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# How Eminent Domain Abuse is Destroying Texas' Most Valuable Landscapes: The Growing Threat to the Lone Star State

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**STEWARDSHIP STRATEGIES**

PLACE PLANNING | PRAGMATIC PRESERVATION | POLICY

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*Cover Image: Sunrise in the Texas Hill Country in spring. Photo Credit: Gary D. Regner, <http://www.texaswildflowerpictures.com/>.*



*Night Sky over the Texas Hill Country. Photo Credit: Images from Texas, <http://www.imagesfromtexas.com/>.*

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## EXECUTIVE SUMMARY

The legal framework that enables the exercise of eminent domain in Texas is such that abuses are becoming more and more common in irreplaceable landscapes such as the Hill Country, and these abuses are destroying the notions of private property rights that have been so highly valued in the Lone Star State. They are also destroying landscapes and precious natural resources that supply rapidly growing metropolitan areas such as Austin and San Antonio. If private companies are allowed to continue to take land for economic development and if utilities and infrastructure projects continue to run rampant across permanently conserved private lands, we are at risk of losing landscapes that can never be replaced.

One of the greatest abuses of eminent domain is by Municipal Utility Districts (MUDs). MUDs have proliferated across suburban and rural areas of Texas and are using eminent domain to take adjacent lands for a variety of purposes rather than using their own land for them. MUDs have used adjacent agricultural lands to dump sewage effluent and can pump groundwater without limit if there is not a Groundwater Conservation District (GCD) overseeing groundwater use permits, potentially draining the water supplies of adjacent landowners and therefore infringing on their rights. MUDs are defined as political subdivisions, but they are serving the purposes of private developers, who are often able to use them to avoid legal barriers to building subdivisions inside or outside of incorporated areas.

It is important to act now to curb the abuse of eminent domain in Texas. Three steps that can address that problem are to exempt conservation easements from the exercise of eminent domain, to remove “economic development” from the list of allowable reasons for the enforcement of eminent domain and to reform the qualifications for entities that can exercise the power of eminent domain and to remove privately owned entities from qualification. Limiting the type of entity that can exercise this power can do a great deal toward curbing abuse and can put responsibility back where it belongs, on the shoulders of democratically elected government bodies that are accountable to voters. Without these critical changes, Texas is gambling on its future with little hope of a payoff.

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## INTRODUCTION

The Texas Hill Country has historically been used for ranching cattle, sheep and goats; and the large tracts of land west of the Austin-San Antonio corridor that were needed to raise livestock remained mostly intact for over 150 years as Texas' population grew slowly through the 19th and 20th centuries.<sup>1</sup> This protected the large landscape of working lands and the diverse flora and fauna that were supported by active land management from development and large scale infrastructure projects. There was little cause for the landscape and its use to change when an agricultural economy provided sufficient income for ranching families and the small towns that served as centers of culture and business. In the 21st century, however, the Hill Country faces a growing threat from eminent domain abuses that have found a foothold at the intersection of a decline of the relative value of agriculture and the explosive population growth of urban areas, particularly the Austin-San Antonio corridor. It is not the only landscape that is at risk, and not the only region of Texas that is experiencing the pressures of population growth.

The legal framework that enables the exercise of eminent domain in Texas is such that abuses are becoming more and more common, and these abuses are destroying the notions of private property rights that have been so highly valued in the Lone Star State. They are also destroying the landscapes and the precious natural resources they supply to rapidly growing urban areas. If private companies are allowed to continue to take land for economic development and if utilities and infrastructure projects continue to run rampant across permanently conserved private lands, we are at risk of losing landscapes that can never be replaced. There are legitimate public uses of private lands and there are ways to justly compensate land owners for the use of those lands. But the abuse of this legal tool has reached a scale that is endangering not only livelihoods and the long term economic and ecological health of entire regions for the sake of private developers, but is also now threatening critical water supplies and quality of life features that serve to fuel the economic engines of metropolitan areas such as Austin and San Antonio.

