19, 2002 (Daniel 2002b; *Amarillo Globe-News* 2002). The RFP process is another technique to enlist the booster network, particularly developer-builder interests, as described by my framework. Perry holds that the future toll revenues promised through such CDAs act as a mechanism to attract private partners, specifically consortium partners. Williamson has called the mechanism “pure market,” (Sallee 2002a).

It looks like there was some sort of consultation between Perry and potential private partners before announcing the Corridor. At the January 2002 press conference, Williamson discussed how work to incorporate private entities into the implementation process was already under way, but demurred when asked who these entities were (Associated Press 2002). He did say, however, that “contractors, bankers, and road designers already have expressed an interest in Mr. Perry’s initiative,” whether in specific projects or in the abstract is unknown (Hartzel 2002). However, these expressions, consultations, or negotiations clearly occurred before the public heard about the proposal, supporting the idea of private booster network partners helping with policy formation.

Williamson later made comments at the June 2002 Transportation Commission meeting about the I-35 (2<sup>nd</sup> Corridor project) CDA process. When compared side by side to the January 2002 statements made just prior to awarding the TX 130 CDA, a pattern of harnessing market forces combined with discreet consultation with booster network interests emerges. Williamson: “Generally, it’s thought that a proposal will occur shortly after we adopt the rules,” referring to

the RMA rules that were reported at the time as being Corridor ground rules. “After the governor gave us the charge, I think market forces started working right then,” (Dickson 2002). At the same June meeting, Williamson offered this convoluted statement, “And so while we anticipate that private sector partners out there in the world who we don’t know specifically who they are but we know generally would be interested in these projects, we anticipate that they will be making proposals fairly quickly,” (TxTC 2002c). Indeed, just over a week after that meeting, a six-firm consortium submitted a \$10 billion bid to build the I-35 Corridor leg (Selby 2002b). The I-35 example is used here to suggest that there may have also been more plainspoken cues given in consultation to enlist booster network participation in the CTTTP than just the RFP process.

In late April 2002, both Transportation Commissioner Williamson and Representative Krusee said they wanted to see TX 130 and TX 45 begun by the November 2002 elections (Heinauer 2002a). The Commission transferred control of the 183-A project to the CTRMA so that the state could focus money particularly on TX 130, since it directly affected Perry’s Trans Texas Corridor plan (Heinauer 2002b). State officials said, however, that the Central Texas Toll Project still would depend on sizable traffic flows from 183-A to generate necessary toll revenues to help fund the related projects (Heinauer 2002a). This technique for generating regional toll projects was later discussed in a 2005 House transportation committee hearing. A new definition and its concomitant statute were created by HB 2702 for “toll systems” to allow regionally (both geographically and physically) connected projects to be financially connected too. In fact, Chairman Krusee used the CTTTP as an example of the usefulness of the addition (Texas House 2005a). The Commission urged local leaders to take over the 183-A project through an RMA (Heinauer 2002b). Krusee, the leader organizing the CTRMA, also told local

leaders that creating the RMA would be the quickest way to get money to build 183-A (Heinauer 2002a). This move by state leaders not only directly supported the Corridor, but also did so indirectly by creating the impetus behind establishing the CTRMA, giving the RMA statute a practical test case so they would later know how to improve it with 3588.

In summer 2002, during the same period the Corridor action plan and (RMA) ground rules were being adopted, TxDOT went to New York to approach the bond market for investments in the Central Texas Toll Project, coming away with \$2.2 billion in bonds (Daniel 2002c). Transportation commissioner Robert Nichols lauded his team that presented TxDOT's case to some of the largest financial insurers and rating agencies in the nation. Nichols said of the trip: "New York and the financial part of our nation is watching Texas very carefully to see how we approach this first step which I think is a model not only for our turnpike system but the first incremental step on the Trans Texas Corridor which could piggyback and become a model," (TxTC 2002c). The bond market can be considered an agent for Trans Texas Corridor implementation. There is a special relationship between the CDA and bond market willingness to engage in this process. As arguments on behalf of CDA provisions during legislative enactment of 3588 later revealed, TxDOT's experience with the CDA and bonding processes discussed here acted as a valuable guide for drafting those provisions. In particular, the CDA allowed TxDOT to get a lower, fixed price for the project due to the feeling of certainty engendered in bonding agencies by the contract (Texas House 2003b). These valuable lessons were learned in part by undergoing these processes.

It is interesting to note that TxDOT-generated toll traffic predictions for Texas 130 were low for the New York presentation at just 12,520 vehicles per day by 2015—8 years after the

road was scheduled to be opened. Bob Daigh, head of the CTP, said they were intentionally low-balled, but that explosive growth in the early use of toll roads in Dallas and Houston support the idea that 130 would be quickly successful, too. However, his rosy interpretation may overstate the case. This is because most of the drivers that will use I-35 on the stretch through central Texas, that will be paralleled by 130, will enter and/or exit 35 *within* the northern and southern intersections between the two roads, including the bulk of truck traffic. Therefore, congestion on that segment is not expected to be lessened much by the opening of the 130 bypass, and that same congestion is not expected to apply strong pressure for 130 demand. Proportionally little of the traffic on congested urban roadways can avoid going “within the loop” because their starting points and destinations are there (Wear 2003). In fact, before TxDOT went to New York, it considered the comparatively low traffic estimates for the originally proposed 3<sup>rd</sup> segment of 130 beginning south and east of Austin and continuing to San Antonio a liability for the negotiations (Daniel 2002b). Even after the bond deal, the project almost stalled until local governments agreed to kick in \$1.4 billion more, and to shorten 130 by cutting out this 3<sup>rd</sup> segment (Wear 2003).

It was, therefore, perhaps somewhat unexpected that the bond underwriters decided to go through with the deal in light of the low traffic demand estimates. Time is money not only for project developers, but also for investors. The way these deals work is that firms like Salomon Smith Barney and Goldman Sachs invest up front in infrastructure using a chunk of their own capital, they offer to operate the projects, then they sell public stock in those projects in the form of funds which generate further business off the initial capital investment. Such funds offer dependable 6 to 12 percent return rates for investors, and the firms who organize the deals make

their main profits on fees (Anderson 2006). However, if toll revenues do not begin flowing very shortly after the money is invested, repayment of these revenue-backed bonds will be delayed, meaning return rates expected by investors would not materialize at the proper time and money would be lost as opportunity cost was incurred.

The Texas Department of Transportation may have offered some assurance at the time that 183-A toll revenues would be a reliable enough source to back the bonds, but that seems unlikely since the project was already by then CTRMA's first future project. Regional Mobility Authorities, at that time, had not yet been legally authorized to condemn property. Therefore, potential underwriters had no reason to believe that the revenues would begin flowing in the near future to back such an assurance. It is more likely that the CTRMA 183-A project did not supply the necessary assurance, therefore bonds were sold only for \$2.2 billion of the necessary \$3.6 billion for TX 130. Nevertheless, there was a built in monetary incentive for the lesser amount as evidenced by the fact that the three firms who underwrote the TX 130 deal, including Goldman Sachs and Salomon Smith Barney, earned about \$21 million in fees (*Amarillo Globe-News* 2002).

I would be remiss if I did not mention political contributions to Governor Perry that were associated, at least by their timing, with the closing of the TX 130 CDA and bond deals. On June 14, 2002, Perry received \$30,000 from Fluor Corporation and S & B Infrastructure, two firms that were part of Lone Star Infrastructure, the consortium that was awarded the April 2002 TX 130 contract. The actual CDA signing occurred just five days after the contribution, on June 19<sup>th</sup>. Also, a Salomon attorney contributed \$25,000 dollars to Perry during the same month (*Amarillo Globe-News* 2002; Daniel 2002b). These contributions could have merely been part of regular

dealings with the governor by regular political supporters—the same *Amarillo Globe-News* article (ibid.) noted that highway contractors had given Perry over \$500,000 since he took office at the end of 2000.

