

**TIME TO ACT:
THE FUTURE OF THE
TEXAS HILL COUNTRY**



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HILL COUNTRY ROUNDTABLE

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THE FUTURE OF THE TEXAS HILL COUNTRY**

Change is occurring in many different ways in the Texas Hill Country. Counties in the region are experiencing unprecedented population growth. This growth is impacting every aspect of community life, including water resources, government services, economic productivity, housing prices, taxes, as well as the face of the landscape. In some areas, the open landscape and natural beauty, for generations an impetus to move to the region, is being threatened by unplanned growth. Because much of the Texas Hill Country is not in incorporated cities or towns, county government is at the heart of any adaptive changes that citizens will make in the next 20 years to balance the economic, social and environmental issues facing this growing area of the state.

The Steering Committee of the Hill Country Roundtable, a non-partisan, volunteer organization of residents and local officials from twelve Hill Country counties, in cooperation with the not-for-profit Texas Center for Policy Studies, has developed this information pamphlet in the interest of creating awareness of the role residents of the Hill Country can play in determining the future of this area. The Hill Country counties included in the discussion are Bandera, Bexar, Blanco, Burnet, Comal, Kendall, Kerr, Gillespie, Hays, Medina, Travis, and Williamson. Our focus is on county government: the authority it historically brings to address today's challenges, as well as the new tools it will require.

HILL COUNTRY ROUNDTABLE STEERING COMMITTEE

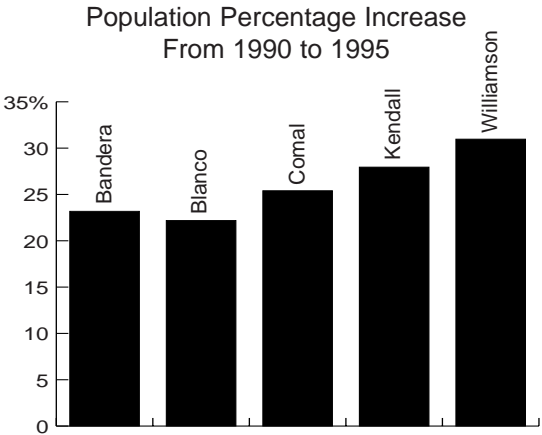
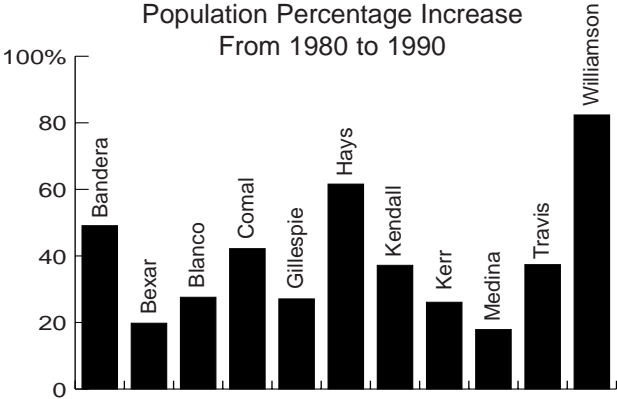
Clay C. Conoly, Bandera
Peggy Tobin, Bandera
Sue Tracy, Medina
County Commissioner Ralph Chancy,
Medina
Larry Hoffman, San Antonio
City Councilwoman Susan Peace,
Helotes
J. David Bamberger, Johnson City
Shirley Beck, Blanco
Bob Barton, Bulverde
County Commissioner Jay P. Millikin,
Garden Ridge

County Judge Richard Evans,
Bandera
Mike Henry, Boerne
Pam Hodges, Boerne
Jeanne West, Kerrville
Don Henderson, Kerrville
Paul Tybor, Fredericksburg
Julia Jarrell, Fredericksburg
Frank Austin, Wimberley
David Baker, Wimberley
Larry Allen, Hondo
Sue Wiseman, Leander
County Commissioner Mike Heiligenstein,
Round Rock

THE CHALLENGES

Today's Hill Country county governments are not in a position to protect threats to the health, welfare and resource base of their communities, caused by rapid and increased population growth. Neither the citizens or the local county government have the basic tools and authority to plan.