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<sup>1</sup> Texas State Demographer, 2015.

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## REGIONAL FOCUS: HILL COUNTRY FACTS & FIGURES

Frederick Steiner, Dean of the School of Architecture at the University of Texas at Austin, has said that if the Texas Hill Country were anywhere else in the country, it would be a national park.<sup>2</sup> It is one of the most beautiful large landscapes on the planet, and has incredible biodiversity on display year-round. This large landscape attracts high levels of tourism. In 2014 the Texas Hill Country region, which includes the Austin Metropolitan Area, generated nearly \$14 billion dollars in travel spending related to attractions such as state parks, resorts, wineries, historic towns and cities, rivers, entertainment, dining and vacation dude ranches.<sup>3</sup> Texans and non-Texans alike enjoy the scenic views, historic places, natural beauty and dozens of native flora and fauna species. More than 94% of Texas Lands are held in private ownership<sup>4</sup> and the Texas Hill Country region is no exception. Home to centuries of human settlement, it plays a dominant role in the cultural and historical legacy of the Lone Star State. The Hill Country Region is composed of:

- 17 Counties
- 17,760 Square Miles
- 11.4 Million Acres (more than double the size of New Jersey)
- 90% Unincorporated Land
- 15 State Parks and Natural Areas
- 88 Endangered Species
- 215% Land Value Increase from 1997-2007
- 3.4 Million People in 2014
- Doubling of the population by 2050 (96% of this growth is in the four counties along the IH-35 corridor between Austin and San Antonio)<sup>5</sup>

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<sup>2</sup> Ferrari, Natalie. 2016. "UT Report Shows Austin's Growth Threatening the Hill Country." KXAN.com. March 18. <http://kxan.com/2016/03/18/ut-report-shows-austins-growth-impacting-the-hill-country/>.

<sup>3</sup> Dean Runyan Associates. 2015. "The Economic Impact of Travel on Texas, 1990-2014p." June. <http://travel.texas.gov/tti/media/PDFs/TX14pFinalrev.pdf>.

<sup>4</sup> Blair Calvert Fitzsimons. 2015. "No Land, No Water: Solutions and Programs for Mitigating Land Loss." presented at the Alamo Area Council of Governments, May 27. <https://www.aacog.com/DocumentCenter/View/27832>.

<sup>5</sup> Hill Country Studio. 2016. "Toward a Regional Plan for the Texas Hill Country." The University of Texas at Austin. <https://soa.utexas.edu/sites/default/disk/Toward-a-Regional-Plan-for-the-Texas-Hill-Country.pdf>.

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## SOURCES OF EMINENT DOMAIN ABUSE

In 2005 *Kelo v. City of New London* was a watershed moment for eminent domain law in the United States. The U.S. Supreme Court decision upheld the right to take private property (Kelo's home) for private economic development (which did not actually materialize). The legal standard for the exercise of eminent domain had previously been for *public* use. The majority opinion of the Court reworded *public* use to *public purpose*, which was a critical and controversial shift in the legal language. The Supreme Court decision paved the way for changes to protections of private property rights in Texas. That change meant that the exercise of eminent domain was no longer limited to public use projects such as infrastructure for transportation, utilities and oil pipelines. *Public purpose* is a much more broad definition that includes railroads, airports, stadiums, arenas, shopping centers, schools, hospitals and public parks. This expanded definition puts much more private property at risk of legally supported property takings by private developers. It took little time for legal entrepreneurs to exploit the new legal standard, and the Texas legislature tried unsuccessfully to respond. "Texas attempted to enact more substantive reform in 2007. House Bill 2006 would have closed the 'blight' loophole and defined 'public use' more accurately so it 'allows a state, a political subdivision of the state, or the general public of the state to possess, occupy, and enjoy the property.' Although it passed the State House of Representatives by a vote of 125 to 25 and the State Senate unanimously, House Bill 2006 was ultimately vetoed by Governor Perry."<sup>6</sup> The reform bill passed in 2011 was not considered strong enough to prevent the abuses that had been piling up since 2005.