#### 6.1.4. CTRMA

At the January 31, 2002 Transportation Commission meeting, Krusee, who also represents Williamson County, praised the Williamson County Commissioners Court for their proactive stance toward organizing the state’s first RMA (TxTC 2002b). Krusee was at that time taking the lead in organizing the Central Texas Regional Mobility Authority (Daniel 2002b; Heinauer 2002a). By July 4, 2002, Travis and Williamson Counties had agreed to begin negotiating to establish the CTRMA, bringing another of Perry’s innovative finance tools, one designed to quickly create partnerships in urban areas “to finance and immediately begin construction of improvements to regional transportation projects that complement and support the Corridor,” closer to reality (Perry 2002, 2; Heinauer 2002c).

The state still had not come up with money for the 183-A project at the time of the April 2002 Commission meeting, so local officials were beginning to warm up to the idea of supporting the RMA in order to get 183-A built (Heinauer 2002a). Just before that meeting, Mayor Larry Barnett of Leander, a small exurb of Austin greatly interested in the alternate route to relieve congestion, was resigned to the fact that Texas 130 was being so strongly supported by the state. So he expressed his support for the RMA if it would get the 183 built. However, Krusee by then had been indicating that the organization should not be formed until late 2003 after the legislature changed the law to allow them to issue bonds (Daniel 2002b). This change was important, and was a lesson Krusee and the booster network learned from trying to establish



the CTRMA, since counties had been reluctant to support RMA formation because they did not want to pledge the full faith and credit of their governments for toll road projects that might not realize the expected revenue (Heinauer 2002a). When he learned about Krusee's advocacy for further delaying RMA formation, Mayor Barnett expressed frustration at the delay (Daniel 2002b). But at the April 25 meeting, when Mayor Barnett found out that the 183-A project "was a financial component for the entire [Central Texas Toll] [P]roject, it made [him] feel better." "The fact that this is going to have to happen for the whole thing to work was a significant development in my mind," (Heinauer 2002a). The state's decision to devolve 183-A had indeed given impetus for RMA formation.

Besides offering lessons to improve Corridor policy design, the CTRMA offered direct opportunities as a tool for local booster network developers. Starting in August 2002, a month after Travis and Williamson Counties began negotiations to establish CTRMA, Williamson County Commissioner Frank Limmer formed Magellan Water to pursue local government (including county) contracts to transport water through pipelines from the Carrizo-Wilcox Aquifer to eastern Williamson County, the area through which TX 130 will run. Limmer had been a member of the Carrizo-Wilcox Water Alliance until its relations to a general partner, and convicted swindler, of the Metropolitan Water Company, which once controlled the aquifer's groundwater leases, became apparent. Major Austin investors and developers also were involved with these water interests. With the future development TX 130 promises, being one of Williamson County's long-term water suppliers is considered an excellent business prospect (Alexander 2002). *Austin American-Statesman* newspaper articles dating back to 1995 reveal that Williamson County has long had troubles obtaining water supply to meet its growth demands.

The Williamson County attorney ruled that Limmer did not have a conflict of interest between his role as water developer and county commissioner. However, Limmer's position on the commissioner's court, his relations to close ally and Magellan Water supporter Pete Peters, and support Krusee gave in 2002 to his Magellan Water efforts seem to tie developer influence to Corridor policy. In March 2005, the CTRMA became the subject of a special report by Republican state comptroller Carole Keeton Strayhorn titled *Central Texas Regional Mobility Authority: A need for a higher standard*. The report was undertaken at the September 2004 request of a comprehensive audit by State Representative Terry Keel, R-Austin, and Democratic Austin City Council member Brewster McCracken, both of whom serve on the Capital Area Metropolitan Planning Organization board. They were concerned that this RMA was going to be managing the \$2 billion Central Texas Toll Project with only one full-time employee. The audit found that by December 31, 2004 CTRMA with its one full-time employee had already billed over \$14.5 million to TxDOT. Fundamental oversight of these and billions more in future funds had become the responsibility of contractors who, Strayhorn concluded, were a small circle of financially interested parties—and who were selected and hired in most cases on a noncompetitive basis. Her report details many instances of these activities in chapters titled “Double Taxation without Accountability,” “Loose Management Practices,” “Favoritism and Self-Enrichment,” and “Lax Expenditure Controls” (Strayhorn 2005).

These problems are not all the report reveals, but are brought up to offer background context for CTRMA creation. The example illustrates how developer interests had the opportunity to influence Corridor policy because of their influence on CTRMA. This influence could have been used in an attempt to indirectly ensure Corridor policy enhances their own

business dealings. Commissioner Limmer was in a position to vote, and obtain others' support, for the creation and board members of the CTRMA. This is because counties have the authority to petition the Transportation Commission for approval to create an RMA, as well as the power to select board members (TxDOT 2004). The Williamson County Commissioners Court, including Limmer and Mike Heiligenstein, approved the county's CTRMA board members in December 2002. About a year later on November 5, 2003, that board then selected Heiligenstein to be CTRMA executive director (Strayhorn 2005). Developer interests come into play because of Limmer's membership in:

a tight circle of county commissioners, road contractors, and a consultant, Pete Peters. The road contractors, who hired Peters to help pass a bond issue, contributed heavily to Limmer's election campaigns. The commissioners, including Limmer, then chose the road contractors to build the roads—and Peters, as a consultant, to advance the road construction project (*Austin American-Statesman* 2002).

Not surprisingly, Peters was hired by CTRMA beginning on November 10, 2003 in a non-competitive contract. In a status report from later that month, he stated, “elected officials have been shored-up and alliances have been formed to see Hwy 183-A through to completion,” (Strayhorn 2005, 45). These efforts on behalf of CTRMA's 183-A project directly translated into the future financial solvency of the TX 130 Central Texas Toll Project/Trans Texas Corridor project.

To more tightly close the circle, Strayhorn's report (*ibid.*) contains a copy of a memorandum emailed on April 14, 2004 from a CTRMA consultant to Bob Daigh, TxDOT engineer in charge of the Central Texas Toll Project, and Heiligenstein, CTRMA director, and was carbon copied to others including Peters. The memo was coordinating a public advocacy campaign on behalf of an unnamed project. The first paragraph, referring to Daigh and

Heiligenstein, stated: “However, you have both made it clear that neither TxDOT or the CTRMA can be directly and actively involved in advocacy efforts due to funding and ethical constraints,” (Strayhorn 2005, 77). He then contravenes their purported protestations by assigning private fundraising and other responsibilities to both TxDOT and CTRMA employees. He closes the memo with the following paragraph quoted here in full:

Again, we need to be absolutely sure that all efforts recognize the constraints of what the CTRMA and TxDOT are legally and ethically permitted to do. To the extent some of the individual[s] mentioned above are working temporarily on both efforts (the advocacy and public information activities) it needs to be made very clear that separate billing records are to be maintained and that no charges are made to the CTRMA or TxDOT for advocacy work,” (Strayhorn 2005, 80).

In this sort of context, it is easy to see how outside influence can creep into the situation. A related issue, which will be discussed later in Chapter Seven, is that one of the CTRMA employees carbon copied and given responsibility in this scheme, Brian Cassidy, actually drafted a major portion of HB 3588, the RMA article. This was in his dual role as CTRMA general counsel and legislative drafter of Trans Texas Corridor policy (Texas House 2003b).