It is not known whether these percentage increases will continue in this manner, but there is no doubt that the region will experience growth and change for the foreseeable future.



From 1990 to 1995 Bandera had a 23.18 percent increase, Blanco had a 22.19 percent increase, Comal had a 25.40 percent increase, Kendall had a 27.95 percent increase, Williamson had a 30.97 percent increase. It is not known whether these percentage increases will continue in this manner, but there is no doubt that the region will experience growth and change for the foreseeable future.

The question for Hill Country residents is not growth or no growth. Growth is inevitable and it increases the pressure on county government to provide essential services. There is a twofold problem: population increases and harmful growth patterns. By being designated as a critical groundwater management area, it is accepted that the population of these Hill Country counties will outgrow available groundwater supplies. Moreover, our communities have no ability to plan the pattern of growth. Ultimately, the pattern of growth will have a determining effect on the quality of life of residents of the Hill Country. As planners point out sprawl development has led to inefficient use of land, energy, and other resources and has had profound impacts on air quality, the hydrology of watersheds, and the environmental health of the inhabitants.¹

HISTORY

Texas county government has its roots in the municipios of Mexico. When Texas was under Spanish-Mexican rule, the most important unit of local government was the municipio, which included not only the town but also the surrounding area of small settlements, ranches and farms. The Congress of the Republic of Texas reorganized municipios as counties using the Anglo-Saxon model. When Texas gained statehood in 1845, the Texas legislature specified that the county would be the state's basic governmental subdivision.

According to legal historian David Brooks, the governing body of Texas counties has developed largely by statute. The 1836 Constitution of the Republic of Texas did not address the issue; the Texas Legislature adopted legislation in 1845 which established the current structure of county government. The 1866 Texas constitution was the first state constitution to establish the governing body for the county.² The constitution prescribed that, as a legal subdivision of the state, the county commissioners court would have only the authority granted to them by the state.³ Powers granted by the state currently include funding county parks, providing emergency medical services, building and maintaining county roads, administering the county court system and county attorney's office, recording vital statistics, and burying paupers.⁴

There have been previous legislative attempts to change the structure and increase the power of county government. In 1933, a constitutional amendment providing home rule authority for counties was approved by Texas voters.⁵ Under the Home Rule Amendment, residents were given the opportunity to propose and vote on a county charter to provide the county commissioners court with additional authority, change the structure of the commissioners court or replace the commissioners court with another elected governing body.⁶ But the Home Rule process was technically

and legally cumbersome and the option was never effectively taken up. The Amendment was repealed in 1969.

Over the last 30 years, legislation and court cases have clarified the authority counties have over specific development activities in unincorporated areas. Also, numerous recommendations and reports have been issued calling for changes in the organization and power of county government. For example, in 1965, Texas Governor John Connally asked the Texas Research League to study the structure and services of the local governmental units of the metropolitan areas of the state. The subsequent Texas Research League report recommended that the Legislature grant county commissioners court specific land-use protection authority.⁷ The Legislature did not act on the recommendation.

As recently as 1995, at the urging of the commissioners courts and residents of Kendall and Bandera counties, State Senator Jeff Wentworth introduced legislation allowing the citizens of these two counties to hold a local option election to expand county ordinance authority.⁸ The residents of these two fast-growing counties supported this bill because they felt their property values and rights were being eroded by ill-conceived and under-regulated subdivisions.⁹ The bill did not get out of the Senate Committee.

This very brief history shows that there have been attempts, although unsuccessful, to provide county government flexibility to deal with significant change, particularly as many Texas counties were becoming an extension of the urban environment. Almost twenty years ago, the Texas Advisory Commission on Intergovernmental Relations issued a report stating "...the county more than any other unit of government has been hit most directly by the impact of the various imbalances caused by recent urbanization trends...the county with its rural and urban counterparts has had to face both the dilemma of rural decline and suburban expansion."¹⁰

Efforts to strengthen the ability of counties to plan for change and remain good stewards of our land and water resources have been stymied in recent years. State legislators are suspicious of county government, developers do not want stricter standards, urban municipalities do not want their authority challenged and landowners are concerned about property rights.

