
**HOUSE COMMITTEE ON LAND AND RESOURCE MANAGEMENT
TEXAS HOUSE OF REPRESENTATIVES
INTERIM REPORT 2002**

**A REPORT TO THE
HOUSE OF REPRESENTATIVES
78TH TEXAS LEGISLATURE**

**GARY L. WALKER
CHAIRMAN**

**COMMITTEE CLERK
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Committee On
Land and Resource Management

October 1, 2002

Gary L. Walker
Chairman

P.O. Box 2910
Austin, Texas 78768-2910

The Honorable James E. "Pete" Laney
Speaker, Texas House of Representatives
Members of the Texas House of Representatives
Texas State Capitol, Rm. 2W.13
Austin, Texas 78701

Dear Mr. Speaker and Fellow Members:

The Committee on Land and Resource Management of the Seventy-Seventh Legislature hereby submits its interim report, including recommendations for consideration by the Seventy-Eighth Legislature.

Respectfully submitted,

Gary L. Walker, Chairman

Joe Crabb, Vice Chairman

Fred Brown

Charlie Geren

Charlie Howard

Mike Krusee

Anna Mowery

Vicki Truitt

Bob Turner

Joe Crabb
Vice-Chairman

Members: Fred Brown, Charlie Geren, Charlie Howard, Mike Krusee, Anna Mowery, Vicki Truitt, Bob Turner

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INTRODUCTION

At the beginning of the 77th Legislature, the Honorable James E. “Pete” Laney, Speaker of the Texas House of Representatives, appointed nine members to the House Committee on Land and Resource Management. The committee membership included the following: Chairman Gary L. Walker, Vice-Chairman Joe Crabb, Fred Brown, Charlie Geren, Charlie Howard, Mike Krusee, Anna Mowery, Vicki Truitt and Bob Turner.

Pursuant to House Rule 3, Section 21, the Committee has jurisdiction over all matters pertaining to:

- (1) the management of public lands;
- (2) the power of eminent domain;
- (3) annexation, zoning, and other governmental regulation of land use;
- (4) problems and issues particularly affecting rural areas of the state; and
- (5) the following state agencies: the Veterans’ Land Board, the School Land Board, the Board for Lease of University Lands, the Coastal Coordination Council, and the General Land Office.

HOUSE COMMITTEE ON LAND AND RESOURCE MANAGEMENT
INTERIM STUDY CHARGES AND SUBCOMMITTEE ASSIGNMENTS

During the interim, Speaker Laney charged the committee with the following issues:

1. Conduct a comprehensive examination of issues associated with the expansion of metropolitan areas into formerly rural areas (“urban sprawl”), including impacts on infrastructure, alteration of the rural or small town character, and the loss of open spaces including farm land and wildlife habitat. Consider the range of state, local and private measures (including the purchase of development rights) that might mitigate the negative aspects of such growth.
2. Consider issues associated with the ownership and maintenance of rural roads. Assess the benefits of legislation that would clarify ownership and county responsibility for maintenance of those roads.
3. Pursuant to H.B. 2684, 77th Legislature, conduct a study on the placement and use options for dredged material from the Gulf Intracoastal Waterway.
4. Actively monitor agencies and programs under the committee’s oversight jurisdiction, including the implementation of H.B. 7, 77th Legislature, and the new Office of Rural Community Affairs.

Chairman Gary L. Walker appointed subcommittees to study the first three charges.

Subcommittee on Urban Sprawl: Chair, Anna Mowery. Members: Charlie Howard and Vicki Truitt.

Subcommittee on the Ownership of Rural Roads: Chair, Mike Krusee. Members: Joe Crabb and Bob Turner.

Subcommittee on Dredged Materials: Chair, Charlie Geren. Members: Fred Brown and Gary Walker.

The final charge was studied by the Committee as a whole.

The committee and subcommittees have concluded their hearings and research and issued the following report.

Charge 1

Conduct a comprehensive examination of issues associated with the expansion of metropolitan areas into formerly rural areas (“urban sprawl”), including impacts on infrastructure, alteration of the rural or small town character, and the loss of open spaces including farm land and wildlife habitat.

Consider the range of state, local and private measures (including the purchase of development rights) that might mitigate the negative aspects of such growth.

THE SUBCOMMITTEE ON URBAN SPRAWL

Background

The term “urban sprawl” first appeared in Merriam-Webster’s Dictionary in 1958, defined as “the spreading of urban developments (as houses and shopping centers) on undeveloped land near a city.” Although the definition seems benign, the perception of urban sprawl relies on terms such as “haphazard,” “disorderly,” and “lack of proper planning.” Sprawl, however, is perceived by many as a necessary part of economic development. Or as one bystander commented, “People aren’t really upset by sprawl. They are upset by what it looks like.”