## 6.2. Policy Design

Once a full policy design has been developed, elaboration is complete. This section explains the two main remaining design elements (save rules), the policy tools and agents, the focus of the Corridor’s elaboration stage. Although strictly speaking the issue definition and its components are part of the policy design, and may have been elaborated somewhat after their initial pronouncement, they are for the purposes of my framework fixed at the earlier stage. The discussion about them will not be repeated here. As discussed before, the promise embodied by the expected policy design is imputed the power to draw booster network participants into the

policy formation and implementation processes to secure desired policy outcomes, their activities both shaped by and shaping the completed policy design. Particularly, this stems from the meaning of the tools and agents as understood in light of the policy objective, explicit and implicit.

My analysis follows the following logic for interpreting the meaning of these provisions to booster network players. In a nutshell, I believe that outcomes in the interests and under the control of the booster network will likely result. That is because, in pragmatist terms, the conduct that Corridor policy is fitted to produce is urban growth under the direction of the profit motive. The players, who were initially targeted by the proposal, were also defined by Perry as Corridor implementation agents. The tools' "if...then" causal inferences activated the players' interests, causing them to decide to voluntarily join in as agents—for the formation process in addition to implementation. By participating in the formation process, the agents get to define their role in implementation in part by helping define the details of the tools-based provisions that are eventually enacted. Through these elaboration activities, the target population constructions, of both the policy's agents and recipients of tools-based provisions, are clarified.

The policy entrepreneur's initially intended meaning for all these, in the form of the guiding principle, comes to be collectively understood by the booster network during the formation process. In this way, the guiding principle shapes the eventually enacted tools and agents provisions. In one sense, the policy entrepreneur hands the baton over to the group as a whole (of which s/he is a member) during this sequence of events, thus losing some control over the destiny of the policy. However, in another sense, the successive clarification of all design elements, elements which were initially relatively loosely defined, allows this transaction to

occur without the essential thrust and direction of the policy to be altered. That is because its direction, most importantly, is defined by the network's various interests—interests that must be assuaged for the enterprise to move forward to self-defined success.

### *6.2.1. Tools*

Concession financing is the key content of Corridor policy, embodying all four financing provisions, and it uses especially authority, incentive, and system-changing tools. In this section, concession financing, in terms of the tools used, is explained. Tools are the parts of the policy design that are meant to change behaviors of the various agents and targets of the policy. The major provisions discussed in this paper, regional mobility authorities, toll equity, comprehensive development agreements, and the Texas Mobility Fund, have been referred to as “market mechanisms” that are designed to offer financial incentives to entice private entities to come in and implement the Trans Texas Corridor. They contain numerous specific tools to give them their policy handles.

Concession financing, or franchise financing, is “a long-term contractual agreement between government and private or quasi-private companies” that allows the company to design, build, operate, and maintain a transportation project (TxDOT 2002a, 84). Toll roads are an attractive investment for private equity because they combine low, predictable operating costs and relatively inelastic demand with stable, predictable long-term revenue generating capacity. The cost of private equity is higher than traditional tax-exempt financing, but these investors are taking on a higher level of risk. Private equity lenders have substantial expertise to undertake big projects, and they are willing to accept a longer time horizon to realize gains than tax-exempt bond investors typically are—40 to 50 years rather than 20 to 30 years. This is because they

highly value the surplus, i.e., profits, generated predominantly in those out years. Previously, tax laws prevented mixing tax-exempt financing, private equity, and transportation department revenues, so concession financing, which depends in part on this admixture, was not possible. With the advent of concession financing and the legal changes that have accompanied it, all available sources of financing can be combined to realize huge infrastructure projects on the Trans Texas Corridor (Booke 2005).

Authority tools are those that use government authority to grant or deny permission to act under particular circumstances (Schneider and Ingram 1997). Toll equity and the Texas Mobility Fund are examples of authority tools, both allowing private bonds to be combined with state funds. At the same time, they are also both sweeteners to incentivize private entities to join in Corridor implementation, incentive tools. Incentive tools use positive or negative payoffs, monetary or otherwise, to induce desired behaviors (*ibid.*). Often, concession arrangements are signed directly between RMAs and the private entities. Another authority tool was the legislature granting RMAs eminent domain power in general, quick take in particular. This tool also simultaneously acts as an incentive tool to convince bond underwriters to close deals on CDA projects with RMAs. In a broader sense, RMAs are additionally a system-changing tool. System-changing tools reallocate authority among individuals and agencies to alter the system that delivers goods (Elmore 1987). Regional mobility authorities are locally-based entities that are political subdivisions of the state that have the authority to do, transportation wise, many of the things the state can, but on a decentralized basis.

To further enhance their willingness to take on the risk that long-term, concession investment entails, private equity lenders have required other legal changes that allow them to

have more control over a project than would have traditionally been the case. With concession financing, a key element that allows these investors to interpose themselves between a transportation department and project delivery is the comprehensive development agreement (Booke 2005). In this way, CDAs are another form of incentive tool. Through them, private entities are offered future toll revenues as an incentive to enter into the agreement. They also enshrine the design-build construction method and allow the consortium (the concessionaire) responsible for developing and building the project to operate and maintain it for a long time period such as 50 years in return for tolls and other sorts of revenues (ibid.). The design-build method is a new capability that allows the developer to design aspects of a project simultaneously with constructing other aspects. This contrasts with the traditional design-bid-build process that required a sequential separation of these two components of the job. Essentially, the older process required a fully detailed plan to be presented and agreed upon up front, and little deviation from the plan was allowed during the construction phase. This traditional process, proponents of design-build argue, adds years to sorely needed highway projects, compounding the wait with extra expenses (Texas House 2003b).

Due to being an important component of CDAs, design-build arrangements also typify an authority tool. Additionally, leaving the regulation of toll rates up to the negotiated CDA between TxDOT and the private entity, or an RMA and the private entity, adds an additional combination of authority and incentive tools. Finally, CDAs derive additional incentive power because their details come under legally-protected privacy, another authority tool. This provision was enacted by HB 3588 and refined by HB 2702. Chapter 223.204 of the Transportation Code, says that CDA proposal information is “confidential, not subject to disclosure, inspection, or



copying under Chapter 552, Government Code, and is not subject to disclosure, discovery, subpoena, or other means of legal compulsion for its release until a final contract for a proposed project” is signed. Chapter 552, Government Code, is the law dealing with public information commonly known as open records. The exemption is said to encourage private entities to submit proposals.

### *6.2.2. Agents*

Agents are governmental or nongovernmental institutions that are formally charged with developing and implementing policy. “Agents may be established by the policy or existing agents may be given new authority or different rules,” (Schneider and Ingram 1997, 82). The Corridor sets up the bond market and private entities, the consortia that put together bids to design, finance, build, operate, and maintain segments of the Corridor, as simultaneous targets and agents of the policy. “Almost all public policies act to coerce or enable people—either directly or indirectly—to do something they otherwise would not do...These people are the targets of policy, and through them policy is supposed to achieve its intended purposes,” (ibid.). Corridor policy targets the private sector, asking it to form such an entity to bid for a CDA to implement part the Corridor. These entities also act as agents in relation to both the state and RMAs that contract with them. By making these private players agents, their target population definitions are further clarified. The private sector, is constructed as being fast, capable, effective, and more than deserving of the opportunity to provide our transportation infrastructure. As a byproduct of this, the public is, by way of contrast, defined as slow, inefficient, and incapable. The driving public is constructed as users of facilities that cost money to build and maintain—users who should pay their fair share of the costs entailed by the system.