The process of exercising eminent domain in Texas is where the abuses occur. It is important to note that the exercise of eminent domain is not a private transaction with mutually agreed upon terms for transfer of title. Eminent domain requires condemnation of property before it can be taken by the condemning party.

Eminent domain is the power of the government or someone acting upon power granted by the government to take private property for public use. The power of eminent domain is recognized in both the United States and Texas Constitutions. The Fifth Amendment of the United States Constitution provides that private property may not be taken for public use without just

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<sup>6</sup> Matt Miller. 2009. "They Want to Erase Us Out: The Faces of Eminent Domain Abuse in Texas." Institute for Justice. <http://ij.org/wp-content/uploads/2015/03/tx-report-1.pdf>.

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compensation. Article I, Section Seventeen of the Texas Constitution, likewise, prohibits the taking, damaging or destruction of property for public use without adequate compensation being made.

Condemnation is the exercise of the power of eminent domain. Thus, when the government or a person/entity authorized to use eminent domain takes property, it engages in condemnation. There are three elements of eminent domain under Texas law: (1) The actor must be the state or a private entity authorized to condemn; (2) the property must be taken for public use; and (3) the landowner must receive adequate compensation for the condemned property.<sup>7</sup>

In compliance with Texas Senate Bill 18, effective in 2011, The Texas State Comptroller keeps a listing of the entities in Texas that are allowed to exercise power of eminent domain.<sup>8</sup> The list includes thousands of entities,<sup>9</sup> all of which have the ability to take private land for “public use.” Of those entities are hundreds of Municipal Utility Districts, which are a “political subdivision of the State of Texas authorized by the Texas Commission of Environmental Quality (TCEQ) to provide water, sewage, drainage and other services within the MUD boundaries.”<sup>10</sup> These MUDs have proliferated across the Texas Hill Country in particular and are using eminent domain to take adjacent lands for a variety of purposes rather than using their own land. If there is not a Groundwater Conservation District (GCD) to implement and enforce groundwater use permits, MUDs can pump groundwater without limit, potentially draining the water supplies of adjacent landowners and therefore infringing on their rights. While it is true that not all MUDs exploit legal loopholes to their advantage, the number of instances has grown in the Hill Country since 2005. And while MUDs are defined as political subdivisions, they are serving the purposes of private developers, who are often able to use them to avoid legal barriers to building subdivisions inside and outside of incorporated areas and to tax residents to pay back infrastructure financing.

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<sup>7</sup> Tiffany Dowell. 2014. “Eminent Domain in Texas (Part 1) - What Is It?” *Texas A&M Agrilife Extension Texas Agriculture Law Blog*. March 17. <http://agrillife.org/texasaglaw/2014/03/17/eminent-domain-in-texas-part-1-what-is-it/>.

<sup>8</sup> [http://comptroller.texas.gov/specialrpt/eminent\\_domain/](http://comptroller.texas.gov/specialrpt/eminent_domain/).

<sup>9</sup> <http://www.trackingtexas.org/index.php/sb18report/search>

<sup>10</sup> <http://www.jbgoodwin.com/municipal-utility-districts.php>

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Utility commissions, transportation agencies and other similar state and local agencies also have the power of eminent domain, which they can employ when landowners are either unwilling to part with land or when the cost to purchase land is higher than the agencies want to pay. Although there is a legal process that must be followed for condemnation, including the delivery of a letter from the condemning entity and the Landowner Bill of Rights<sup>11</sup> the notification process is short and does not provide much notice to the landowner, who may not be prepared to deal with the legal action. While the standard is that landowners be compensated for the fair market value of the land condemned, that standard is not clearly defined and is subject to legal challenges and their associated costs, which can be burdensome to landowners. The process places burden of proof on landowners who are already losing their land.