From 1980 to 1995 the number of residents in Hays County south of Austin has increased 92 percent to approximately 78,000 in 1995. Hays County commissioners court approved 1,200 septic tanks in 1997, as compared to 266 in 1991. It reviewed more than 2,200 proposed subdivision plans, up from the several hundred in 1990.¹¹ By the year 2020, Hays County is projected to have 146,000 residents. Blanco County grew 22 percent between 1990 and 1995. Part of the growth in some of the counties seems attributable to retirement—with retirees lured by low crime rates, low property taxes, beautiful lots and running water. One survey found that the vast majority of 2 million Texans over the age of 55 hope to retire to the Hill Country in the next ten years.

CURRENT COUNTY POWERS

County Ordinance Authority

The legislature provides county government very specific and limited ordinance-making power. For example, the county commissioners court may enact subdivision ordinances, mobile home ordinances, drainage ordinances, and ordinances regarding domestic animals, and septic tanks. In rare cases, as will be discussed, a few specific counties may develop and implement zoning ordinances.

Subdivision Ordinances

The enactment of subdivision ordinances is county government's major means to regulate new development. The specific authority granted to county commissioners court to require a plat prior to subdivision approval came about in 1931, though there are loopholes in this provision.¹² The underlying reason for the law was to enable taxing authorities to locate and have a record of property. Many years later the legislature gave counties the authority to adopt specifications for the construction of streets and roads for subdivisions and to review and approve subdivision plats. County governments are not required to establish subdivision rules. Many counties in Texas do not have them or are just now designing them.

The current subdivision regulation policy is found in Chapter 232 Section 232.001 of the Texas Local Government Code. It states that:

“...the owner of a tract of land located outside the limits of a municipality who divides the tract into two or more parts to lay out a subdivision of the tract, including an addition, or to lay out suburban lots or building lots, and to lay out streets, alleys, squares, parks, or other parts of the tract intended to be dedicated to public use or for the use of purchaser or owners of lots fronting on or adjacent to the

streets, alleys, parks or other parts must have a plat of the subdivision”.¹³

In other words, a county may not require a plat if the owner of the land simply divides the land and doesn’t lay out any land for roads, parks, or alleys to be used by the public, or owners or purchasers of adjacent lots.¹⁴

Septic Tanks and Water Wells

Under the Texas Water Code and the Texas Health and Safety Code, county government has been given some regulatory authority which may be interpreted as providing land-use planning authority. For example, under the Texas Water Code, counties have the authority to regulate the use of private sewage facilities.¹⁵ The Texas Health and Safety Code gives counties specific regulatory authority over solid waste collection, handling, storage and disposal.¹⁶

The Texas Natural Resources Conservation Commission requires a 1/2-acre minimum size for use of septic tanks for new lots with public water supply and minimum one acre for those lots served by private water wells. Through its septic tank authority, a commissioners court may establish more stringent requirements for septic tanks for proposed platted subdivisions, unplatted subdivisions and individual lots. If a court establishes more stringent requirements than the TNRCC, it must be able to justify the size requirement in terms of a specific set of criteria, such as available water supply in the county, soil type, size of homes and types of amenities (tennis court, swimming pool). However, the lot size requirement is not to be used as a tool to control growth, but as an instrument to protect the health, safety and welfare of the residents.

Home rule cities have the authority to regulate water wells, but County Commissioners Courts do not have the authority to regulate the design, number of water wells or the spacing of wells. This authority rests with the Texas Natural Resource Conservation Commission.

Special Land-Use Authority Granted to Specific Texas Counties

The Texas legislature is prevented by the state constitution from enacting special laws for individual political subdivisions. Nevertheless, certain counties have been given special authority by the legislature because they face unique challenges, including threats to the health, welfare of the residents and to significant natural resources. In response to the threats to human health due to substandard developments known as “colonias,” the legislators authorized commissioners courts in counties located fifty miles of an international border, and also in those counties meeting certain low income conditions, to impose requirements for sewer and water services in the subdivision approval process. Counties that wanted to receive state funding to construct new infrastructure to serve the colonias were required to adopt these subdivision rules.