Regional mobility authorities, newly created through Corridor legislation, are the other main agents created by Corridor policy, with target constructions as governance structures who are “on the ground” closest to the issues. They take out bonds and are allowed to contract directly with private entities to get projects going. Most policies have several targets, and these may but do not have to be closely related. With the Corridor, they are interrelated. Other Corridor agents include TxDOT, who takes care of planning, design, right of way acquisition, and deals with environmental regulations and studies. Also, the Transportation Commission, TxDOT’s policy making body implements legislative policy, makes administrative rules, assigns state grants and loans, directs the transportation budget, contracts with private entities, and generally uses TxDOT as its arm to help implement the Corridor.

## CHAPTER 7

### LEGISLATION

Chapter Seven deals in two sections with the repetitive legislative process the booster network used to enact then improve Corridor policy. Although it was not yet a concrete proposal, the 77<sup>th</sup> Legislature may be considered a trial run for the Corridor insofar as its core provisions were initially enacted at the time. They were subsequently taken up, combined, and reworked into a different context with a unified purpose for the following session. Nonetheless, “the Corridor” was officially enacted by the 78<sup>th</sup> Legislature in 2003 with HB 3588, after which its implementation officially began, then it was refined by the 79<sup>th</sup> Legislature in 2005 with HB 2702. Section 7.1 is the video content analysis of 78<sup>th</sup> legislative activities during 3588 enactment. The analysis gives examples of how the various policy elements discussed earlier in the case study reappear during the legislative process to support the policy’s passage. Section 7.2, the final section of the case study, discusses findings from the 2005 legislative refinement of the Corridor. The analysis in this chapter is designed to shed empirical light on booster network motivations for Corridor policy formation and implementation, yielding the network’s guiding principle—one of the major findings of this thesis.

### 7.1. Enactment: HB 3588

The Republican Party took over the Texas statehouse in the 2002 elections. Tom Craddick, R-Midland, was elected Speaker of the House in January 2003, and as a result Representative Krusee, a long time ally of Craddick, was appointed chair of the 78<sup>th</sup> Legislature's House Committee on Transportation (Daniel 2003). Being such a prominent member of the Speaker's team, he was in a strong position to enact the Corridor with HB 3588, which he carried then passed in May 2003. The examples given in this section supply the reader the opportunity to "see the booster network in action," and by extension the framework, in a way the more static previous analyses did not allow.

#### *7.1.1. Passage of HB 3588 in 2003*

In Chairman Krusee's opening remarks to the House floor debate of HB 3588, he repeated the policy narrative that forms the Trans Texas Corridor's issue definition. He began by saying our transportation system is in rough shape with only 30% of projects funded, and that it will only get worse. The system is "on the brink of collapse," hence the bill features the Trans Texas Corridor. He then outlined how it would maximize private investment, pointing specifically to RMAs and the Texas Mobility Fund (Texas House 2003a).

During the acrimonious floor debate that followed, discussion and arguments centered on the Texas Mobility Fund. Representative Delisi's (R-Bell County) freestanding bill, the "Driver Responsibility Act," was rolled into 3588 to provide a funding stream for the TMF. The debate was important for a twofold reason: it illustrated the influence of finance interests while it offered an example of 2<sup>nd</sup> and 3<sup>rd</sup> tier participant involvement in the legislative process, which was overshadowed by the power of those financial interests. Much of the acrimony, especially

that expressed by the minority Democrats, stemmed from two sources. Their arguments against the provision were consistently expressed in terms of the fee increase being a de facto tax hike—a hike coming from no new tax pledgers, the Republicans. Also, during the middle of debate, the Republicans brought up a surprise procedural vote to move their unrelated controversial redistricting plan forward (Texas House 2003a).

Under Delisi's provision, a point system was developed to raise ticket fines on drivers for various offenses, with 50% of these revenues to go to trauma care while the remaining 50% would go to the TMF. Because bond markets want older, more reliable funding sources, a three-way swap between the TMF, Department of Public Service ticket fees, and general revenues was engineered. The new dollars earmarked for the TMF had to first be routed into general revenue based on an estimation of the total amount raised. Then, DPS fees, a long-established revenue stream, equal to the estimated amount would be put in the Mobility Fund. The bond market regards DPS fees as a more stable source of funding than the new fine increases, so better rates are available for equity actually based upon them. Finally, DPS fees equal to the amount diverted to the Mobility Fund are then replaced from general revenues (Texas House 2003a).

A group of 2<sup>nd</sup> tier latecomer participants joined the legislative process because of Delisi's provision once HB 3588 went over to the Senate after the House from the floor debate just discussed. From those Senate hearings it was learned that two representatives of emergency care interests weighed in in favor of the bill, and one representing Texas' Justice of the Peace and Constables Association testified with reservations, saying that ticket fees were already so high that many judges lower them simply to obtain any money from the many low-income offenders (Texas Senate 2003a; 2003b). However, it was not arguments based upon these

interests, either for or against, that were made by legislators in the House when originally debating the eventual inclusion of Delisi's provision in 3588. The financial interests, with the debate structured around which technicalities would ensure the bond market a reliable revenue stream, overshadowed considerations of medical or other interests. It is almost assured that had these latecomers voiced their desires before the House debated the provision that the outcome would have been no different.

After passing the House, several important Senate committee changes occurred which spurred Representative Krusee to call an unofficial "working session" of the House transportation committee for May 27, 2003 in response. The meeting, between the time 3588 was changed in Senate committee and the Senate floor debate, was largely a discussion between Chairman Krusee and invited witness Brian Cassidy. It can be characterized as the witness being led by the chairman, who could hardly veil his anger and frustration at the Senate's actions.

This meeting illustrates important aspects of the booster network framework. Firstly, it represents legislative confrontation which, according to the framework, can reveal important policy disagreement. One of the changes Krusee was angry about was the removal of RMAs' comprehensive development agreement authority. Senator Lindsay, R-Harris County, who likely was responsible for that removal, later joined the House working session to give a speech against allowing RMAs to execute CDAs. Before that, though, the chairman and his witness began the session with Article 2, which deals with RMAs including CDAs, and focused mainly on it for the entire meeting.

Krusee introduced Cassidy as the general counsel to the newly established CTRMA, and later during the meeting gave him credit as the lawyer who drafted Article 2 for him (Texas

House 2003b). From the time of the first June 2003 billing to TxDOT for his services to the RMA until her March 2005 report was completed, Texas Comptroller Strayhorn tabulated that Cassidy was paid \$1.136 million from state money for rendering these services (Strayhorn 2005). More importantly, having overseen CTRMA's establishment as general counsel, Cassidy was intimately aware of legislative changes that would need to be made to facilitate RMA activity, and was furthermore in a position to draft them into the Corridor legislation. This is another important illustration of the framework, with boosters leveraging their experience with imperfect legal capabilities into legislative policy refinements.

One of the objectives of Article 2, according to Cassidy, was to correct the actions of the 77<sup>th</sup> Legislature, which omitted bonding and condemnation authority when originally creating RMAs (Texas House 2003b). He knew how counties only formed CTRMA after promises that RMAs would be given bonding authority, and that an RMA without condemnation authority was a nonstarter for the bond market, as the following discussion about quick take authority will show. Also, Cassidy discussed how 3588 was designed to make RMA debt as attractive as possible to the debt market by allowing RMAs to use such tools as CDAs. Comprehensive development agreements, he said, were particularly well-suited to RMAs which do not have deep staffs—which presumably cannot plan and manage large-scale projects themselves. Not giving RMAs CDA authority, what the Senate moved to do, would delay the time frame and increase costs both because of longer periods paying interest rates and higher interest rates required by investors. Comprehensive development agreements speed up projects because they allow the design-build construction method, a nonsequential development process. Also, CDAs allow the

RMA to receive a fixed price for the project because of increased certainty that bond markets have due to the contract (Texas House 2003b).