Many communities have found themselves caught up in the sprawl debate. Sprawl is blamed for social isolation and obesity (people driving everywhere), asthma and global warming (auto emissions), flooding and erosion (too much pavement), the demise of small farms (developers buying their land) and the extinction of wildlife (natural areas being overrun by development). At the same time, it is credited with creating safe neighborhoods, affordable housing, and good schools. In short, a chance to live the American dream.¹

Noted policy analyst Anthony Downs has identified ten “traits” associated with sprawl:

1. unlimited outward expansion;
2. low-density residential and commercial settlements;
3. leapfrog development;
4. fragmentation of powers over land use among many small localities;
5. dominance of transportation by private automotive vehicles;
6. no centralized planning or control of land use;
7. widespread strip commercial development;
8. great fiscal disparities among localities;
9. segregation of types of land uses in different zones; and
10. reliance mainly on the trickle-down or filtering process to provide housing to low-income households.²

Texas is a high-growth state, with a population of 34 million people expected by the year 2030. Growth is inevitable, how it is handled is not.

Summary of Testimony from Public Hearings

The Subcommittee on Urban Sprawl heard testimony during three scheduled hearings. Those who testified and their representation were:

March 21, 2002, in Fort Worth, TX

Jim Bill Anderson, *Representing Himself*

David Behm, *Connemara Conservancy Foundation Board of Trustees*

Craig Farmer, *City of Lubbock, City Planners Association of Texas, Texas Municipal League*

Jimmy Gaines, *Texas Landowners Council, Inc.*

Daniel Gonzalez, *Texas Association of Realtors*

Ron Harmon, *Texas Association of Counties*
Donald Lee, *Texas Conference of Urban Counties*
Nathan Loftice, *Representing Himself and Defenders of Americans' Voice
in Decision-Making*
Jerry Millhon, *Fossil Rim Wildlife Center*
Bob Riley, *City of Fort Worth, City Manager's Office*
Javier Ruiz, *Humberto Hernandez, Regional Conservationist, NRCS*
Julie Shackelford, *American Farmland Trust*
Paul Wood, *Representing Himself and Wise County*

April 11, 2002, in Austin, TX

Beyrl K. Armstrong, *Representing Self*
Katharine Armstrong Idsal, *Texas Parks and Wildlife Commission*
Robert Ayres, *Representing Himself*
Lorenz Bading, *Representing Himself*
David Baker, *Representing Himself*
J. David Bamberger, *Representing Himself*
Rob Baxter, *Friendship Alliance, Goldenwood Property Owners'
Association*
Kirby Brown, *Texas Wildlife Association*
Dan Byfield, *American Land Foundation*
Bill Cofer, *Annandale Ranch*
George Cofer, *Representing Himself and Hill Country Conservancy*
Susan Combs, *Texas Department of Agriculture*
Anna D. Franklin, *Representing Herself*
Jimmy Gaines, *Texas Landowners Council, Inc.*
John Hamilton, *Texas Land Trust Council*
Jim Hannah, *Representing Himself and Trinity Aquifer Water Planning
Group*
Marcy Holloway, *Representing Herself and Hill Country Roundtable*
Dick Kallerman, *Austin Sierra Club*
Jo D. Krankel, *Representing Self*
Nancy McClintock, *City of Austin*
William T. McPherson, *Prairie and Pines Land Trust*
Jay Millikin, *Comal County Commissioners Court*
David Mintz, *Texas Apartment Association*
Mary Sanger, *Texas Center for Policy Studies*
Julie Shackelford, *American Farmland Trust*
Roland Smith, *Representing Himself and Texas Cooperative Extension*
Don Steinbach, *Representing Himself*
Lynn Storm, *Representing Self*
Scott Storm, *Representing Himself*
Allen Walther, *Representing Himself and Hays County Judge Jim Powers*
Ira Yates, *Representing Himself*

May 16, 2002, in Sugar Land, TX

Laurance Armour, *Representing Himself and Landowners, Texas Rice Industry Coalition for the Environment*
Bill Crolley, *Texas Chapter of the American Planning Association and City Planners Association of Texas*
Synda Frost, *Representing Herself*
Brian Gaston, *Representing Himself*
Jack Harris, *Brazoria County*
Paul Hofman, *City of Sugar Land*
John Jacob, *Texas Sea Grant College Program*
Thomas Kelsey, *Representing Himself*
Jennifer Lorenz, *Representing Herself and Legacy Land Trust*
Robert Mersmann, *Representing Himself*
Jeffery Mundy, *Houston Audubon Society*
C.E. Myska, *Representing Himself*
Wayne Neumann, *City of Missouri City*
Mary Anne Piacentini, *Katy Prairie Conservancy*
Julie Shackelford, *American Farmland Trust*
Tom Stavinoha, *Fort Bend County and Needville School District*
Paul Sugg, *Texas Association of Counties*
James Sulentich, *The Nature Conservancy of Texas*
Clifford Vacek, *Representing Himself*

The Existence of Sprawl

Why does sprawl exist? According to some theorists, sprawl is part of the price we're paying for something novel in human history--the creation of a mass upper class. Rising incomes and employment, combined with declining interest rates, have allowed a record number of people, including minority and immigrant families, to purchase homes for the first time. Nationally, an unprecedented 67 percent of Americans are homeowners.³

Geography can play a factor in the creation of sprawl. Areas that have limited sources of water often experience lesser sprawl than areas where a developer can leapfrog away from the municipal water supply and drill a well. With water, huge technology production facilities can be enticed to an area, providing thousands of jobs, which results in massive suburban development. Mountains, deserts, and other natural barriers are generally a preventative to sprawl.

