# GROWTH AND CONSERVATION IN TEXAS

## A PRIMER ON COUNTY TOOLS AND PATHS FORWARD 2023

*Commissioned by: The Hill Country Alliance, Cibolo Center for Conservation, Comal County Conservation Alliance, Environmental Defense Fund, Greater Edwards Aquifer Alliance, League of Women Voters of the Comal Area, and the National Wildlife Federation*

*Prepared by: Gap Strategies*

## Executive Summary

The Texas Hill Country is one of the fastest growing regions in the country. Situated in the heart of the state, this 17-county landscape is home to the booming megaregion of the Austin-San Antonio corridor--which includes two of the fastest growing counties in the country: Hays and Comal. Much of the region's growth is happening in unincorporated areas, many of which feature sensitive and vital environmental systems and features.

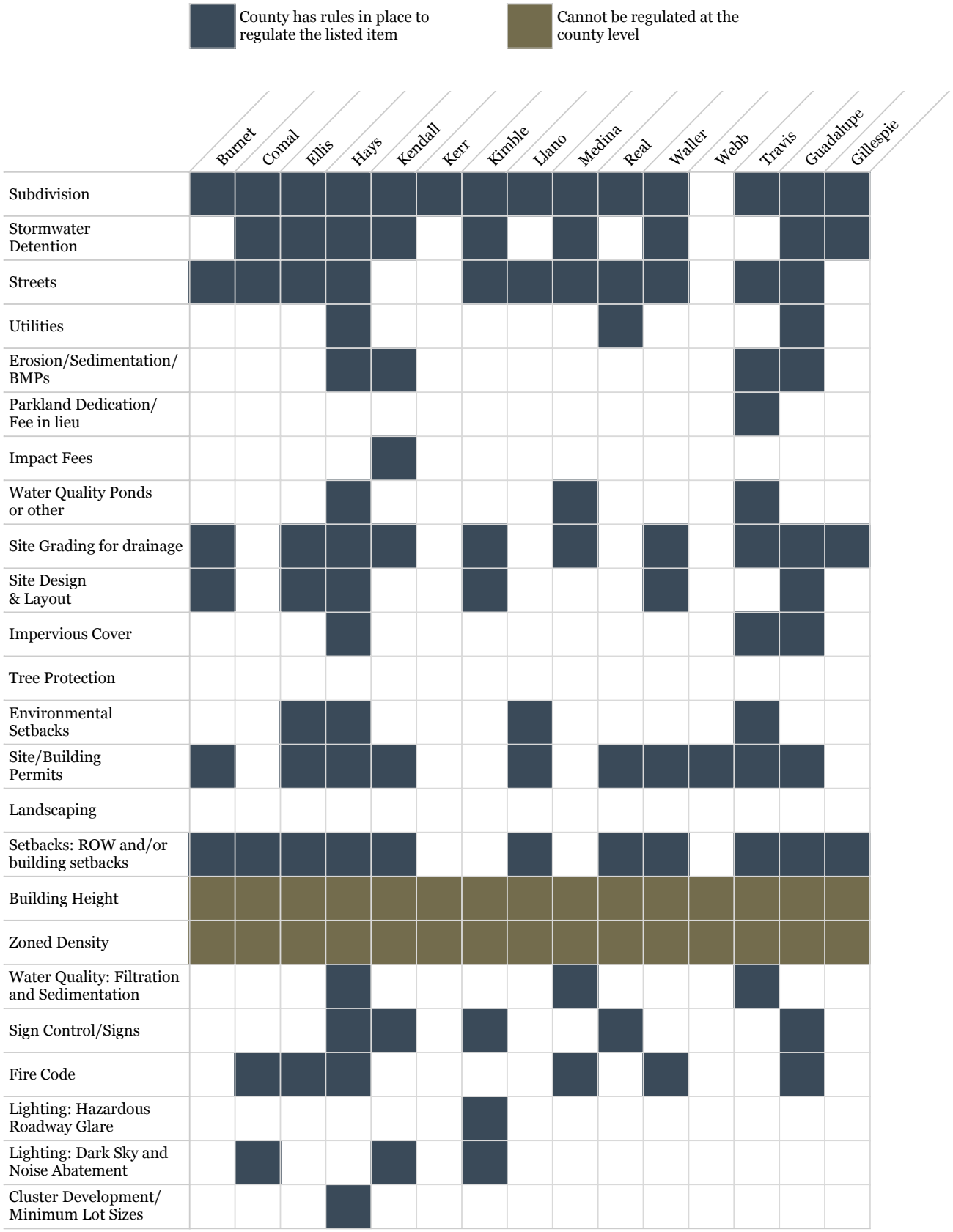
**Although population growth has its advantages, it can also put stress on natural resources, particularly when the growth takes place beyond city boundaries**. According to the 2022 State of the Hill Country report, when open spaces and ranchlands are converted to subdivisions, the region experiences:

- **More pressure on aquifers** as a result of greater residential water consumption.
- **More wastewater discharge,** risking harmful algal blooms that make our waterways unsafe and unuseable.
- A significant **increase in impervious surface cover,** leading to **heightened flooding, and reduced land capacity to recharge** the aquifer.
- The **loss of land** that might have been considered ideal for a regional park or wildlife area at the same time that the region is seeing increased need for outdoor recreational activities.
- **Net losses for county budgets**, as residential subdivisions tend to require more local government dollars to service and maintain than they generate in tax revenue, whereas open space and agricultural land is net positive for local budgets, even with agricultural and wildlife tax evaluations.