The Senate also pulled RMAs' "quick take" authority from the original version of the bill. Quick take is a tool that provides for an accelerated condemnation process to facilitate taking land from holdout property owners who may be trying to pressure the condemnor to settle on an inflated price just so the project can move forward. This authority is important to RMAs, who are trying to acquire debt at the lowest possible cost. The problem with not having that authority, argued Cassidy, is that it looks like increased risk to the bond market, so higher interest rates will be charged (Texas House 2003b). In other words, the RMA would not have the authority to ensure a quick turnaround for the project, thus delaying the flow of toll revenues that would come from opening the road sooner. One can reasonably deduce from this discussion that RMAs having no condemnation authority at all, as was the case up to that point, would strongly discourage the bond market from financing an RMA project because there would be no way to estimate how soon, or at how much expense, a toll revenue-backed project could be completed to begin generating toll revenues.

The following are additional examples of how finance sector interests were taken into account creating the Corridor. They further illustrate how those interests overrode competing interests, such as accountability to the public. In the House working session, Krusee discussed how RMAs must be able to have telephone conferences to make decisions on a timelier basis. Cassidy added regular meetings, which require posting, slow down important decisions such as whether to acquire a piece of property or enter into a contract for services. Any thing that slows the process increases risk in the eyes of the bond market—all it cares about is speeding up the



process. In the same vein, Cassidy later discussed with Representative Edwards, D-Harris County, how the proposed 6-year RMA board terms were seen by the capital market as increased stability that would ensure that projects begun would eventually be finished (Texas House 2003b). The next important discussion about bond markets occurred later that day during the second reading of HB 3588 on the Senate floor. Senator Whitmire, D-Harris County, asked Senator Ogden, R-Bryan, whether tolls and fees set by RMAs on the Trans Texas Corridor were subject to any state or other governmental agency oversight or regulation. Ogden responded that there was no such regulation in the bill because the authors wanted to assure bondholders that RMAs had sufficient authority to set tolls at a rate that will enable them to pay off their debts (Texas Senate 2003c). Once HB 3588 passed the Senate, the two chambers assigned a conference committee to reconcile differences in the bill before it was sent to the governor to sign into law.

## 7.2. Refinement: HB 2702

The booster network uses a repetitive legislative strategy to perfect its policy. Once HB 3588 was passed, the network had two years to begin implementing the Corridor. Lessons learned from that time were brought back in the form of HB 2702, the second major piece of Corridor legislation. Section 7.2.1 deals with one of those lessons, RMA quick take authority. Section 7.2.2 is devoted to an analysis of the ancillary facility issue. The contentious debate that surrounded it gave preliminary indication of its potential importance, but an analysis of the rules that legally express this aspect of Corridor policy (the limited, and only rules analysis in this paper) provides the most convincing evidence of its potential value to all booster network interests. It illustrates how the beachhead established by 3588 was solidified and extended with

2702 policy refinement. Section 7.2.3 briefly discusses how latecomer participants managed to have some influence on Corridor legislation after they had the chance to organize between legislative sessions.

#### *7.2.1. HB 3588 Debate, Continued into 2005*

The hearings and debate over 2702 revealed somewhat less than their 3588 counterparts did two years before. This might be because many of the core provisions that constitute the Corridor were passed then. However, one old issue remained unsettled. Fast forward two years to May 2005 and the passage of HB 2702, quick take authority for RMAs was back on the table. The transportation code was amended by 2702 to give RMAs all the authority to condemn and acquire real property that TxDOT had based on Subchapter D, Ch. 203. Chapter 203, in turn, was also amended to clarify TxDOT's quick take condemnation authority. In short, the new bill gave RMAs their long sought after quick take authority (Texas House 2005a).

#### *7.2.2. New Debate: Ancillary Facilities*

Although the fierce debate over the Texas Mobility Fund during HB 3588's passage did reveal some things, the one over ancillary facilities in 2702 touched right to the workings of the Corridor, thus revealing much more. The provision, which seems to allow all types of for-profit development within the Corridor, struck many legislators as a boon to powerful developers, and a blow to neighboring communities. It became the big issue of contention with the bill. The provision was never removed, but was tinkered with without really altering the expected benefits to future Corridor developers. The following exchange occurred during a statement of legislative intent orchestrated by Representative Lois Kolkhorst, R-Brenham, just prior to engrossing HB

2702 on third reading. It illustrates several issues that must be disentangled to understand the ancillary facility debate:

REP. KOLKHORST: Mr. Krusee, we've been working...and you know one of my biggest concerns is the rural areas and some of the things we are doing on the Trans Texas Corridor. Before we get to the Trans Texas Corridor, I just want to ask a couple of questions to make sure that I've read the bill correctly. On page 18, line 9, it talks about state highways and RMAs and their ability—what they can and cannot do...they can, 'provide a location for auxiliary [ancillary] facilities that is intended to generate revenue for use in the design, development, financing, construction, maintenance, or operation of a toll project, including a gas station, garage, stores, hotel, restaurant or other commercial facility.' Now is that on any state highway that becomes a tolling facility, Mr. Krusee?

REP. KRUSEE: That is directly, that is a part of the recodification, that is not new law. That was taken from Chapter 361, and that is a part of the recodification where it's put into Chapter 201 which is the definition section of the transportation code. In other sections of the code where this is implemented it is severely restricted. For example, in the Trans Texas Corridor they are not allowed to do hotels or restaurants. In RMA, there is a two year moratorium on doing any of them. In other parts of the bill, we are restricted from putting any auxiliary [ancillary] facilities or condemning land for auxiliary [ancillary] facilities outside the Corridor, and there are other restrictions as well that the house put on, all those restrictions remain intact in this bill. This is not new language and it is restricted by everything we have put on in the house (Texas House 2005b)

I repeated almost in full this long passage from the *House Journal* to illustrate just how complicated and ambiguous Corridor policy is. Note that Rep. Kolkhorst began by mentioning the Trans Texas Corridor, then quoted a passage from HB 2702 that she characterized as dealing with state highways and RMAs. The passage does indeed affect state highways, Chapter 203 ("Modernization of State Highways"); however, it does not deal directly with RMAs. Chairman Krusee mistakenly answers that it is part of the recodification of Ch. 361 ("State Highway

Turnpike Projects”) into Ch. 201 (“General Provisions and Administration [of roadways]). Again, this passage affects Ch. 203, it was new law.

Neither Representative Kolkhorst nor Krusee are expected to correctly quote the confusing array of provisions suffused through multiple sections of code while they are debating on the floor of the house. That being said, the Trans Texas Corridor is constituted through multiple sections of code, with chapters such as “Modernization of State Highways,” “Regional Mobility Authorities,” “Bids and Contracts for Highway Projects,” “State Highway Toll Projects,” in addition to the chapter titled “Trans Texas Corridor,” added or altered in conjunction to bring the Corridor to reality. Furthermore, the entrepreneurial nature of Corridor implementation lends itself to the several similar yet distinct provisions, necessarily legally compatible with one another, scattered throughout the code which can be chosen from to fit the particular situation at hand. In a way, each project through its design (physical as well as legal and financial) reconstitutes the Corridor anew by having brought together several elements of code into one unified plan. This legal structure fits the Corridor’s highly entrepreneurial formation and implementation strategy.