Basic elements of land-use management authority has also been provided to counties in areas where the legislature has been convinced “orderly development and use of the area is of concern to the entire state,” including Padre Island, Lake Amistad National Park and Lakes Tawakoni, Ray Roberts, Alan Henry, Cooper and Post.¹⁷ These statutes allow the counties to regulate land use within certain boundaries of the designated area, e.g., 5000 feet around a lake boundary; within two miles of the beach or two miles of a public park or “recreational development” (Padre Island). The counties have the authority to regulate within the designated area, the following items: the height, number of stories and size of buildings and other structures; the percentage of a lot that may be occupied; the size of yards, courts and other open spaces; population density; the location and use of buildings, other structures, and land for business, industrial, residential or other purposes; and the placement of water and sewage facilities, parks and other public requirements.

The authority granted counties for these designated areas mirrors municipal land use management authority and is granted to the counties for the same purpose: to promote public health, safety, peace, morals and general welfare. Like municipal land use regulations, these regulations must be adopted in accordance with a “comprehensive plan.”

Furthermore, to protect the state’s coastal resources, the legislators have given counties bordering the Gulf Coast or its tidewaters authority to regulate public beach areas and dunes.¹⁸

Recent Additions To County Powers

One other example of special powers being given to county government, so that it might protect the welfare of the residents, is found in Senate Bill 1. Passed by the state legislature in 1997, Senate Bill 1 (AKA the state water bill) allows counties in areas that are experiencing, or are expected to experience, critical groundwater problems as declared by Texas Natural Resource Conservation Commission, to require demonstration of adequate water availability as condition of subdivision plat approval. This authority applies to eight Hill country counties: Bandera, Blanco, Gillespie, Kendall and Kerr counties and parts of Comal, Hays and Travis Counties.¹⁹

Growth and its Impacts on the Texas Hill Country

- Increased cost and lack of funds for road maintenance, emergency medical services, police and fire protection
- Loss of affordable housing
- Depletion of groundwater and natural springs
- Threats to water quality due poor drainage, polluted runoff, and inadequate septic tanks
- Air Pollution
- Traffic congestion
- Development that is incompatible with existing land use, such as race car tracks on the edge of a neighborhood
- Noise and light pollution
- Scenic beauty destroyed by inappropriate placement of development, signs and spotlights
- Fragmentation of the landscape
- Loss of farmland and ranchland
- Loss of critical wildlife habitat

Some rural residents point out that living outside a city limit frees them from regulations and government interference. But, unfortunately, in Texas as in many other states, living in unincorporated territory also has prevented us from having a say in the destiny of our communities. Rather, we have others deciding our future for us. That future could be dry wells and the loss of the unique natural rural environment that is an important part of our economic base and that currently provides residents with a high quality of life. We have no say about the inappropriate development that sprouts up on neighboring land. We are losing farmers and ranchers because of increased taxes as well as the problems inherent in living in an urbanized area. And those that are still in business find they cannot drive their tractors down the county road because it has become a busy highway.

The residents and local governments of the Hill Country counties need the ability to accommodate and plan for new growth while preserving the very assets attracting people and capital to the region. Protecting the health, welfare and quality of life of the population, are goals that counties can achieve if they have the authority to do so.

¹Robert Geddes, "The Sprawling American City and the Search for Alternatives: Metropolis Unbound," *The American Prospect*, November-December, 1997,40.

²David Brooks, *Texas Practice. County and Special District Law*. Vol. 35. (ST. Paul: West Publishing,1989) 21-24. The borders of the early municipios were determined by the landscape and followed the rivers. (For example, the Brazos River forms the western border of Brazos County and forms the eastern border of Washington County.) Those counties formed after the state constitution of 1836, however, were required to have at least 900 square miles in a square form unless it would conflict with existing county boundary lines.

³Each county has a Commissioners Court. It is composed of the county judge, elected by the voters of the entire county and four county commissioners; each elected from a commissioner's precinct.

⁴David Brooks, *Texas Practice. County and Special District Law*. Vol. 35. (St. Paul: West Publishing, 1989), 43.

