
POLICY MEMORANDUM

SUBJECT: Land Fragmentation

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Topic and Purpose

Landowners around Texas are increasingly dividing their properties, either to sell parts of it or to diversify its uses. In a state where 95 percent of the land is privately owned, land divisions play an important role in determining the future of development in the region. This briefing analyzes the current trends in land fragmentation and provides policy recommendations that address land conservation concerns.

Background

Land fragmentation refers to the separation of lands by ownership or use. Such divisions can occur to satisfy the needs of a given area. In the case of Texas, a state that has seven of the fastest growing cities in the country, land fragmentation occurs to satisfy the needs of a growing population, including increased housing and food demands. All across the state, landscapes are continuously threatened by suburbanization, rural development, and land fragmentation driven by rapid population growth. As stated by the Texas Agricultural Land Trust, “Land fragmentation [...] leads to loss of open space, decline in wildlife habitat, water quality problems caused by erosion and runoff, and higher demand for county services in rural areas.” As explained by Leslie Lee of the Texas Water Resources Institute, preservation of land is important for water security because “all across Texas, private, rural lands collect most of the rainfall the state receives, and it then flows to both groundwater and surface water supplies. Stewardship of this land helps provide not only water but also clean air and open spaces to urban populations.”

Current Policy

Although there is no current policy specifically addressing land fragmentation, policies relating to land conservation mitigate the effects of fragmentation by ensuring landowners practice good stewardship of the land. Efforts to address land conservation are taking place at the local level across the state. Travis County and the cities of San Antonio and Austin are at the forefront of land conservation. Voters in Travis County, including Austin, have twice in last decade voted for county bonds to fund parks, conservation lands and open space – in 2005 for \$62 million and for \$82 million in 2011, setting aside thousands of acres of land for watershed protection. In San Antonio, voters approved propositions in 2000, 2005, and 2010 to allocate funding for land conservation initiatives. Proposition 3 in 2000 allocated \$38 million in local sales taxes to the purchase of almost 6,500 acres of sensitive properties located over the Edwards Aquifer. The passage of similar propositions in 2005 and 2010 showed continued public support for conservation through the allocation of local sales taxes towards the purchase of lands over the Edwards Aquifer. In 1998, Austinites approved bonds for purchasing and conserving land in the Barton Springs area. As a result, the city established the Water Quality Protection Land program, which aims to “produce the optimum level of high-quality water from project lands to recharge the Barton Springs segment” of the Edwards Aquifer. Today, the program includes 26,000 acres of land that were either purchased or donated with the help of additional bond measures passed in 2006 and 2012.

Stakeholders

There are three groups whose interests are at the forefront of the land fragmentation discussion: landowners, developers, and conservationists. Landowners are faced with increasing property values as a result of population growth and urban sprawl; areas that were previously considered rural are becoming urban or suburban, generating increased interest in rural properties. This increased interest causes property values to go up, along with property and estate-related taxes.

Developers are concerned with the acquisition of lands to meet the demands of commercial and residential expansion. This group seeks to build in areas of high demand and where land is cheaper.

Conservationists' interests include the preservation of natural resources. Their concerns focus on identifying and protecting areas that are important for water and environmental conservation.

Key Influencers

All stakeholder groups are vocal in the land fragmentation debate. Nonetheless, there are some individual organizations that have stood out for their advocacy efforts. The Texas Agricultural Land Trust (TALT) is a non-profit organization comprised of landowners seeking to increase awareness of the day-to-day challenges faced by farmers and ranchers. The organization has partnered with leaders around the state to conserve 225,000 acres to date. TALT has been successful in rallying people in support of local, state, and federal legislation that promote tax incentives for rural property owners that choose to take on conservation efforts within their land. Although other landowner associations exist in the state, TALT has a big influence on 1) the education of landowners all around the state and 2) the public policies that are being developed and supported at all levels of government.

The Home Builders Associations have regional chapters all across Texas that rally for measures to increase incentives for builders. They use public statements, social media, and traditional media to organize people around state and local initiatives.

Organizations focused on environmental conservation in Texas have two primary ways of influencing the land fragmentation debate. First, conservationists provide educational tools for the public to become informed about the current trends in land conservation. Texas Land Trends, an organization developed by the Texas A&M Institute of Renewable Natural Resources, is one such organization. Texas Land Trends provides current news as well as user-friendly reports on issues affecting lands all over the state, including population growth and land fragmentation. Second, environmental conservation organizations influence public policy directly through advocacy. The National Wildlife Federation (NWF) works closely with politicians and social organizations to advance environmental conservation efforts, including land conservation. The NWF works directly with legislators to design and promote bills, resolutions, and propositions that promote land conservation. Additionally, they promote civic engagement by encouraging constituents to call their legislators and by publicizing land conservation bills up for vote.

Sources of Conflict

The main political conflict in the land fragmentation debate is conservation vs. development. Although stakeholders agree that Texas must adapt to sustain its growing population, they differ on what the needs of the population are. Landowners and conservationists agree that lands must be preserved to protect the natural resources, like water and clean air, that are needed to provide a high quality of life to all residents of the state. They believe government funding should be used to conserve land. Developers, however, argue that tax incentives for new construction projects will ensure adequate growth to meet the needs of new residents who seek Texas' quality of life.

Land fragmentation is also a personal issue to farming and ranching families across the state. Many families do not want to sell the land that has been in their family for generations, but they see it as the best option to cope with increased expenses, such as higher taxes. Sometimes, a developer will make an offer that is too good to refuse, and families that might otherwise want to keep their property decide to sell.