In the quoted passage above, Chairman Krusee also explains how ancillary facilities are restricted to varying degrees in different parts of the law. He says, “For example, in the Trans Texas Corridor they are not allowed to do hotels or restaurants. In RMA, there is a two or more year moratorium on doing any of them,” (Texas House 2005b). The part of 2702 that Kolkhorst chose to mention was not the chapter directly devoted to RMAs. As demonstrated earlier in this paper, RMAs are seen as an essential component of the Corridor. Certainly, not all RMA projects are Corridor projects (although many “non-Corridor” projects may indirectly be, due to their

partial purpose as revenue generators to finance Corridor projects—recall U.S. 183-A), but Corridor projects have thus far been depicted as relying on RMAs for their implementation. The question becomes whether a project that retains many of the characteristics that define the Trans Texas Corridor is actually a “Corridor project” even if it is not labeled as such for purposes of, say, allowing commercial ancillary facilities such as hotels and restaurants to generate revenue for the project at hand or a future project.

Also, the two-year moratorium Krusee discusses with Kolkhorst appears as Section 2.100 of HB 2702. This section is devoted to a moratorium on commercial ancillary facilities that expires September 1, 2007, but it exempts the comprehensive development agreements the state signed in 2005 with the Spanish consortium CINTRA for the I-35 Dallas to San Antonio leg of the Corridor or to the TX 130 leg. Furthermore, the I-69 corridor, widely considered to be the third Trans Texas Corridor project following these two, was predicted in 2005 by Ed Pensock, Director over Corridor Systems at TxDOT, to be two to five years from a decision on route and contract (Pensock 2005). Therefore, the moratorium has no effect whatsoever on the controversial ability of developers to place commercial facilities such as stores, hotels, and restaurants along the Corridor—facilities which would be accessible only to Corridor patrons.

These commercial ancillary facilities are another example of market incentives designed to attract private sector infrastructure providers to build the Corridor for potential profits. The consortia that would develop and build portions of the Corridor could include other developers who would build and operate such ancillary facilities for profit. In fact, due to the combination of limited Corridor access via toll systems and its location miles away from existing developments, these potential profits look fairly certain. Although I am not a lawyer, my analysis of HB 2702

(the finalized version, the conference committee report was used) and related existing transportation code its provisions refer to concluded that limitations on ancillary facility development in one Corridor project context might not apply to another. Seemingly, some parts of the statute established by 2702 allow it while other parts prohibit it. My explanation for this is that ancillary facilities must be such an important component of the CDA package to incentivize private Corridor implementation that the booster network would exempt existing CDAs from the moratorium, and go to great lengths to make sure such developments could still go forward. What follows is the analysis on which these conclusions are based. My analytical procedure was to begin with the provision referred to by Rep. Kolkhorst above, then look up further references to other parts of the act and existing code contained there, and in the additional references themselves, until the circle of references (to the best of my knowledge) was closed.

The argument was assembled from this analysis, and all code referred to is transportation code.

- Under Section 203.052(a) of existing code, the Transportation Commission may acquire real property that is necessary and convenient for a state highway.
- In Section 227.024 a highway, including a turnpike, on the Trans Texas Corridor is part of the state highway system.
- HB 2702 amended Section 203.052(b) to say that property necessary and convenient to a state highway for the purposes of Sec. 203.052(a), mentioned in the first bullet above, includes property to “(9) provide a location for an ancillary facility that is anticipated to generate revenue for use in the design, development, financing, construction, maintenance, or

operation of a toll project, including a gas station, garage, store, hotel, restaurant, or other commercial facility.”

- Furthermore, existing code (227.041) says that property acquired for a facility to be located in or contiguous to an existing or planned segment of the Trans Texas Corridor by definition furthers the primary purposes of the Corridor. This includes property that generates revenue directly or indirectly from ancillary facilities for constructing or operating the Corridor.
- HB 2702 also amended Section 223.206(d) to explicitly state that the department may not enter into a comprehensive development agreement *under* Ch. 223 (“Bids and Contracts for Highway Projects”) *or* 227.023 (Participation by Private Entities in “Trans Texas Corridor”) with a private entity that allows use of rights-of-way by a private entity for a commercial ancillary facility.
- But, once the moratorium that Representatives Krusee and Kolkhorst discussed expires, other chapters such as Ch. 228 (the new chapter created in HB 2702 called “State Highway Toll Projects”) or Ch. 370 (“Regional Mobility Authorities”) could still be used to legally authorize such a facility.
- Additionally, for revenue purposes in Ch. 228, the department “may...notwithstanding anything in Ch. 202 (“Control of Transportation Assets”) to the contrary contract with a person for the use of part of a toll project or system or lease” part of that project or system for a commercial ancillary facility.
- According to Ch. 203.001 (“Modernization of State Highways”), a “person” includes an individual, a corporation, association, or firm.

Again, these legal provisions seem to allow ancillary facilities for developers in exchange for concession fees that would support future transportation projects.

### *7.2.3. Rural Latecomers*

The ancillary facility debate was closely linked to eminent domain issues and property rights, particularly for the state's rural interests. These latecomer participants to Corridor policy making did influence the Corridor, but probably not in fundamental ways. After HB 3588 passed in 2003, the Texas and Southwestern Cattle Raisers Association (TSCRA) formed a committee with the Farm Bureau and other agriculture interests to develop positions and recommendations on Corridor policy for their eventual negotiations with legislators (TSCRA 2005b).

Among the amendments they fought for were three that will be discussed here. They attempted to prohibit ancillary facilities, ensure adequate access to the Corridor and the ability to relatively easily cross it (for farmers and ranchers to get to parts of their land bisected by the Corridor), and to prevent TxDOT or private operators from drilling groundwater wells within the Corridor easement (TSCRA 2005a). Representative Rick Hardcastle, R-Vernon, summed up the essence of the rural argument against ancillary facilities, “[I]f you’re going to condemn my farm and put an eight-lane highway down the middle and then turn around and lease out the median to a fast food restaurant, why are we being cut out of being able to own that fast food restaurant?” (Robinson 2005a). Rural counties shared related concerns about ancillary facilities, largely because agricultural land once on county tax rolls would be removed and owned by the state. Additionally, Corridor concessionaires, not local businesses, would win the dollars of Corridor travelers under conditions set by the 2003 legislation (Robinson 2005b). These concerns were addressed through successful negotiations by rural interests with legislators, including Chairman



Krusee. The landowner will be allowed to retain development rights on condemned land, counties must approve any ancillary facility that would be developed within their jurisdiction, and the state was prohibited from condemning land outside the Corridor footprint for the facilities (TSCRA 2005b).

Access and water rights were also addressed. The state was required to provide access “to and across the Corridor at the intersections of all state and interstate highways, and to make every reasonable effort to provide access to significant farm-to-market and ranch-to-market roads, taking into consideration advice solicited from local officials,” (TSCRA 2005b, 2). Compensation to property owners for loss of access was also inserted into the bill. Additionally, the state was prohibited from drilling water wells for purposes other than Corridor construction (ibid.). Of course, as shown by the above ancillary facilities analysis, the devil is in the details of the legislative language. For example, at the same June 17, 2005 meeting for legislators and their staff referred to above (see Pensock 2005), neither Pensock nor Phillip Russell, current director of the TTA, would directly answer my questions about what “every reasonable effort” to connect the Corridor to roads other than state and interstate highways means. When I asked whether there was a rule of thumb for making those decisions, they answered only that current practice on ingress and egress would be considered and that much of it would depend on travel demand expectations of CDA operators when deciding where to build entrances and exits (i.e., economic analyses about potential toll revenues). When I pressed them as to whether there was any other explicit requirement in the legislation besides the connections at state and interstate highways, Russell admitted that there were none (Russell 2005). Another major problem is that many of the details will be worked out in legally-protected private negotiations between private entities and

the state or RMAs over CDA contracts. This significantly curtails the ability of rural interests or others to enforce the significant, yet not fundamental, changes they wrested from the booster network.