### **LUX FAMILY RANCH IN BULVERDE, TEXAS<sup>12</sup>**

Pat Graham's family (the Lux family) has owned their working farm and cattle ranch in the Texas Hill Country northwest of San Antonio for over 100 years. Their land is being condemned so that a private developer can discharge treated sewage from a subdivision called Johnson Ranch with 1,500 new homes into the Lux family's dry creek bed. The developer is threatening to use eminent domain through a MUD. This MUD has a board elected solely by the developer, who is currently the only landowner in the MUD, and as such is not a truly representative or democratic body. The Johnson Ranch MUD gives this developer the ability to exercise eminent domain with impunity until there are enough residents that become eligible to be elected to the board. It was initially created by Comal County as a Water Improvement District then converted to a MUD. Comal County now requires such districts to have county approval before exercising eminent domain, but such safeguards don't protect landowners who have already been harmed.

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<sup>11</sup> Office of the Attorney General of the State of Texas. 2016. "The State of Texas Landowner's Bill of Rights." Accessed April 30. [https://www.texasattorneygeneral.gov/files/agency/landowners\\_billofrights.pdf](https://www.texasattorneygeneral.gov/files/agency/landowners_billofrights.pdf)

<sup>12</sup> Case edited from Terri Hall. 2014. "Texas Couple under Siege by Government Land Grab for Developer." *Watchdog Wire*. Accessed May 13. <http://watchdogwire.com/texas/2014/05/13/texas-couple-under-siege-government-land-grab-developer/>.

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Johnson Ranch is using this MUD to apply for a sewage discharge permit from the TCEQ so that they can discharge sewage effluent on Graham's land. The Lux ranch has a dry creek bed that only flows when it floods, but the state considers it a creek that belongs to them (the State of Texas owns all navigable waterways, which are under state jurisdiction as administered by TCEQ), and therefore they can discharge effluent into it. The amount of effluent that could be discharged would cause Graham's dry creek bed to be continuously wet. Cattle currently graze in the dry creek bed and would likely continue to do so if the discharge occurs. Graham's cattle could be drinking treated sewage water or grazing on grass and brush that grows in the creek bed contaminated by effluent. These cattle are sold for processing and sent to supermarkets. If the TCEQ can designate this dry creek bed as waters of the state, the problem won't stop with Graham's family. Virtually any area that collects water, even areas that only collect water during occasional flooding, could become property of the state and used on behalf of a single, private developer rather than the original landowner. This sets a disconcerting precedent for Texas landowners.

### **INTERSECTION WITH POPULATION GROWTH**

The State of Texas is expected to double in population by 2050 if current population growth trends continue.<sup>13</sup> The populations of Austin and San Antonio, which serve as the urban anchors on the eastern edge of the Texas Hill Country, are also expected to double in that time frame. Population growth does not happen in a vacuum. It requires increases in consumption of land, roads, water and electricity. Texas has not and does not build in patterns of high density, but development rather sprawls out into open and previously undeveloped lands. The explosive population growth has put pressure on road and utility capacity, and new highways and electric transmission lines feed into cities so that residents can have their needs met. Agricultural lands are being rapidly converted to residential and commercial developments to accommodate more people. What is not at the forefront of public consciousness is how those roads, transmission lines and developments come to be.

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<sup>13</sup> Texas State Demographer. 2015.

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Texas is losing agricultural lands faster than any other state in the nation. In just 15 years Texas had 1.1 million agricultural lands converted, and 54% of that conversion was in the top 25 high-growth counties.<sup>14</sup> While that may seem to be a natural outcome of high rates of population growth, the way in by which those lands are converted is important to understand. If it is all through market-based purchase, then rural landowners, who are frequently “land rich and cash poor”, are able to benefit from Texas’ economic growth and are compensated according to a mutually determined agreement. However, when projects and developments enforce eminent domain, landowners not only do not have the ability to voluntarily participate in a business transaction, they are increasingly not paid the full value of what is taken, particularly when only part of their land is condemned. They also bear the cost of legal challenges to prove that the condemning agency is acting outside the law.<sup>15</sup> This disproportionate impact of the cost of growth is trampling on those who are least able to afford the lost value of their land.<sup>16</sup> It is particularly concerning that the eminent domain statute that requires the land be offered for repurchase to the owner from whom it was taken if the project is not completed<sup>17</sup> is not always followed. The law is not narrow enough to protect land owners from exploitation for “economic development.”