Conservation easements are one of the more common ways to help prevent land fragmentation. A conservation easement is the voluntary donation of the rights to the property (typically, development rights) to a non-profit organization, such as a land trust. A perpetual easement means the land cannot be developed, reducing the property value and associated taxes by removing the potential value of the land if it was developed. However, this reduction in value has significant implications for landowners looking to sell since developers will not invest in their land. Likewise, families have no way of knowing if future

generations might prefer to sell the land at a premium, which would no longer be an option for a land under easement.

Public policy must take into account that land fragmentation is not just a water issue, an environmental issue, or a development issue. Land fragmentation is also about families. With that in mind, land fragmentation cannot be solved solely by making a financial decision or an environmental decision. Just as landowners strive to be good stewards of the land, policymakers must be good stewards of their constituents and remember that land fragmentation is not only an economic issue but also a personal one.

Beyond the personal ties surrounding land fragmentation, the estate tax - deemed one of the main causes of land fragmentation - is controversial. Proponents of the estate tax argue that the tax provides a means of raising significant revenue without putting as significant a burden on the living as the same revenue would if it was collected during life. Additionally, supporters claim that the estate tax helps promote equal opportunity by preventing the rich from giving extremely large inheritances to their children and promoting charitable donations. Advocates against the estate tax argue that it disincentivizes hard work, punishes the successful, and can create an undue burden on families to either plan ahead to avoid the estate tax or to have to deal with the tax during what is already a difficult time. Proponents and opponents of the estate tax are often divided on core beliefs regarding social justice, equity, and fairness, making the estate tax a highly politicized issue.

Current Public Discussion

From families who want to protect their legacy and rural lifestyle to environmentalists who want to protect natural resources to urbanites who want to protect their water supply, there is no shortage of people who care about land fragmentation. In fact, with the exception of the developers themselves and of the new “ranchette” owners who benefit from land fragmentation, there is little disagreement that land fragmentation is a major problem in Texas. As is often the case, the question is not whether land fragmentation is a problem but rather how to solve it. For example, if the state or local government is going to purchase development rights, where should the funding come from? Should the estate tax be abolished? Are conservation easements the answer, or do they tie families’ hands?

Travis County, San Antonio and Austin have proven that the public supports funding the purchase of development rights by consistently passing propositions to purchase development rights in high-impact areas. In fact, per Stoutenborough and Vedlitz, more than 70 percent of Texans support or strongly support protecting some water resources to preserve wildlife and fishery habitats, making it one of the most publicly favored policies to better manage water in Texas. Overall, increasing funding for the purchase of development rights may be one of the more widely-supported approaches to preventing land fragmentation since the purchase of development rights provides more certainty and immediate assistance than do the tax benefits associated with conservation easements. One likely source of conflict is deciding the best source for the funding and whether it should come from the state or local level.

Policy Recommendations

Restructuring of Estate Tax

Although Texas does not have a state estate tax, the federal government does. The estate tax is paid before any heirs receive their share of the estate and is based on the value of the estate, so it can be a hefty sum to pay even if each individual heir is receiving a (relatively) small amount. The impact of the estate tax is especially high for undeveloped land near urban areas. Even if the land itself is not productive, the potential development value of the land can significantly increase the taxable value of the estate. In fact, according to Blair Fitzsimons, CEO of TALT, estate taxes are “one of the leading causes of land fragmentation.” Often, families that are land-rich and cash-poor have to sell all or a portion of their property to pay the estate tax.

One way to minimize the impacts of the estate tax on cash-poor families is to restructure the estate tax to value land at its production value, rather than its sale value. Evaluating land based on the income the land generated during the last fiscal year, for example, would ensure that cash-rich landowners who turn a high profit pay their fair share while protecting those who practice good land stewardship and may be

cash-poor. This restructuring would need to be part of a federal policy change, but Texas legislators could do their part by sponsoring and promoting the legislation to Congress.

Promoting Conservation Easements and Making Tax Benefits Permanent

Another way to minimize the impact of an estate tax is to donate a conservation easement. These benefits are maximized through the Enhanced Easement Act, which increases the maximum deduction from 30 percent to up to 100 percent for qualified ranchers and farmers. According to TALT, “enhanced tax incentives, which have been in place since 2006, have helped America’s 1,700 land trusts increase the pace of conservation by one-third.” However, the incentives are subject to renewal and expired in 2014. Renewing the incentives would promote conservation easements. Making the incentives permanent would add certainty to the financial benefits of conservation easements and promote conservation even further.

Increased Funding for the Purchase of Development Rights (PDR) Program

Currently, most land designated to remain undeveloped in Texas is set aside through conservation easements. Another means to preserve land is the purchase of development rights, in which landowners benefit from the outright sale of the development rights for the land rather than donating the rights and receiving tax benefits. The purchase of development rights has the same benefits as conservation easements on keeping land productive and minimizing the impacts of land fragmentation on water quality and quantity. Purchasing development rights may be a better option for landowners who are cash-poor and need a cash inflow rather than tax relief. Texas’ program to purchase development rights, the Texas Farm & Ranch Lands Conservation Program, has been in existence since 2005. However, the Program received its first appropriation in 2015. Although the original budget was set to \$30 million, the appropriation was for just \$2 million. Increasing the appropriation for the Texas Farm & Ranch Lands Conservation Program would significantly increase the program’s purchasing power, allowing the purchase of development rights to have a much greater impact on protecting Texas’ water.

Conclusion

Land fragmentation is primarily a consequence of increased development. The variety of owners that results from the division of lands leads to a variety of land management styles, which can have impacts on water quality due to erosion and runoff. Land fragmentation is a complex issue with high stakes for developers, conservationists, and landowners. Additionally, personal ties to land play an important role in the land fragmentation debate in Texas. Restructuring the estate tax, making conservation easement tax benefits permanent, and allocating additional funds for the purchase of development rights could help minimize land fragmentation and the effects it has on the environment, including its effects on water quality and conservation.

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