



## **COUNTY GROWTH MANAGEMENT AUTHORITY**

### **Envision Central Texas Work Group Report**

**March, 2009**

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## ***Key Envision Central Texas Principles***

### **The protection and enhancement of our neighborhoods, towns, rural areas, historic sites and our special sense of place.**

The lack of county growth management authority restricts the ability of county government to protect the character of their jurisdictions and in some cases, limits their ability to ensure adequate services. The definition of what needs to be protected or enhanced, and how, best resides with a local jurisdiction.

### **Region-wide understanding and the spirit that our fortunes are tied together.**

The lack of county growth management authority is creating complex issues both for county government as well as municipal and regional entities. Enhancing growth management in unincorporated areas will allow for greater coordination of growth across the region.

## ***Working Group Narrative***

Much of the population growth in Texas, and particularly in the Central Texas region, during the past two decades has occurred outside of city limits. The lack of city taxes and development regulations has meant that houses could be built and bought more cheaply there<sup>1</sup>. So farmland has sprouted rooftops and ranches have become the names of subdivisions. But the new homeowners have the much the same needs and expectations of government services as city dwellers. They need water, transportation, fire suppression, ambulance service, and law enforcement. And they expect to have their piece of the American dream protected from the dreams and plans of their neighbors, which might look quite different than theirs<sup>2</sup>.

In rapidly developing areas such as the five-county Envision Central Texas region, county governments, built on a 140 year-old pattern, are struggling to cope with these demands and the conflicts that arise from them. But their ability to deal with the challenges is limited by Texas law and tradition. Unlike cities of 5,000 or more, which may adopt home rule charters that give them the full power of self-government, counties have only the authority expressly granted to them in the state constitution or statutes. Lack of explicit authority to manage land development, combined with a long tradition of respecting an individual's right to do what he wants with his land, has led some counties to take a hands-off approach to growth in unincorporated areas. The sprawl<sup>3</sup> that has resulted from the haphazard and largely unregulated growth not only strains the resources of local governments, it endangers the property rights<sup>4</sup>, natural resources, and quality of life that the residents came to find<sup>5</sup>.

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<sup>1</sup> **Board feedback:** Fewer land use controls contribute to lower development costs that contribute to lowering the price of a house to a buyer, resulting in housing that is more affordable than in more highly regulated areas.

<sup>2</sup> **Board feedback:** Many people choose to live in rural areas, knowing there are fewer controls and fewer services; the expectation that rural services will be comparable to city services is unrealistic and shouldn't be encouraged.

<sup>3</sup> **Board feedback:** What some call "sprawl" is what others see as a generation of young families looking to move up to homeownership but being unable to afford homes in the cities, leading them to suburban areas where housing was more affordable.

<sup>4</sup> **Board feedback:** Opinions are sharply divided on whether private property rights are endangered or protected by the lack of growth management authority. The debate has many facets, including how to balance the property rights of adjacent property owners, the affect of managing or restricting some property rights on the total dollar value of an individual's property and the value of surrounding properties, which specific rights would be managed and by who, and what may be learned from how cities within a county regulate particular rights and land uses; see Detail section of Report below.

<sup>5</sup> **Board feedback:** Similarly, the sense of quality of life in unincorporated areas has several facets including the desirability of minimal growth management and privacy actively sought by many residents. Rural Texans view the lack of land use controls as a freedom and inalienable right.

Following is an outline of the rationale and recommendations of the Working Group to Envision Central Texas for a solution to this problem.

1. There is a need for county involvement in managing land development in Central Texas outside of city limits.
2. There is public support for more county involvement<sup>6</sup>.
3. This issue is central to the mission of Envision Central Texas. The Community Vision cannot be achieved unless there is a means of managing growth in unincorporated areas.
4. ETC can play a constructive role in forming a regional or a state-wide solution, by helping to reframe the issue to break a long stalemate.
5. The current statute gives counties the authority to take a more active role in managing growth than some counties have utilized<sup>7</sup>.
6. There are arguments for and against giving counties more authority over land development.
  - 6.1 Arguments for:
    - 6.1.1 Counties must be able to plan for future infrastructure costs to support growth;
    - 6.1.2 Urban and near-urban counties face the same challenges as cities do in managing growth<sup>8</sup>;
    - 6.1.2 The efficiency of road networks outside cities would be greatly diminished without county authority to guide growth based on a thoroughfare plan;
    - 6.1.3 Consideration of land use compatibilities through buffer zones<sup>9</sup> avoids conflicts between landowners and does not infringe on property rights and, in fact, may protect them<sup>10</sup>;

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<sup>6</sup> **Board feedback:** The public support is measured primarily by opinion polls, not actual elections or ballot issues, although there have not been any elections or ballot issues.