## CHAPTER 8

### CONCLUSION

How did the Trans Texas Corridor come to be? This question spawned the booster network analytical framework, and in turn the present policy formation analysis aimed at building and refining policy theory. The analysis captures only a small slice of the initiative, and raises many additional questions some of which, for now, must go unanswered. However, there are some things that can be said.

The continuing shift toward privatization has created new opportunities for private participation in transportation policy making, infrastructure development, and service provision, with the resulting high stakes drawing a variety of traditionally powerful private players to overtly participate in these activities. The Trans Texas Corridor is a highly complicated, modern attempt to deal with one of the most basic needs any state faces, while simultaneously providing enough benefits from urban growth to enlist private entities to take on broad responsibilities.

Texas is unique among the states as the unchallenged leader in transportation privatization, and several of our unprecedented changes have recently been adopted by the U.S. Congress in its 2005 transportation reauthorization bill. It is for this and other reasons that we should be mindful of how the Corridor was decided on and established. That very important process will, in the end, largely determine who receives its benefits and who takes on its burdens. It will also decide who the benefits and burdens are distributed to, a broad segment of Texas, a

narrow one, or a combination of the two. This is because early policy formation activities, particularly how the policy issue is defined and constructed, fundamentally shape what follows.

The booster network that created the Trans Texas Corridor utilized an ingenious policy strategy to develop and enact the proposal. Governor Perry, as policy entrepreneur, pulled together the main, development-related interests to constitute the network, the government and experts, financiers and real estate, and developer-builders who were brought to bear on the task. The network's function was to develop transportation policy. The mechanism used to coordinate its activity, the guiding policy principle, emerged among network actors as they pursued their separate yet mutually beneficial interests on behalf of the policy. As they developed its provisions, they used the principle of minimizing risk to themselves and other private sector participants as a guide. In doing so, however, that leaves other groups and societal interests, as well as the state, to bear much of the risk and burden associated with the initiative.

My framework offers an approach to urban development policy analysis that combines the strengths of the policy studies and urban development literatures, offering a content-based analysis that provides insights into the intentions and motivations of policy makers. Even though it cannot conclude with surety what these intentions and motivations are, it offers theoretically and practically based arguments as to what they can reasonably be expected to be. As such, it aids a solid, reasoned analysis which takes the traditional policy analysis into new territory—neither offering a strictly “neutral” analysis nor having to approach the issue of policy goals from a wholly politically- or ideologically-based position.

In practical terms, the framework can be used to provide explanation for officeholders of what is going on in others' policy initiatives during the heat of legislative activity. This is a

valuable contribution to practitioners who need to formulate appropriate positions and response to the many large-scale, urban development-related initiatives that surface in every legislative session. This includes further refinement of Trans Texas Corridor policy. As implementation battles arise and are fought over the coming decades, we are sure to see new proposals that attempt to alter the terms of the debate as our state's varied interests jockey for the rewards that this massive infrastructure initiative will no doubt continue to supply.

### *Further Research*

There are many implications this analysis suggests for future policy outcomes that might very well occur. This study has brought up several important issues and questions, but was not structured to confidently answer them. However, it certainly has outlined a theoretically interesting empirical research agenda. Following is a discussion of this.

The question of who actually takes on the bulk of the risk with the Corridor goes straight to the heart of this policy process. It strikes me that the Texas legislature, by accepting the booster network's proposal essentially unchanged, transferred more authority and control to the private sector than it needed to, and offered more financial incentive than necessary to garner private participation. The state was in a strong bargaining position, due to the manifold profit making opportunities offered by the proposal, but in the end accepted losing terms. As it stands now, the state and the populace are bearing the brunt of the risk. The former by letting go of large sums of taxpayer seed money up front while not retaining broad authority to regulate projects it will, when all is said and done, be held politically accountable for. The latter bears, especially, disproportionate financial risk by financing the largest share of these projects through user fees. Also, the populace loses in terms of opportunity costs, since these transportation

resources are deployed mainly for facilitating interurban travel and trade—so far, the Corridor does not promise to really address the central mobility problem for most Texans: urban traffic congestion.

How was this state of affairs accomplished, and why was it politically tolerated? The answer to this question is difficult and imperfect, but it should be addressed because it directly impinges on, in particular, the future of transportation access and urban development in Texas. The booster network is, essentially, a closed, elite power system that controls state development policy for distributive purposes—that is, to reap profits from urban growth. It managed to keep important, broad interests such as cities, the urban poor, and rural interests largely out of the Corridor policy debate. However, this was not accomplished by exclusion in its strict sense—restricting participation by groups with rightful claims to participate. It was accomplished by precluding that participation, ruling it out in advance as a necessary consequence of the issue definition chosen.

For example, exclusion would have occurred if the issue were defined such that non-booster network groups would have an obvious claim to interest in the policy, but the network proceeded to bar them from that participation anyway—a clear violation of accepted democratic standards. That is different from relying on these groups and the public at large to doubt their concrete interest in the proposal with the network allowing them to accept the idea that the initiative is sharply limited. The second scenario, in effect, has non-booster network groups exclude themselves. So the reason this distinction between exclusion and preclusion is important deals with having a politically passable initiative that still is limited to booster network involvement. The following makes this example more concrete. With toll roads, users pay for

them so the issue is defined as being between those situated to use the road and those providing the road. In other words, the deal is not between road providers and the broader public. If the main purpose of the Corridor had been framed as relieving urban traffic congestion by putting new infrastructure in cities, then the particular booster network process this paper described would have been an exclusion of the public and other non-network groups outright. But by placing the Corridor outside the geographic reach of these groups, the network precluded their participation, avoiding the taint of exclusionary politics.

When pressed on the issue, the network can simply ignore the implication, staying on (the positive) message about improving mobility statewide without seeming too disingenuous because at some basic level, people see how the Corridor in a sense does not directly and concretely touch the lives of these groups, so their relation to it is mostly in the negative. That realization, that disconnect between the ready protests of the precluded and the booster network retort, is effective at silencing political opposition that stems from leaving interests out—again, opposition nullified from the start through preclusion of broader interests.

In the 19<sup>th</sup> century, using an elite mechanism such as this for developing infrastructure did not have the same preclusionary effect—mainly because there often was no one yet residing in the as yet fully organized cities who could be ignored, and if there were people other than the booster network there, they were still served by the infrastructure because previously there was none. Today, however, just about everywhere has some level of development. Placement of infrastructure has all the ability to ignore groups of people and it is impossible to narrowly consider the simple positive act of placing infrastructure in one place not to have a kind of opportunity cost to other places and populations nearby. In other words, the booster network in

the modern era is no longer an independent agency operating in a vacuum. It acts (regardless of its desires to the contrary) unavoidably in relation to other potential infrastructure providers as well as in the context of a whole set of potential recipients. Infrastructure provision is distributive, and ignoring this property does not absolve the network of responsibility for negative outcomes stemming from unequal distribution of its benefits. By narrowly defining the issue in terms of privately providing infrastructure without using tax dollars, and by planning the Corridor as, essentially, a suburb-to-suburb connector, the network has given itself the flexibility to decide such important policy issues in terms of financing and profitability. However, this has serious implications for access and urban development.