The American dream is to own a "little piece of land." Many local governments have adopted minimum lot size restrictions that limit density. These ordinances force developers to use more land than they would otherwise. Homes that are "spread out" are perceived to contribute to sprawl.

Effects of Sprawl

Inner City Decay

Developers often find it cheaper to develop new land on the outskirts of a city rather than revitalize land in the inner city that tends to be more expensive per acre. Those families who flee to the suburbs tend to do so because the homes tend to be less expensive, and feel “safer” than the inner city. However, these same people usually continue to commute to the city for employment. Commuting requires the city to provide ever larger freeways, which sometimes has the effect of further degrading the neighborhoods along the road.

Water Quality and Quantity

A Priority Groundwater Management Area (PGMA) is an area that has had and is expected to continue to experience critical groundwater shortages. The Texas Commission on Environmental Quality (formerly the TNRCC) has designated five PGMA’s in the state of Texas, although several other areas are under review. One of the designated PGMA’s lies over the Trinity Aquifer in Hays County. Hays County has added 40,000 new residents in the past ten years, and is expected to triple in population by 2025.

David Baker, of the Wimberly Valley Watershed Association in Hays County, testified that the Texas Water Development Board estimates the Trinity Aquifer recharges at 1,800 acre feet a year. Currently, 4,400 acre feet is being pumped annually, and approximately 400 new wells are added every year. On June 20, 2000, the artesian spring of Jacob’s Well, the largest underwater cave in Texas and a primary source of water for Cypress Creek, stopped flowing for the first time in history. The reason is directly related to overpumping.

Statewide, the population is expected to grow from roughly 20.8 million in 2000 to about 40 million in 2050. Statewide water demands are expected to increase from nearly 5.5 trillion gallons a year in 2000 to 6.5 trillion gallons a year in 2050.

In addition to groundwater shortages, development brings other water-related problems. Green areas absorb water, concrete allows it to run off. An increase in population growth brings an increase in impervious cover. Waters that have nowhere to go carry floodwaters and polluted water into populated areas. Polluted waters also end up in rivers, streams, and underground water sources.

Pressures on the Schools

Schools in formerly rural areas are suffering as subdivisions take root. Without a strong industrial base, the taxes must be shouldered by the residential community. One area reported an overburdened school district about to become worse with the addition of a 400-trailer mobile home park. High density, low value real estate becomes a problem for schools.

Another school district near Houston has built five new schools just to handle current growth. Despite their enormous bonded indebtedness, they may be approaching Robin Hood status.

Tourism

The fastest growing segment of the state's tourism industry is nature tourism, which has grown up around natural and wildlife areas such as whooping cranes in Rockport, rare birds in the Rio Grande Valley, and clear rivers in the Texas Hill Country. According to a preliminary 2001 survey by the Fish and Wildlife Service, wildlife-associated recreation (fishing, hunting, wildlife viewing) contributed \$7.8 billion to the Texas economy.⁴

Endangered Species

In 1900, there were more than two million Attwater's Prairie Chickens in the Houston area. Today, there are 14. The land that supports the birds is now in the hands of the Nature Conservancy. Other wildlife in Texas that has become endangered due to the loss of habitat include the grey wolf, ocelot, black footed ferret, whooping crane, red-cockaded woodpecker and jaguarundi.

Cemeteries

According to cemetery preservation groups, developers pave over a cemetery in Texas each month. Although disturbing a body is a felony in Texas, paving over a graveyard is a misdemeanor, and rarely prosecuted. Identifying older cemeteries can be difficult due to headstones that have disappeared, and boundaries that are unclear. Counties have no authority to enact ordinances to protect cemeteries. The state is conducting a \$1.1 million study in 107 counties to identify cemeteries that might be threatened by encroaching urban development.

Pollution

Light pollution is not often discussed, but is considered a consequence of sprawl. An urban sky glow obscures the stars and other celestial objects. The Legislature has granted general land use authority to the area around the McDonald Observatory in West Texas to protect their work and research.

Sprawl increases our reliance on transportation. The average American driver spends 443 hours per year behind the wheel. According to the Sierra Club, cars, trucks and buses are the biggest source of cancer-causing air pollution, emitting more than 12 billion pounds of toxic chemicals each year.

Possible Solutions

City Solutions

Portland, Oregon is often touted as a mecca of "smart growth." In 1973, the city established an urban growth boundary. The idea was to encourage denser development inside the boundary, and preserve green space beyond it. This solution has had its highs and lows. For instance, growth is now occurring beyond the boundary, on land that is not part of the region's authority. Both Salem, Oregon and Vancouver, Washington, are experiencing rapid growth. Both cities are within easy commuting distance of Portland. The cost of housing in Portland has increased

dramatically.

