

APPENDIX J: KGS ROW PRESERVATION MEMORANDUM





Memorandum

To: TxDOT – San Antonio District

From: BGE

Date: May 31, 2018

Subject: Boerne ROW preservation options

The following is taken from a literature review and is intended to provide the City of Boerne, Kendall County, Alamo Area MPO (AAMPO), and TxDOT San Antonio District guidance to preserve ROW in and around Boerne in anticipation of new routes for SH 46 and other facilities.

Texas A&M Transportation Institute (TTI) has issued reports on the topic of Corridor Preservation including “5606-P1: Creating Partnerships with Local Communities to Manage and Preserve Corridors” and “6208-1: Preserving the Functionality/Asset Value of the State Highway System: Technical Report”. Report 6208 describes Corridor Preservation (CP) as the practice of acquiring, preserving, or protecting ROW needed for a future transportation corridor. The American Association of State and Highway Transportation Officials (AASHTO) define CP as ‘a concept utilizing the coordinated application of various measures to obtain control of or otherwise protect the right-of-way for a planned transportation facility.’ One update since these reports is that the Legislature extended transportation planning authority to each County in the State.

TxDOT, like many state DOTs, does not have enabling legislation that specifically provides a formal corridor preservation program. In lieu of specific CP authority, TxDOT must coordinate and rely on local jurisdictions and MPOs in transportation planning to assist in corridor preservation, where possible. TxDOT does have tools for limited early acquisition including hardship acquisitions, protective purchases, donations, and options to purchase. NEPA policy requires that the environmental clearance process be completed before Federal or State funds be used for project wide ROW so early acquisition is limited to specific parcels. Lack of funding is another hindrance to State efforts to preserve ROW since Texas, and other states, lack the resources to purchase ROW for all future projects while maintaining their construction program.

The best tool available for Corridor Preservation is cooperation with local governments. Partnerships are necessary to implement local and regional thoroughfare plans. Combined regulatory authorities from among all agencies and jurisdictions can be drawn upon to achieve community objectives. Similarly, these partnerships can protect existing corridors from development and degradation of operations under the concept of Corridor Management. One example is the designation of future transportation corridors and cooperative planning between TxDOT and Counties (TTC Sec. 201.619).

The greatest opportunity for CP is in cities with adopted comprehensive plans and zoning. This is because cities with adopted plans and zoning in place may regulate subdivision of property, land use

and density, and many aspects of site development. Local comprehensive plans, including thoroughfare plans, are important tools because:

- They serve as the guide for establishing development regulations to manage growth in a corridor.
- Zoning cannot be implemented without an adopted plan containing transportation and land-use components.
- Comprehensive plans serve as the basis of authority for the majority of tools and regulations for CP. The validity of regulatory actions hinges on adherence to an adopted plan.

Similarly, Counties can adopt transportation plans and subdivision ordinances per updated Local Government Code (LGC) Chapter 232. However, Counties can only adopt zoning in limited instances (Padre Island, certain lakes, and along the U.S. border with Mexico). Counties can adopt subdivision street design standards but cannot exceed the County's own design standards. Authority within a City ETJ must be defined as either the City or County per Chapter 242 of the LGC with a formal agreement required between the two entities to affect this arrangement. County Commissioners Courts in all Texas Counties may deny subdivision within a designated transportation corridor (LGC 232.033).

Kendall County development rules and regulations provide guidance for subdivision of properties within the County including streets. However, street information is limited to residential and collector streets and no agreement is proscribed for permitting within City ETJ's. The City of Boerne's subdivision ordinance does provide for coordination and permitting within the ETJ with Kendall County or other overlapping entities.

Hays County offers an example County Transportation Plan (CTP) (<http://www.co.hays.tx.us/transportation-plan.aspx>). This plan was revised in 2011 to reflect changes in State law as well as changes within the County. The CTP seeks to:

- Set an overall direction for the transportation future of the County;
- Accommodate future growth while maintaining and improving access;
- Address current transportation needs by identifying specific projects; and
- Address future needs by providing the information and tools needed to preserve ROW.

The main tools used to preserve future ROW are a Thoroughfare Plan Map accompanied by a Roadway Matrix of projects and recommended ROW.

Metropolitan Planning Organizations (MPO's) play a role in transportation planning and land-use through development of various long-range plans (MTP), thoroughfare plans, functional classifications, and land use and traffic projections. The Alamo Area MPO (AAMPO) MTP assumes that many arterials will be constructed by developers interested in expanding commercial and residential development outside of already built-up portions of cities within the MPO's study area. The MTP includes policy statements regarding CP:

- Require land developers to preserve the necessary rights-of-way in future travel corridors;
- Require private developer contributions in roadway construction in undeveloped areas through the development process; and

- Support the integrated development and implementation of transportation, land use and economic development plans by ensuring consistent collaboration between local, regional and statewide transportation partners.

TxDOT has developed large loop corridors around various Cities and ROW preservation in those corridors may be illustrative for the City of Boerne:

- Tyler Loop 49 – planned for 20+ years as a freeway facility before culmination in two EIS studies. ROW acquisition prior to issuance of the Records of Decision (ROD) in 2000 and 2001 was limited to hardship cases and resulted in fewer than 10 early acquisitions. Once the ROD was issued ROW mapping and acquisition was pursued throughout the corridor.
- Lubbock Loop 88 – is proposed to develop a staged freeway ‘half loop’ on the south and west sides of Lubbock. A route feasibility study was prepared in 2010 with extensive stakeholder input. Since that date the route and typical section has continued to be refined but ROW has not been purchased. However, with the regional cooperation exhibited route preservation will be possible through platting, protective purchases, and corridor acquisition following environmental clearance.

Following initial studies and consensus building, the Texas Transportation Commission normally pass a Minute Order (MO) authorizing new highway routes, or modifications to existing routes, called highway designations. These MO’s modify the State highway system and authorize TxDOT to plan, design, purchase ROW, and construct new facilities and are necessary for the expenditure of State, and certain Federal, funds. Some designations require local participation such as local purchase of ROW for new FM highways or percentage participation in other programs.

A reroute of a State facility, such as SH 46 or US 87, may create an opportunity for negotiation regarding the existing routes through Boerne under TxDOT’s turnback program. The City may elect to take ownership of these facilities as streets allowing the City to change design and operations elements such as angled parking or narrowed lanes.

Conclusion. The City of Boerne and Kendall County have tools available to protect transportation corridors related to the Kendall Gateway Study. Refinement of these corridors by TxDOT and environmental clearance under NEPA can allow ROW acquisition on a corridor basis to protect against further development until construction projects are designed and funded.