Regarding access, the private entities responsible for implementing Corridor policy also have the responsibility for deciding where to locate highway access points, and what the fees for entry will be. State officials argue that demand will determine the locations of these points, assuring everyone will have adequate access. Putting aside the issue of direct monetary ability to pay, a serious question of access for the urban poor, the very location of the Corridor poses real access problems. Since it will not penetrate the suburban (much less urban) fringe, what happens if (as seems likely) state dollars are soaked up incentivizing private participation, leaving currently state supported urban highways in the cold? How will groups like the urban poor, who already face great transportation difficulties, maintain even their current level of access to their increasingly suburbanized jobs, healthcare, and education? Rural populations will likely also suffer access problems. If demand is not sufficient to support frequent ingress and egress, many rural citizens will be excluded from, or at least severely curtailed from enjoying, the mobility



benefits and connection to economic centers the Corridor will provide—not to mention being physically cut off from nearby rural areas where economic ties previously existed.

The Trans Texas Corridor promises to accelerate the realignment of urban development that we already see underway today. It will connect suburbs to suburbs, and result in a massive, low-density, decentralized growth at today's suburban fringe. Furthermore, it will probably also result in many boomtowns in rural areas between cities that currently are hardly developed at all. These instant exurbs will pop up overnight at Corridor access points, built by large corporate developers who have existing capacity and well-practiced instruments for quickly installing malls, shopping centers, industrial and high-technology parks, and subdivision housing. This could further drain rural populations of the few young people that now remain, contributing to the cycle of economic and cultural stress on rural Texas. These new cities will most readily be accessed by the limited access Corridor, with more traditional transportation connection lagging years behind if it ever arrives. This means that the few private entities capable of handling the Corridor's massive projects, in conjunction with newly-constituted regional mobility authorities made up of the same booster network participants that created the Corridor, will on a contract basis decide broad urban development patterns—hence, the future face of Texas.

These and many other issues were raised but only partially answered by the application of my analytical framework. The provisional answers it provides to these questions are based on potential outcomes that might be expected from the dynamics, interaction, and purposes that brought the policy into existence. Not only will a full scale policy analysis, using the results of this formation analysis, determine whether these potential outcomes might actually come to pass, but the situation is bound to change over the next fifty plus years as the Trans Texas Corridor is

battled over, refined, and perhaps altered to meet goals that today are completely unexpected. With an initiative so large in scope, the only sure thing is that we will not know all the details until it is on the ground.

APPENDIX A  
ACRONYMS AND ABBREVIATIONS

A	As in U.S. 183-A, means “alternate”
CAMPO	Capital Area Metropolitan Planning Organization
CDA	Comprehensive Development Agreement
Ch.	Chapter, used to indicate chapter of Texas transportation statute
CINTRA	Concesiones de Infraestructura de Transporte, a subsidiary of the Spanish infrastructure Ferrovia group
CTRMA	Central Texas Regional Mobility Authority
CTTP	Central Texas Toll Project
D	Democrat
DPS	Texas Department of Public Safety
EDA	Exclusive Development Agreement
FHWA	Federal Highway Administration
HB	as in HB 3588, means “House Bill”
I-35	Interstate 35
R	Republican
(R)	As in 79(R) HB 3588, means “Regular” legislative session
Rep.	Representative
RFP	Request For Proposals
RMA	Regional Mobility Authority
SB	as in SB 4, means “Senate Bill”
Sen.	Senator
SJR	As in SJR 16, means “Senate Joint Resolution”

TMF	Texas Mobility Fund
TSCRA	Texas and Southwestern Cattle Raisers Association
TTA	Texas Turnpike Authority
TxDOT	Texas Department of Transportation
TxTC	Texas Transportation Commission
TX	Texas
U.S.	United States

APPENDIX B

CONTENT ANALYSIS REFERENCE SHEETS

Date:

**Committee Hearing Info Sheet** (fill out a new sheet at each gavel in)

Chamber: \_\_\_\_\_

Official committee name: \_\_\_\_\_

Date and time of meeting: \_\_\_\_\_

Time finished: \_\_\_\_\_

Members present:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Bill number and version discussed: \_\_\_\_\_

Start time (on RealPlayer file): \_\_\_\_\_ End time: \_\_\_\_\_

Witness name and affiliation: \_\_\_\_\_  
Official witness position: for on against Unofficial position: for on against  
General tenor/interaction: \_\_\_\_\_

Witness name and affiliation: \_\_\_\_\_  
Official witness position: for on against Unofficial position: for on against  
General tenor/interaction: \_\_\_\_\_

Witness name and affiliation: \_\_\_\_\_  
Official witness position: for on against Unofficial position: for on against  
General tenor/interaction: \_\_\_\_\_

Witness name and affiliation: \_\_\_\_\_  
Official witness position: for on against Unofficial position: for on against  
General tenor/interaction: \_\_\_\_\_

Witness name and affiliation: \_\_\_\_\_  
Official witness position: for on against Unofficial position: for on against  
General tenor/interaction: \_\_\_\_\_

***Committee Hearing Reference Sheet*** (information to look for)

General:

- Procedural motions and votes
- Interactions of note between members
- General tenor of entire hearing

Member positions: (dealing with the 4 financing topics or political battles)

- Stated positions (by member)
- Implied or referenced positions (by another member. member reaction if present)
- Issue/topic of position
- Portion of the bill referred to (if any)
- Reasons/arguments regarding stated positions
- Language changes requested (member and change)

Q & A: (dealing with the 4 financing topics or political battles)

- Question asked (by member)
- Witness answer and tone (i.e., defensive, gladness, etc.)
- Interactions of note between witness and member

roles played by boosters and stakeholders

the narrative

- pay-as-you-go system failing us
- crisis, must overhaul
- strapped federal and state budgets
- private sector necessary

the metaphor (TX-sized problems need TX-sized solutions)

the 4 financing methods

- TX Mobility Fund
- RMAs
- EDAs/CDAs
- toll equity

public sector vs. private sector



Date:

***Floor debate info and notes reference sheet***

*Chamber:* \_\_\_\_\_

*Date and time of meeting:* \_\_\_\_\_

*Time finished:* \_\_\_\_\_

*Bill number and version debated:* \_\_\_\_\_

*Start time (on RealPlayer file):* \_\_\_\_\_ *End time:* \_\_\_\_\_

*General:*

- Questions asked (and member)
- Motions made (and member)
- Portion of legislation the above refer to
  
- Contentious issues and members involved
- Debate about 4 financing methods
- References to who/what interests brought issue to legislator

*Amendments:*

- Proposed amendment #
- Member proposing
- Portion of legislation to which it applies
- Amendment content and purpose (as stated by member)
- “Back mike” questions and questioners
- Motions on (and member)

*Important moments:*

- Revealing moments in the debate
- Contentious issues and members involved
- Debate about 4 financing methods
- References to who/what interests brought issue to legislator

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## BIOGRAPHICAL STATEMENT

Patrick Embry began the Master of Arts in Urban Affairs program at the University of Texas at Arlington in fall of 2003. He completed his Bachelor of Arts in Social Science from the University of North Texas (Denton) in spring of 2001. At UNT, Patrick emphasized political science and economics, having a particular interest in state and local governance and public policy. Once at UTA, he continued to pursue economics and policy studies, and their application within the urban context. Under his thesis supervisor Jianling Li, for whom he also did transportation research throughout his time at UTA, these pursuits led him to specialize in transportation policy. In preparation for a career in Texas legislative affairs, he worked on the staff of State Representative Garnet Coleman at the Texas Legislature during the 79<sup>th</sup> regular and first special sessions, from January to August 2005. He did so as a part of the Texas Legislative Internship Program (TLIP) administered by State Senator Rodney Ellis. Patrick intends to divide his time between the Dallas-Fort Worth metropolitan area and Austin, so he can serve the region that has been his lifelong home.