The City of Austin has had success in passing bond initiatives to purchase land to protect water quality. The city chose parcels that were highly susceptible to pollution and development. Sixty percent of the acreage chosen by the city was protected by conservation easements, and forty percent of the acreage was bought outright by the city. In some cases, the city bought the land, removed the development rights, and resold the land at auction minus the rights. The money realized from those sales went to purchase other parcels of land.

Infill development is a growing attempt by municipalities to utilize existing infrastructure. It can be as simple as using a vacant lot in an older neighborhood to convert a warehouse to loft apartments. Studies show that some U.S. cities are experiencing growth for the first time in decades as many baby boomers are moving back to urban areas that have pedestrian opportunities.

Brownfields

A brownfield is a tract of land that has been developed for industrial purposes, polluted, and then abandoned. It has been conservatively estimated that more than 500,000 such tracts exist in the United States. Developers often avoid these sites due to the massive costs of cleanup. More than 100 cities collectively have estimated that they would receive additional annual tax revenues in the range of \$205 million to \$500 million if they could return their brownfields to productive economic use.⁵

The Texas Commission on Environmental Quality (formerly known as the TNRCC), which acts as a site assessor for brownfields for local government entities and non-profit organizations, lists dozens of successful brownfield conversions on its website. Included among those is one of the nation's largest, the American Airlines Center in Dallas. Encompassing 72 acres, the site was once home to a city dump, railroad maintenance facility, aging power plant and abandoned grain silos. It is now a \$420 million downtown arena, home of the Dallas Mavericks basketball team and the Dallas Stars hockey team. The City of Dallas has leveraged another \$600,000 in EPA grants into \$835 million in private investment to remake another 1,200 acres of brownfields.⁶

Despite the successful conversion, the project remains controversial to many in the Dallas-Fort Worth area due to the tax abatement provided.

Creating Open Spaces

SB 305, the sunset bill for the Texas Parks and Wildlife Department, charged that agency with developing a Land and Water Resources Conservation and Recreation Plan. Among the goals of the plan is the determination of what must be done in the next ten years to meet the outdoor needs of a growing number of Texans.

To best serve the populations of Texas, The Department is concentrating on focusing their acquisition efforts within 90-minute drives of large cities such as San Antonio, Fort Worth, Dallas, Austin and the Valley areas of the state. Studies show that urbanites are eager to spend time in outdoor activities, but prefer not to have to drive all day to get to parkland. As outdoor

activities become more popular with Texans, the Department is finding that there is not enough parkland within a 90-minute drive of these large cities to serve all interested citizens. Although the final plan has not yet been approved at the time of this report, one of the goals of Texas Parks and Wildlife is to acquire four to six 5,000-acre or more state parks or combination state parks and wildlife management areas near major urban centers. Recognizing the financial status of the state, the agency has also taken a cost-effective look at adding land to existing parks and wildlife management areas.

Although land is cheaper in the sparsely populated areas of the state, and the Department recognizes the value of acquiring such land, Texans have indicated their desire to have recreation opportunities closer to home. Acquiring land closer to population centers will be expensive. The cost of doing so, however, increases from year to year, and the Department feels that the sooner action is taken, the less expensive it will be to acquire land.

The Department has also long recognized that the breakup of family land holdings and land fragmentation are major threats to wildlife and water resources in this state. Family farms and ranches double as wildlife habitat, and the overwhelming majority of hunting participation in Texas occurs on private lands. TPWD continually explores new ways in which to partner with private landowners to make their lands accessible for public recreation. One tool to assist them could be a purchase of development rights program.

Purchase of Development Rights

PDR programs began in the 1970's when communities in the eastern United States, concerned by the rapid loss of the farms that supplied food and fiber for the region, instituted public finance measures that could fund the acquisition and retirement of development rights in order to preserve agricultural lands in perpetuity. Through PDR programs, the public provides a cash payment to a landowner for the value of the development rights associated with a land parcel. The owner still owns the land, but is compensated for relinquishing the right to develop it as real estate. Agriculture and other uses of the land continue. For the public, PDR programs enable land conservation at a much-reduced expense, as the cost of the PDR is less than the outright purchase of land, and costs associated with subsequent management of the land remain the responsibility of the landowner.⁷

In Texas, ninety-seven percent of all land is in private hands. The average land value in Texas is five times higher if it is used for non-agriculture rather than agriculture. Between 1982 and 1997, Texas lost 2.3 million acres of productive farmland. Farmers and ranchers in Texas today are faced with escalating land costs, extreme weather such as drought and flooding, shrinking commodity costs, and encroaching development. When the landowner dies, the heirs are faced with estate taxes. It is becoming increasingly difficult for these landowners, especially in areas where the suburbs are rapidly approaching, to continue to use their land for agriculture production. Many are finding that their land is worth much more to developers to build residential areas.

For the counties, residential developments provide a financial squeeze. According to a study performed by the American Farmland Trust, a farm or ranch typically pays approximately three times more revenue to counties than they require in public services. An average subdivision

dweller does not pay enough in taxes to cover the costs of the public services, such as sewer and water infrastructure, that they require.