**Board feedback:** Anecdotally, city officials involved in annexing previously unincorporated areas have expressed support for greater county authority to shape growth – and especially appropriate infrastructure investment – ahead of annexation.

<sup>7</sup> **Board feedback:** There are several existing, strong organizations already working on this. Any effort aspiring to help counties utilize more of the authority they might already have must be coordinated with the Texas Association of Counties and the Conference of Urban Counties.

**Board feedback:** Different counties are utilizing existing authority to different degrees, some to a great degree and others not very much, even just in Central Texas.

<sup>8</sup> **Board feedback:** Urban, suburban and rural counties actually face very different challenges, not only compared to each other but also to the small town and large cities within their boundaries. Land use laws in a sparsely populated county should be less arduous than in a densely populated county.

<sup>9</sup> The term “buffer zone” has several definitions, usually depending on what is being buffered, but in general a buffer zone refers to an area that is defined and can be measured around a particular feature such as a road, stream or

- 6.1.4 Buffer zones for creeks, lakes, springs, beaches, wetlands, and other water features protect our water supply<sup>11</sup>, wildlife, and natural resources;
  - 6.1.5 Many cities<sup>12</sup> support increased county powers in high growth areas that they eventually may annex; and
  - 6.1.6 Many counties believe that the current statute is too vague, opening them up to legal challenges if they try to take the initiative in managing growth.
- 6.2 Arguments against:
- 6.2.1 Counties may not have the resources, financial or staffing, to use the current or proposed authority; the fear of unfunded mandates exacerbates this issue<sup>13</sup>;
  - 6.2.2 Some landowners<sup>14</sup> and others fear that any additional authority might be abused;
  - 6.2.3 There is a long Texas tradition of respecting a landowner’s rights on his or her own property and a perception among some that counties might not respect them<sup>15</sup>; and
  - 6.2.4 Some counties are not interested in taking on the responsibility for managing growth.
- 7 Bills have already been filed in the current session of the Texas legislature.
- 8 A consensus approach should be aimed to meet real needs and reassure legitimate doubts. ECT therefore makes the following recommendations:
- 8.1 Counties should use their current statutory authority fully to achieve community objectives.

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airport, that is desired to be protected or is regarded as a hazard. The zone is typically defined by a set distance from the central feature and is more highly managed and controlled than areas outside the zone.

**Board feedback:** Buffer zones would be difficult to enact unless the land is purchased by a developer or the County, otherwise it could be considered a legal takings.

<sup>10</sup> **Board feedback:** Some believe that buffer zones infringe on property rights to the extent of being a takings, typically depending on the size of the buffer relative to the feature being buffered or relative to the size of the whole parcel or depending on the particular rights being limited within the buffer zone. To date in Texas, there is no legal basis for the argument that requiring buffer zones amounts to a taking of private property.

<sup>11</sup> **Board feedback:** Water supply in a given area, in general, is from either groundwater sources such as wells or surface water sources such as lakes (or brought in by pipe from a remote ground- or surface source). Within Central Texas, primary water supply source varies greatly from the east (ground water) to the west (surface water), the differences in water supply source would require differences in how a buffer zone is defined.

<sup>12</sup> **Board feedback:** The sense of “many cities” and “many counties” is based on the experiences of the work group and is not derived from a survey or poll.

<sup>13</sup> **Board feedback:** As does the fear of paying for additional cost of services which will be passed on to taxpayers.

<sup>14</sup> **Board feedback:** Same as previous footnote for the sense of “some landowners.”

<sup>15</sup> **Board feedback:** There is confusion over exactly what “managing growth” means, to some it implies heavy handed land use control or even county zoning authority.

8.2 The Legislature should make additional growth management authority available to Central Texas counties on two conditions<sup>16</sup>:

8.2.1 Adoption of a strategic policy plan to guide the growth and development of the county; and

8.2.2 Passage by the county voters of a local option referendum, called by Commissioners' Court resolution or voter initiative, specifying the authority to be exercised by the county.

### **Detail Points**

8.3 The additional authority available to counties, if authorized by referendum, should include the explicit authority to –<sup>17</sup>

8.3.1 Adopt ordinances to require buffer zones between incompatible<sup>18</sup> kinds of land uses, to be defined in the ordinances; including the definition of the areas within a county where such ordinances would apply;

8.3.2 Adopt ordinances to require buffer zones for creeks, lakes, springs, beaches, wetlands, and other critical water features<sup>19</sup>;

8.3.3 Adopt ordinances to require land developers to pay<sup>20</sup> off-site improvement fees to cover the incremental cost of transportation<sup>21</sup> and drainage

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<sup>16</sup> **Board feedback:** Within Travis County the focus of county planning is specifically on land use and a proper condition of additional authority in Travis could be that the requirements of HB 1445 (2001) have been met with each of the applicable jurisdictions.