### **BALOUS MILLER V. THE CITY OF SAN ANTONIO**

During the late 1980’s the City of San Antonio condemned a portion of Balous Miller’s family farm for the construction of the Applewhite Reservoir. Although Mr. Miller was compensated for the taking of his family’s property, he was not compensated for the damages that would accrue to that portion of property he retained. He was told that his property would not be damaged because it would soon have a lakeside view. Of course, the Applewhite Reservoir was never completed. Though the City contemplated selling the condemned property back to the original land owners, it decided not to do this.

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<sup>14</sup> Blair Calvert Fitzsimons. 2015. “No Land, No Water: Solutions and Programs for Mitigating Land Loss.” presented at the Alamo Area Council of Governments, May 27. <https://www.aacog.com/DocumentCenter/View/27832>.

<sup>15</sup> Kathleen Hunker. 2015. “Eminent Domain Reform Is Needed to Protect Texans’ Property Rights.” *Heartlander Magazine*, May 27. <http://news.heartland.org/newspaper-article/2015/05/27/eminent-domain-reform-needed-protect-texans-property-rights>.

<sup>16</sup> “Fighting Eminent Domain Abuse.” 2009. *Competitive Enterprise Institute*. October 13. <https://cei.org/blog/fighting-eminent-domain-abuse>.

<sup>17</sup> “TEXAS PROPERTY CODE TITLE 4. ACTIONS AND REMEDIES CHAPTER 21. EMINENT DOMAIN SUBCHAPTER A. JURISDICTION.” 2016. Accessed April 30. <http://www.statutes.legis.state.tx.us/Docs/PR/htm/PR.21.htm>.

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Years after work on the Applewhite Reservoir project ended, the City of San Antonio sold the property to Toyota, probably for much more than it paid for it originally. Mr. Miller lost not only the amount that he could have received from Toyota, but he also remains uncompensated for damages to his property, which at one time was to overlook a scenic reservoir, but now is adjacent to a truck factory.<sup>18</sup>

### THE CLASH WITH CONSERVATION EASEMENTS

The Land Trust Alliance (LTA) defines a conservation easement as “...a voluntary legal agreement between a landowner and a land trust or government agency that permanently limits uses of the land in order to protect its conservation values. Landowners retain many of their rights, including the right to own and use the land, sell it and pass it on to their heirs.”<sup>19</sup> The LTA extols the virtues of conservation easements, claiming that, “Landowners have found that conservation easements offer great flexibility, yet provide a permanent guarantee that the land will not be developed. For example, an easement on property containing rare wildlife habitat might prohibit any development, while one on a farm might allow continued farming and the building of additional agricultural structures. An easement may apply to only a portion of the property, and need not require public access.”<sup>20</sup> In the State of Texas, this is simply not true. By law, conservation easements in Texas are not protected from the exercise of eminent domain.<sup>21</sup> This means that any landowner who signs legal documents to have their land protected in perpetuity can have their land taken from them and developed for any public purpose, including that of private development. This lack of protection is one of the failings of Texas eminent domain law, and one of the disincentives for land conservation easements.

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<sup>18</sup> Case quoted directly from Bill Peacock. 2006. “Recent Examples of Eminent Domain Abuse in Texas.” Texas Public Policy Foundation. <http://www.texaspolicy.com/library/doclib/2006-04-ED%20examples-bp.pdf>.

<sup>19</sup> Land Trust Alliance. 2014. “Conservation Easements.” Text. *What You Can Do*. December 23. <http://www.landtrustalliance.org/what-you-can-do/conserv-your-land/questions>.