Purchase of development rights is a voluntary option for landowners who never want to sell their land. Just as mineral rights attached to a parcel of land can be bought and sold, a willing landowner can sell the development rights to an entity such as a non-profit land trust or government entity. The program compensates landowners for the development value of their property, yet allows the landowner to retain the property and keep it in a non-developed state. Twenty states currently have this program, and fund it in a variety of ways. Some use state bonds, others use lottery funding, or cigarette and cell phone taxes. The program could also be for a specific term of years, although the landowner typically would not receive as much funding.

The land has an agricultural value, and also an appraised development value. The agriculture value is subtracted from the development value, which is usually substantially higher. The payment to the landowner would be the difference of the two.

The Governor's Task Force on Conservation recommended the creation of a statewide Purchase of Development Rights Program in 2000. The Task Force recommended that a "Texas Land Stewardship Fund" be created, from which grants would be made for conservation planning and purchase of development rights. It was recommended that the program should require that a local entity, such as a local land trust, match state funds at some level to leverage the grants. Funding requests would be submitted to a council made up of the Texas Parks and Wildlife Department and the Texas Department of Agriculture, and landowner and conservation interests appointed by state leadership. The council would establish eligibility and ranking criteria for the purchase of development rights grants to ensure a clear public benefit and consistency across the State.⁸ Although the council would make funding decisions, testimony during the subcommittee hearings suggested that a state agency, such as the Texas Parks and Wildlife Department, handle the money.

A possible statewide PDR program could be funded from a variety of sources. An original appropriation would anchor the funds, but would be matched by federal, local and private money. Testimony suggested the initial state outlay should be followed by a self-perpetuating source that would not have to be addressed every year, such as general obligation bonds, revenue bonds that would be paid back using a dedicated source of funding, impact fees for water hookups, or a real estate transfer fee. One witness suggested a "fragmentation fee," which would be assessed to developers who build subdivisions in formerly open spaces. There are currently thirty six non-profit land trust organizations currently operating in Texas who could provide expertise and suggest appropriate parcels of land. Some of those organizations, who have raised funds successfully, suggested that private money remain in the region that generates the funds.

There are various federal funding sources now available: the Forest Legacy Program, the North American Wetland Conservation Act, and the USDA Farmland Protection Program. The recently passed federal Farm Bill provides \$1 billion for protection of farmland. If, as testimony suggested, local initiatives and private sources could be leveraged with federal funding, there are more opportunities than ever before for matching funding.

County Powers

Since the frontier days, Texans have been reluctant to allow a governmental entity to tell them “what they can do with their land.” Private property rights are an integral part of the Texas soul. Traditionally, the Texas Legislature may grant broad regulatory powers to municipalities, but prefers to strictly control the counties. The theory was that those who declined to live in a teeming metropolitan area could choose to live on their own land, free of much regulation over that land, and with lower taxes to boot.⁹

What has upset this ideal in recent years is the explosive growth that is occurring in the unincorporated areas of the state. As more Texas residents move into the unincorporated areas to “escape the city,” and live a “quieter life,” they find that their new neighbor could very well be a rock quarry. Those who want to avoid what they perceive as onerous city regulations and city taxes often find that the lack of those regulations means a landfill could one day be at their doorstep. County commissioners are flooded with phone calls from residents who have built nice homes, only to have an undesirable business, such as a junkyard or flea market, build right next to them. In addition, those who move to the counties generally demand big ticket items such as improved maintenance of county roads, and increased county services such as law enforcement, new schools, and broad-band technology.

Pearland has struggled with drainage problems. The city is expected to double their population in ten years, and must build expensive retention ponds covering extensive acreage. In addition to the expense of purchasing land and constructing the ponds, the land is removed from the tax rolls forever.

According to the American Planning Association, only Texas and Alabama do not allow counties to manage land. Rather than give Texas counties broad powers to control their growth, Texas legislators have been more comfortable granting authority in pieces. Counties have been given some subdivision regulation. They can prohibit fireworks and outdoor burning under certain conditions. They can establish visual standards for certain outdoor businesses. They can regulate sexually oriented businesses. They can abate nuisances, such as the accumulation of refuse. They may establish load limits on county roads and bridges.

One “piece” of authority that counties in high growth areas have consistently requested is the ability to assess impact fees on developers to help pay for the roads that lead to the subdivisions they are constructing.

Many years ago, counties were expected to split a state appropriation of \$37.2 million to take care of their roads. When the farm to market program was begun approximately 50 years ago, \$30 million of that total was used to fund it. The remaining \$7.3 was split by 254 counties for road maintenance. The \$7.3 million figure remains the same today. The small, two-lane, no-shoulder county roads have become major connectors to developments. They are used by increasingly large amounts of traffic, including school buses. What was adequate for many years has now become, in some cases, dangerously inadequate.

SB 873 by Lindsay, as introduced last session, would have allowed counties to charge impact fees to developers to pay improvements on county roads bordering their new subdivisions.

Although SB 873 ultimately became law, the impact fee provision was stripped from the bill before passage.