⁵The legislators granted home rule authority to municipalities in 1912.

⁶David Brooks, *Texas Practice*, 44.

⁷Texas Research League, *Metropolitan Texas: A Workable Approach to its Problems*, Report to Governor John Connally and the 60th Texas Legislature 1967, vii. See also, Robert E. Norwood and Sabrina Strawn, *Texas County Government: Let the People Choose* (Austin: Texas Research League, 1984).

⁸S.B. 1372, 75th Session of the Texas Legislature.

⁹Letter from Kendall County Judge James W. Gooden, dated May 5, 1995 to State Senator Judith Zaffirini in regard to support for Senate Bill 1372.

¹⁰Texas Comptroller of Public Accounts, *Forces of Change*, Vol. 2, Part 1 (Austin: TCPA, 1993), 678. The report by the Intergovernmental Relations Commission was issued in 1980.

¹¹Patrick Barta, "Countries Are Taking Steps to Curb Rural Growth" *Wall Street Journal*, 25 March 1998, T1.

¹²Acts 1931,42nd Leg., pp. 371, 372, chap. 217, amending *Tex. Rev.Civ.Stat.Ann.*, art. 6626; Brooks, *Texas Practice, County and Special District Law*, vol. 36 (St. Paul: West Publishing, 1989), 505. The first plat approval requirement statute was established in 1927 and was applicable to cities with populations over 25,000.

¹³Local government Code Section 232.001(a).

¹⁴*Elgin Bank v. Travis County, Texas*. 906 S.W. 2d 120 (Tx. Civ App.—Austin 1995) County Commissioners Courts cannot require plats for rental manufactured housing.

¹⁵*Tex. Water Code* at Sec.26.032.

¹⁶*Tex. Health and Safety Code* at Sec. 364.011.

¹⁷Local Government Code, Ch.231, County Zoning Authority.

¹⁸Texas General Land Office, *Texas Coastwide Erosion Response Plan: A Report to the 75th Texas Legislature* (Austin: TGLO, 1996) See *Texas Administrative Code* Ch. 15.1-15.10.

¹⁹These are known as Priority Groundwater Water Management Areas.

**ADDITIONAL POWERS NEEDED BY
COUNTY GOVERNMENTS OF THE HILL COUNTRY**

The Hill Country counties must have the opportunities and the tools to protect the unique economic, environmental and social character of their communities.

Additional powers for county government would provide for a higher degree of self-governance and local control in contrast to the outdated, obsolete approach where a complete lack of basic planning is lessening property values and degrading resources. Some of these powers include:

- the authority to enact minimal land-use management provisions for all new development, in order to protect vital groundwater and surface water resources.
- the authority to protect the natural resources of the region which are a major asset to the entire state
- the authority and tools to give financial incentives to farmers and ranchers to preserve the agricultural productivity, wildlife habitat and open space value of their land
- the authority to develop meaningful planning guidelines, including strategies and goals for protecting the quality of life, public health and welfare and economic assets of the community. These guidelines should be developed through a structured community planning process involving the participation of landowners, business leaders, developers, residents, and county officials

To support these positions contact:

___ A member of the Roundtable Steering Committee

___ Your State legislators

___ Your County Commissioner & County Judge

**MISSION AND GOALS
OF THE HILL COUNTRY ROUNDTABLE**

- Seek sustainable economic development compatible with the heritage, culture and environment of the Texas Hill Country
- Recognize and protect the heritage and culture of the Texas Hill Country
- Protect the natural and fabricated environment of the Texas Hill Country
- Provide a forum for open exchange of opinions concerning the Texas Hill Country
- Develop an information system to inform Texas Hill Country residents concerning issues pertinent to their quality of life
- Encourage the design of a service infrastructure that is compatible with the character of the Texas Hill Country

I want to be involved with the Hill Country Roundtable

Name: _____

Address: _____

City/State/Zip: _____

Occupation or Interest: _____

Send the above information to the Hill Country Roundtable c/o Mary Sanger, Texas Center Policy Studies, P.O. Box 2618, Austin, Texas 78768. Call Mary Sanger at 512.474.0811 or Jim Hannah at 830.460.4646.