Because there are no broad or comprehensive growth management tools at the county level, counties must weave together a patchwork of small authorities to creatively address issues related to growth and the need for resource conservation. **The tools we have in Texas are far from perfect; yet, they can be effective – and there are innovative ideas already available for local leaders to adapt and apply.**

In 2023, Gap Strategies conducted a survey to understand how counties in Texas are using their existing regulatory authorities to manage growth and steward natural resources in their communities. The table on page 2 represents responses from the counties that completed the survey. Blue indicates that the county has rules in place to regulate the listed item. Brown denotes items which cannot be regulated at the county level because of statutory restrictions. The sources of authority for many of these regulations can be found in the full report, starting on page 13.

# How Counties in Texas are Using Existing Regulatory Authorities



# Opportunities and Innovation

**The biggest takeaway from the survey is that nearly all counties in Texas could be doing more with their existing authorities to manage growth and development.** Different counties are using their authorities in different ways, and this presents opportunities to learn from and draw inspiration from one another.

Additionally, examples from counties across the region show that there are opportunities to manage growth in the following categories:

- **Long-range and Strategic Planning:** While counties may not have the direct authority to regulate most land uses, a general strategic plan or a long-range transportation plan that incorporates natural resource protection and economic development can take advantage of the strong link between transportation and land use, directing county infrastructure investment to parts of the county that are most appropriate and/or most manageable. For examples, see page 23 of the full report.

- **Variable Lot Sizing:** The Texas Commission on Environmental Quality (TCEQ) sets minimum lot sizes for On-Site Sewage Facilities (OSSFs, which are essentially septic tanks in most cases). These are typically one-half acre or one acre over the Edwards Aquifer Recharge Zone. These rules do not address lots connected to an organized sewer system. Most Texas counties have either established no formal minimum lot size of their own and default to the state OSSF minimums or use the state OSSF minimums as the basis for minimum sizing. A relatively small number of counties have taken a different approach, especially in the Hill Country, using a combination of OSSF regulations, PGMA rules, well-spacing requirements, culvert-spacing, and other patchwork authority to assert much larger minimum lot sizes, up to 10 acres in some cases, making lot sizing a stand-in for water protection (quantity and quality) and de facto density controls. For more information, see page 25 of the full report.

- **Exceptions to Zoning Prohibitions:** Counties in Texas are generally prohibited from zoning or controlling the use of land (as opposed to regulating platting procedures and infrastructure). But there are exceptions. A handful of counties have additional zoning-type authority, found in Chapter 231, of the Texas Local Government Code. These counties are "bracketed" — the special authority is granted only to specific counties that meet a narrow definition, or bracket, and are typically established through "local" bills in the legislature. These brackets for county land use are set up around the protection of a few surface lakes, military bases, and observatories. Often they apply only to small parts of a county, within a certain distance of the protected lake, for instance. For more about bracketed zoning cases and how new brackets might be used to address other issues, including aquifer protection, see the section on Ideas For the Future, starting on page 37 of the full report.

- **Roads and Transportation:** Counties have leeway to regulate road and lane widths. Because transportation, land use, and water act as compounding drivers for growth and resource management, road and transportation tolls can have an immense impact. Similar to variable lot sizing, variable road widths allow a county to influence the density and type of development that occurs. For more information, see page 27 of the full report.

- **Stormwater and Impervious Cover Limits:** State law does not explicitly give counties the power to regulate impervious cover, and most authority for county stormwater regulation is tied to road construction, or to the regulation of floodplains. However, there are some tools to affect impervious cover and stormwater indirectly:
    - **Voluntary opt-in agreements with developers —** Counties may establish incentives or alternative development guidelines, giving developers a choice between standard state-law-conforming subdivision procedures and a voluntary, incentivized alternative protects water resources, open space, and advances other conservation goals. This might be a voluntary conservation design program or a Developer Agreement that incorporates other county goals. For an example of conservation development incentives, see the Hays County example on page 32 of the full report.
    - **Road design standards that incorporate Low Impact Design features,** such as rain gardens, or that allow for narrower roadways (meaning less impervious cover) under certain circumstances, such as large-lot subdivisions.
    - **Lot sizing,** as discussed above in its own subsection.
    - **Direct preservation of open space in strategic areas,** limiting impervious cover in certain watersheds or environmentally sensitive areas. A few counties, including Hays County and Kendall County, have taken steps to address the issue of land conservation proactively by passing voter-approved conservation bonds. For examples, see page 30 of the full report.

## Conclusion

Texas will continue to grow, and with it, the Hill Country. That means more stress on water, land, and communities. While population growth will bring exciting opportunities, including the potential for economic prosperity, the challenges will be immense. Managing growth in ways that honor the existing character of communities while truly stewarding limited natural resources – and doing so while respecting property rights and the freedom to move and to live in the place of one's choice – will require vision, creativity, and collaboration.

As this report seeks to illustrate, there are tools currently available for counties to pick up and use. There are innovative ideas already on the table for local leaders to adapt and apply. These tools are far from perfect, but they can be effective– and perhaps essential– for protecting the very things that make the Hill Country a viable and desirable place to live, work, and visit.

**To view the full report, visit:**
https://hillcountryalliance.org/county-tools-report/