Although roads are the most obvious beneficiary of an impact fee, counties also have problems with the affordability of large infrastructure, such as wastewater treatment plants.

Subcommittee Recommendations

With the recent passage of the Farm Bill, and its unprecedented \$1 billion funding set aside for the protection of farmland, Texas should develop the framework to make PDR's an option to all interested parties in the future. Any PDR program should remain voluntary on the part of the landowner.

Counties need the ability to inspect septic tank systems before a family adds another residence to the system. Some county officials have reported problems in mobile home parks where a resident will allow another trailer to hook onto the system, without an inspection to see if the system can handle the additional sewage.

Other Opinions

The issue of urban sprawl is complicated, and can result in alternate opinions. Some members of the full Committee on Land and Resource Management are of the opinion that the following recommendations should also be considered by the next Legislature. It should be noted that the members of the Subcommittee on Urban Sprawl are not in agreement with the following recommendations:

Texas Parks and Wildlife Department has made an honest effort to enlarge the parks system in a cost-effective manner. Their plan should be approved and funded to the greatest possible extent, as the cost of land will only continue to rise.

Realizing the growth of counties, and recognizing the problems that come with that growth, some members of the full committee would like to recommend that fast-growth counties be given the authority, with a referendum of the people, to give county commissioners the power to ensure that residential and heavy industry be kept separate from each other. Heavy industry would be defined as that industry that results in a large volume of traffic, air and groundwater quality concerns, and/or noise pollution.

County roads and bridges are not adequate to the task of carrying large loads of traffic, and the legislature is unlikely to increase an appropriation that has not been increased in over fifty years. Impact fees would be a good way for counties to upgrade their transportation network. Although developers claim the fee will raise the price of a home, it is fair that those who need improved roads should pay for them. If impact fees prove impossible to pass, developers should be required to warn homeowners that their purchase borders a substandard road, and that road will not be enlarged in the foreseeable future. The warning should include the provision that school buses and emergency vehicles may have problems reaching the residents in the future.

Only fifteen years ago, the average home site in a county was a home built on a two acre lot with on-site systems such as wells and septic tanks. Counties in high growth areas today are dealing with ultra high density developments with wastewater and water permitted through the Texas Commission on Environmental Quality (formerly the TNRCC). Although counties do have regulatory authority over septic tanks, testimony indicated that they are left out of the loop with the more sophisticated water and wastewater systems. They have no control over density. County officials should be given a seat at the table when water and wastewater infrastructure is planned for their area.

Charge 2

Consider issues associated with the ownership and maintenance of rural roads. Assess the benefits of legislation that would clarify ownership and county responsibility for maintenance of those roads.

THE SUBCOMMITTEE ON THE OWNERSHIP OF RURAL ROADS

Introduction

According to the Texas Department of Transportation, the state highway system comprises over 80,000 miles. As a comparison, county governments maintain 142,000 miles of county roads.

The Seventh Texas Legislature laid out procedures for the creation of county roads in 1858. The law declared “all public roads and highways that have been laid out and established agreeably to law...are hereby declared to be public roads.” The law also required that roads created should be “clear of all trees, all stumps cut to six inches of the surface...and all lanes shall be made at least thirty feet wide.” All male persons were expected to repair the public roads of the State, although certain people, such as keepers of grist mills that grind for toll, Ministers of the Gospel, and chief justices were exempt. All workers had to bring their own tools.

Despite the early intentions of the Legislature, from 1845, when Texas became a state, to 1981, almost all county roads were acquired by the common law doctrine of prescriptive easement. Common law means that the law was created by the courts, and will not be found in the statutes or the constitution. The courts, called upon to determine whether or not the public could gain an interest in a road that already existed, created rules designed to find out whether or not certain items were in place to find public interest. One of those items was county maintenance.

Prescriptive easement is the right to use another person’s property if it does not adversely affect the property owner. To create an easement by “prescription,” the use must have been open, continuous, exclusive and under claim for right for a statutory period. Case law prior to 1981 found that if a road is used by the public and is maintained by the county for a period of over ten years, then the road becomes public.¹⁰ In brief, if a property owner acquiesces the use of his road over a period of time, then the public has gained the right to use it, and the county to maintain it.

Many of these “public” roads were created with handshake agreements in the early 1900's. The county would agree to take over maintenance of a private road in return for ownership of the road, and right of access for others along the road. Prescriptive easements were seldom surveyed, and the county commissioners’ court took no formal action to make the road public. An individual commissioner could maintain and acquire a road by prescriptive easement. Records of county acquisition were not required by the courts, and counties generally did not keep them. County officials had no reason to believe that the law would change, and that such records would be needed in the future.

For purposes of discussion, a private road is one owned by an individual; a public road is a formerly private road that has a history of being open for the use of others; and a county road is one owned and maintained by the county.

Background

HB 1708 by Coody, introduced in 1979 during the 66th Legislative Session, sought to change the way commissioners courts acquired a private road for public use. The bill specifically stated

that verbal dedication and intent to dedicate were not sufficient; and that public use and maintenance with public funds were not sufficient to establish adverse possession. The term “adverse possession” is defined as a method of acquiring real property under certain conditions by possession for a statutory period (in this case, ten years).