<sup>20</sup> Land Trust Alliance. 2014. “Benefits for Landowners.” Text. *Benefits for Landowners*. December 23. <http://www.landtrustalliance.org/what-you-can-do/conserv-your-land/benefits-landowners>.

<sup>21</sup> Natural Resources Code. Title 8. Acquisition of Resources. Chapter 183 Conservation Easements. Accessed May 3. <http://www.statutes.legis.state.tx.us/Docs/NR/htm/NR.183.htm>.

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Conservation easements are critical to protecting the fragile segments of Texas landscapes from which water is collected before it flows into the rivers and aquifers that provide water not only to the metropolitan areas of Texas but also to downstream farmers and ultimately to the wetland areas along the Texas coast. If those lands in the watersheds are not protected from development, both the quantity and quality of urban, agricultural and coastal water supplies could suffer. The City of San Antonio has already purchased over \$300 million in conservation easements through its Edwards Aquifer Protection Program.<sup>22</sup> Without protection from eminent domain, those lands, and ironically enough the taxpayer dollars that paid for the conservation easements to protect the city's water, are at risk. If cities are not able to partner with landowners to protect water supplies and if development increasingly encroaches on these fragile areas, more than just landowner rights are at risk. The economic engines of cities such as Austin and San Antonio rely on water. If that water is compromised, so might be economies that generate billions of dollars annually.

### **THE CASE FOR EMINENT DOMAIN**

One of the arguments for the exercise of eminent domain for transportation and economic development is that private companies rather public entities are responsible for the costs of the projects and tax payers do not have to finance them. This has been said in reference to transportation projects like the SH 130 toll road that begins north of Austin and terminates at IH-10 just east of San Antonio. The highway was built to relieve traffic congestion on IH-35 and the project was built by a private company that receives part of the toll revenues as repayment. However, that company has faced bankruptcy as the project has not generated the projected revenues.<sup>23</sup> Is it really a win for taxpayers when billions of dollars are spent with an outcome of bankruptcy?

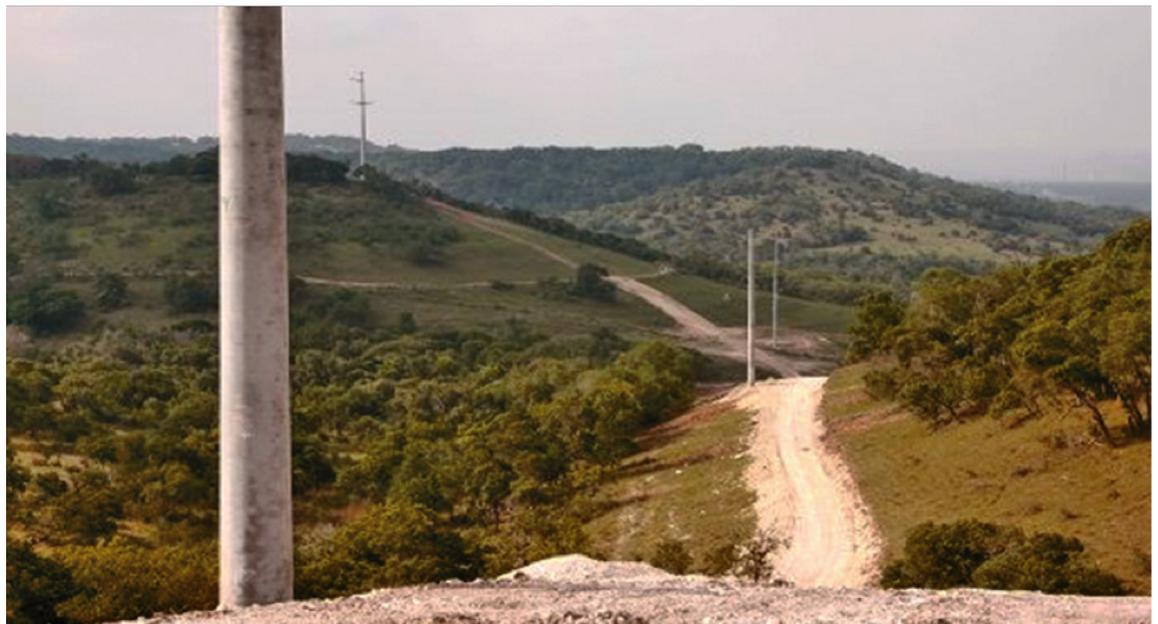
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<sup>22</sup> City of San Antonio. 2016. Edwards Aquifer Protection Program. Accessed May 3. <https://www.sanantonio.gov/edwardsaquifer>.