<sup>17</sup> **Board feedback:** To be consistent with Envision Central Texas, a county should create a vision of what it wants from growth, including addressing issues such as greater sustainability, compact design, mixed-use, quality of development, designated growth corridors, key transportation corridors, key ETJ areas shared with cities, and lowering carbon production from development before creating a county plan or any ordinances to manage growth.

**Board feedback:** The issue of if and how the tax burden on county residents could change should happen before any changes in growth management or services are considered. The issue of if and how the county would use financial or entitlement incentives to shape growth should happen before any changes in growth management or services are considered.

<sup>18</sup> **Board feedback:** The definition of what land use is incompatible with what will and should vary county to county and be established by the county itself, not by Envision Central Texas.

<sup>19</sup> **Board feedback:** Federal regulations already exist establishing buffer zones around certain water and natural features. A county could create incentives to encourage more positive environmental protections and not rely as much on punitive responses.

<sup>20</sup> **Board feedback:** Additional impact fees and regulatory costs to develop land, as might be associated to any growth management ordinances, are typically passed on to home buyers, increasing the housing prices and decreasing the affordability of the homes.

**Board feedback:** A county is also able to require a developer show they are supplying adequate drainage.

<sup>21</sup> **Board feedback:** County subdivision rules and regulations should be strengthened to limit a new subdivision's "drive-way" access to a County or State road. Under present rules, a developer can size lots so as to avoid bearing the cost of improving the collector roads for their subdivision while greatly increasing usage of the collector roads. All of the County's taxpayers end up having to bear the improvement costs.

infrastructure, law enforcement, water supply, wastewater reuse or disposal, and other county services made necessary by developments of more than a certain size<sup>22</sup>;

8.3.4 Adopt ordinances requiring the developers of subdivisions to certify the availability of water to serve the needs of the project<sup>23</sup>; and

8.3.5 Make and enforce development agreements with landowners that specify the density or amount of impervious cover allowed in a project<sup>24</sup>.

Other kinds of land use regulations<sup>25</sup>, such as zoning and building permits, should remain within municipal jurisdiction only<sup>26</sup>.

## ***Envision Central Texas Roles***

9 ETC should take the following short-term and long-term steps to achieve this result.

9.1 Short-term steps:

9.1.1 ECT should promote participation in CAPCOG’s County Land Use Workshop on March 6, 2009<sup>27</sup>;

9.1.2 ECT should not take a position to support any particular bill during the current session of the Legislature, but it should offer testimony before legislative committees during this session as a resource in support of the principles and measures recommended above.

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<sup>22</sup> **Board feedback:** Ongoing services such as law enforcement, court administration, and “other county services as may be necessary by development” are typically paid for by operating revenues funded annually by property taxes. These are different in nature than the county road system and its road-related drainage which is impacted directly and incrementally by new development, thus an impact fee is warranted.

<sup>23</sup> **Board feedback:** Both state and county regulations already require developers to show they can supply water to a development, either onsite with a public or private water supply system or by contract with a water provider. A county is also able to require a developer show they are supplying adequate drainage for a project.

**Board feedback:** Given recent and ongoing drought and water supply concerns, existing “proof” of water availability may have to be stronger than what can be enforced by a single county.

**Board feedback:** Counties do not provide water or wastewater services and thus would have no reason to levy an impact fee to recover costs.

<sup>24</sup> **Board feedback:** Similar to other details discussed by the Working Group, what, if any, density or impervious cover limits a county wants to allow should be determined by residents of that county, not by Envision Central Texas.

<sup>25</sup> **Board feedback:** Additional needs are ordinances to regulate signage, or at least to prohibit off-premise signs (billboards) on State highways in unincorporated areas; also, ordinances that require a plan to reduce and reuse the waste stream.

<sup>26</sup> **Board feedback:** Suggest ECT just remain silent on this; there may be an opportunity to get joint county/city land use authority within the ETJ, at least for metropolitan counties like Travis, much like they currently have joint subdivision authority through adoption of a single code with joint administration.

<sup>27</sup> **Board feedback:** Envision Central Texas should develop a stronger means of sharing this information and helping educate elected officials from cities, counties and the State on the pros and cons of county growth management; and make elected officials more familiar with the ECT Preferred Vision for Central Texas.

9.2 Long-term steps:

9.2.1 ECT should compile and make available a set of model county ordinances that utilize the full range of county authority available for growth management; and

9.2.2 ECT should facilitate a region-wide or state-wide consensus-building process over the next two years, to build support for a systematic reform of county development management authority.

## ***References***

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