HB 1708 was passed by the House on the Local and Consent Calendar. Nine members, however, (Lyon, Lator, G. Green, Geistweidt, Von Dohlen, J. Wilson, Sharp, Wieting and Kubiak) took the time to register a “no” vote on the bill. The bill passed the Senate and was sent to Governor Clements, who vetoed it.

Governor Bill Clements vetoed HB 1708 for the following reasons: “This bill would go against established case law regarding acquisition by a county of a public interest in a private road. It would require that dedication of a private road for public use be by explicit, written communication to the county commissioners and would not allow verbal dedication, dedication by intent, public use, or public maintenance to be sufficient to establish a public interest. This bill was designed to correct one situation, but this bill has the potential to change the status of thousands of roads all over the state. Public use and public maintenance have long been factors which allowed counties to acquire a public interest in private roads. This bill would be a major change which might have more negative effects than positive ones, and therefore I veto House Bill 1708.”¹¹

The issue came up again the following session in the form of HB 1589, authored by then-Speaker Bill Clayton. The bill passed the Committee on Transportation, although the chair, Henderson, was recorded as “present, not voting.” The bill landed on the Consent Calendar once again, this time inspiring “no” votes from ten representatives. In the Senate, Mauzy added an amendment to have the bill applicable only to counties with a population of 50,000 or less, according to the preceding federal census. The House concurred, and the bill became law as Section 281 of the Transportation Code.

The 1981 law applied to 212 out of Texas’ 254 counties. Since that time, twelve more counties have grown to a population above 50,000, making the law applicable to 200 counties.

Summary of Testimony from Public Hearing

The Subcommittee on the Ownership of Rural Roads heard testimony on April 30, 2002, in Austin, Texas. Those who testified and their representation were:

Jim Allison, *County Judges’ & Commissioners’ Association of Texas*
Bob Barstow, *Representing Himself*
Jim Farrar, *Representing Himself*
Jimmy Gaines, *Texas Landowners Council, Inc.*
Brad Stephenson, *Eastland County Commissioners Court*
C.D. Woodrome, *Representing Himself and Tyler County Commissioners Court*

Acquiring a Road After 1981

Since 1981, counties of 50,000 or less cannot acquire a road by prescriptive easement. Roads in those counties can now only be acquired by purchase, condemnation, dedication, or a court judgment of adverse possession. It takes a clear action of the commissioners' court to accept one of those four methods. It is illegal for a county commissioner to maintain a private road with public funds. Roads acquired by prescriptive easement prior to 1981 are not affected by this law. The Supreme Court has ruled that the 1981 law was not retroactive--those roads acquired by the county prior to 1981 remain the property of the county.

Under the present law, a property owner may challenge the status of a pre-1981 prescriptive easement roads by filing a lawsuit, or by placing a locked gate on the road, thereby forcing the county into court. No matter which party initiates the lawsuit, the county has the burden of proving that the road was maintained prior to 1981, and acquired by prescriptive easement.

County Records

County courthouses had an alarming habit of burning down in the late 1800's, taking county records with them. In the early days of Texas, arsonists would torch the courthouse to destroy an indictment, or other towns would send delegations to steal the records in an effort to force a move of the county seat. Destruction of records were not limited to frontier times, as more than 25 courthouses burned or were heavily damaged by storms after 1900.

Those records that do exist often do not live up to the standards that would be expected today. Jack County Judge Mitchell Davenport reported in written testimony that "What records I have stumbled across regarding county roads prior to 1954 often say no more than just that a road was created: 'a road jury went out and laid out from xxx to xxx and awarded \$15 to xxx.' There are no metes and bounds descriptions and no width provided."

As county logs are generally not available detailing each time a road was maintained prior to 1981, the county relies on personal recollection of people who were present at the time of maintenance, and are competent and able to testify of their own personal knowledge that the county maintained a certain road for a period of ten years prior to 1981.

As the years progress, counties will be unable to produce personal testimony. Taking affidavits at the present time for a possible lawsuit in the future is not recommended, as such affidavits are generally not admissible. Any landowner can challenge the status of a road at any time. There is no statute of limitations.

In the future, as counties are unable to provide "live bodies" with firsthand knowledge, they will most likely lose in court. To lose the right to maintain what the county considers a public road will endanger the rights of those interior landowners who use the road to access their property. Counties generally have no interest in acquiring additional roads, as they are strapped financially to provide for the ones that they have. However, counties are interested in protecting the rights of their citizens to access their property. Counties are also vitally interested in staying out of court.

Rural Ownership Trends

In Edwards County, three of these lawsuits have been brought in the last two years. In each of these instances, a person from outside the county has purchased or inherited the property, and decided to change the nature of it, normally breaking it up into ranchettes.