<sup>23</sup> Kelly Holt. 2015. "Portion of TransTexas Corridor in Financial Trouble." *The New American*. January 5. <http://www.thenewamerican.com/usnews/politics/item/19836-portion-of-transtexas-corridor-in-financial-trouble>.

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David M. Lewis wrote that, “In a rural environment, almost everyone agrees that it would be a justifiable sacrifice to take a rancher’s land to build dams and lakes for providing water supply or electrical power to our cities’ millions.”<sup>24</sup> Almost everyone in the cities may agree, but eminent domain is not likely to be viewed kindly by the rural landowners, even if it is claimed to be for the public good. There are valid reasons for the exercise of eminent domain and landowners can be fairly compensated. There are times when there is conflict between the march of time and population growth and the ownership and use of both urban and rural lands. There are times that agreements cannot be reached and eminent domain can be justly argued as valid. The exercise of eminent domain for economic development, for private benefit and on lands that are held in conservation easements are not valid reasons.



*Power Transmission Lines Strung Across the Texas Hill Country. The land for the power line easement was purchased and not acquired through eminent domain, which demonstrates that eminent domain is not the only tool for land acquisition by utilities. Source: Texas Agricultural Land Trust. Photo Credit: David K. Langford.*

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<sup>24</sup> “Eminent Domain: Still A Useful Tool Despite Its Recent Thrashing.” 2016. *Planetizen: The Urban Planning, Design, and Development Network*. Accessed May 3. <http://www.planetizen.com/node/21109>.

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## CONCLUSIONS & RECOMMENDATIONS

While the issue of eminent domain is complex and has components at the federal, state and local levels, not all of which have been touched upon here, the legal principles that are developing on a case by case basis are being exploited as legal loopholes and are increasingly at odds with the long-held value for private property rights in the State of Texas. Also in conflict are eminent domain and our notions of equity. Why are rural landowners bearing the direct cost of projects that benefit urban areas when they are not receiving direct benefits? The abuse of eminent domain cannot be our way forward as Texas envisions its future.

The first step toward curbing eminent domain abuse is to exempt conservation easements from the exercise of eminent domain. While a reaction may be to assume that there will be some kind of rush of landowners to place their lands in conservation easements and that this would only serve to either devalue land because it becomes unavailable for development or to cause expenses that make transportation, utility and pipeline projects unfeasible, it has already been demonstrated that this approach can work, and work well. In fact, the New York City Watershed Protection Program is a standout precisely because it did not use eminent domain to acquire land for the watershed that feeds the two water supply sources for New York City. The city was facing action by the U.S. Environmental Protection Agency for not meeting water quality standards for its unfiltered drinking water. The city would have had to build a multi-billion dollar filtration plant unless it could protect its water quality at the source. It therefore established a program to purchase voluntary conservation easements from watershed land owners, who were predominantly dairy farmers, and helped them upgrade their farms and equipment to better manage manure and land. The cost to do this was a fraction of the cost of the filtration plant, the city did not use eminent domain to accomplish its goal and rural landowners were able to benefit from their participation.<sup>25</sup> When landowners voluntarily give up development rights on their property for the future of the state, they should not have to fear that their legal agreements will be voided by private interests supported by that same state.

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<sup>25</sup> NYC Environmental Protection. 2016. "Land Acquisition." *Department of Environmental Protection Land Acquisition Program*. Accessed May 4.  
[http://www.nyc.gov/html/dep/html/watershed\\_protection/land\\_acquisition.shtml](http://www.nyc.gov/html/dep/html/watershed_protection/land_acquisition.shtml).

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The second step is to change the state statute to remove “economic development” from the list of allowable reasons for the enforcement of eminent domain. According to the statute language:

A governmental or private entity may not take private property through the use of eminent domain if the taking:

- (1) confers a private benefit on a particular private party through the use of the property;
- (2) is for a public use that is merely a pretext to confer a private benefit on a particular private party;
- (3) is for economic development purposes, unless the economic development is a secondary purpose resulting from municipal community development or municipal urban renewal activities to eliminate an existing affirmative harm on society from slum or blighted areas...<sup>26</sup>

It has already been shown that economic development has been a primary use with the pretext of primary valid uses. The vague language and broad standard are not protecting landowners from the abuse of this clause.

The third step is to reform the qualifications for entities that can exercise the power of eminent domain and to remove private entities from those who have been deemed qualified. Provision of a public listing of those entities is not enough. There are thousands of state, local and private groups who can exercise eminent domain, and as the state population continues to grow and cities expand outward, we can reasonably expect that eminent domain abuses will increase as well. Limiting the type of entity that can exercise this power can do a lot toward curbing abuse and can put that responsibility back where it belongs, on the shoulders of democratically elected government bodies that are accountable to voters.

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<sup>26</sup> *GOVERNMENT CODE TITLE 10. GENERAL GOVERNMENT SUBTITLE E. GOVERNMENT PROPERTY CHAPTER 2206. EMINENT DOMAIN.* 2016. *Government Code*. Accessed May 4. <http://www.statutes.legis.state.tx.us/SOTWDocs/GV/htm/GV.2206.htm>.

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The future of Texas is at stake and the health of valuable landscapes such as the Texas Hill country is endangered by reckless and irresponsible use of a legal tool that can appear to be necessary for growth and progress. The weak and vague language of the statute is being exploited for private gain, and those abuses are not slowing as Texas' population continues to grow. Long term health and viability should not be sacrificed for short term gain, and Texas should not continue to allow families that have been land stewards for over a century to have their legacy stripped from their hands for projects that have yet to show good stewardship of the land. This is not a rural or an urban issue. This is a regional and a state issue that must be addressed at the state level so that these abuses are not continued and so that private landowners in Texas are protected in the future.

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## ABOUT THE AUTHOR

Britin Bostick is a 6th generation Texan who grew up on The Divide on the western edge of the Texas Hill Country. She is from one of the founding families of Kerrville and attended the same small country school as her great aunt. She graduated with honors from Texas A&M University - College Station with a Bachelor of Environmental Design and worked in architecture and construction project management for several years, designing and building dozens of projects across Texas and the American South. She was serving on the Main Street Advisory Board and the Historic Preservation Commission of Paris, Texas when she found an interest in community development and decided to pursue graduate school to learn more about how she could help revitalize rural communities.

Britin graduated with honors from The University of Texas at Austin with a Master of Science in Community and Regional Planning and a Master of Public Affairs. While in graduate school she worked with noted regional planner Robert Yaro and coauthored the report *Toward a Regional Plan for the Texas Hill Country*. She has also worked with the Hill Country Alliance to develop conversations about a regional strategy for the future of the Hill Country and the future of relationships between urban and rural areas. She continues to speak to civic groups and policymakers about this topic and is engaged in research and writing regarding the future of Texas.

Britin is a Principal of Stewardship Strategies, a consulting firm and thought leadership network that specializes in Place Planning, Progressive Preservation and Policy. She and her business partner Frank Ordia work to develop thought leadership on a wide range of policy issues and focus their research on collecting data that can help develop indicators for the future health of cities as well as determine the effectiveness of incentives. She is based in Austin but still calls the Hill Country home and proudly wears her Aggie ring. You can reach her at [britin@stewardshipstrategies.com](mailto:britin@stewardshipstrategies.com).