As Texas grows, there is an increasing trend for those in urban areas to want to own a “piece of country.” Prior to 1994, farmers and ranchers dominated the market for rural land in Texas. Since 1994, however, the rural land market has been dominated by consumers who live primarily in urban areas. These landowners purchase the land for recreational purposes, such as fishing and hunting. Overall, landowner numbers are increasing while property size is decreasing. Average rural ownership size has declined in 74 percent of Texas’ counties since 1992.¹²

Typically, large, secluded ranches accessible by dirt roads are broken up into small ranchettes, mini-ranches of approximately 50 to 100 acres in size. The traffic on these roads, once limited to two or three landowners, is suddenly supporting 50 or more vehicles a day. The increased traffic brought by these ranchettes angers adjoining property owners, who then challenge the status of the road in court. The burden is on the county to prove that the road is a public one. Although the counties have been largely successful with these suits, a loss by the county would result in the closing of the road to the public, denying other landowners access to their property.

The owners of these ranchettes typically claim a wildlife exemption of their property, which means they provide little income to the counties who defend their right to use a road in court. County expenses for these court cases are on the rise, with no corresponding rise in county income. The comptroller’s office reports that wildlife exemption claims are on the rise. In 1997, wildlife exemptions were claimed on 93,908 acres statewide. The number of acres claimed for such an exemption climbed to 476,161 in 2001.

Determining Ownership

There is nowhere the county can go to find out the ownership of each piece of land adjoining a county road. The appraisal district can determine who is on the tax rolls of each piece of land, but that is not necessarily ownership. Often, the taxes are paid by a manager, or a mortgage company, or someone who is a representative of the heirs. An ownership search for each property would bankrupt the counties. If the owners could be determined, the litigation necessary to prove up each road would overwhelm the courts.

Some counties have published maps showing which roads they believe to be theirs, published notice in the newspapers, and held public hearings. However, if challenged in court, they must still provide evidence that the road was maintained prior to 1981 for ten years.

HB 340

HB 340 by Keffer required that a county laying claim to a road provide notice to all affected landowners by publication in the newspaper, and by two separate mailings in two years in the tax notice. Landowners could protest in a public hearing or by mail. Protestations would stop the process, moving the road to a “contested” or “challenged” status. If a certain times period goes by,

in this case two years, and the landowner does not protest, the road becomes the responsibility of the county. If, after that two year period, the landowner decides to protest, the burden is on the landowner, not the county, to prove their case.

Counties expect that most roads would not be challenged, as most people want access to their property, and a county road is the easiest way to accomplish that end.

The Attorney General's Opinion

An Attorney General's Opinion released on May 15 was in response by a request from Senator Frank Madla, Chair of Intergovernmental Relations.

Senator Madla asks the question: Can a county maintain a road that has not been officially established as a public road but which has been accessible to and regularly used by the public? Secondly, the senator asks whether the commissioners court or individual commissioners determine which roads will be maintained by the county.

In the summary of Opinion No. JC-0503, the attorney general responds:

“A county is limited to expending public funds on the construction and maintenance of public roads...Before maintaining a road that has not been officially established as a public road, a commissioners court must...obtain a judicial order declaring the road a public road...In counties of 50,000 or fewer persons governed by chapter 281 of the Transportation Code, a commissioners court is not authorized to determine that a road has become a public road by dedication or by prescriptive easement based on events occurring after that chapter's effective date, or to maintain such a road on the basis of those common-law doctrines.”

Conclusion and Recommendations

Section 281 of the Transportation Code

The Subcommittee on Ownership of Rural Roads recognizes the value of property rights for all citizens of Texas--including those citizens who live near a road that is needed to access their property.

Acquiring a county road by prescriptive easement is either a good idea or it is not. Allowing counties over 50,000 in population to continue acquiring roads in this manner is to show a preference for urban counties over rural ones. While no county enjoys spending funds defending themselves in court, rural counties are especially hard hit with funding problems. Counties are unable to raise revenue from recreational homes that are spurring on many of the lawsuits, and are constitutionally banned from raising their tax rate above a certain limit.

The Subcommittee recommends passage of Representative Keffer's bill, but feels a closer look should be taken at possible repeal of Section 281 of the Transportation Code.

Wildlife Exemptions

HB 3123, by Clyde Alexander and Bob Turner, passed last session. The legislation required the Texas Parks and Wildlife Department develop criteria and the Comptroller use that criteria to adopt rules for the qualification of agricultural land in wildlife management use. The rules will assist county appraisal districts in evaluating real property that qualifies for an agricultural exemption (1-d-1) as wildlife management land.

HB 3123 was passed with a forward-looking mission: to preserve open space in all areas of the state, especially as the urbanization of the state's rural areas continue. The legislature did not create this open space category to allow developers to avoid paying their fair share of taxes nor did the legislature want landowners to abuse the intent of Proposition 11. In 1995, the 74th Legislature and voters passed the constitutional amendment (Proposition 11) that provided landowners an opportunity to protect our natural heritage and wildlife resources in a revenue neutral format. The same intent remains with the passage of HB 3123, that revenue neutrality continues to be the focus.

The implementation of HB 3123 is being monitored by the House Committee on State Recreational Resources.

A BILL TO BE ENTITLED

AN ACT

relating to the acquisition by a county of a public interest in certain roads.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle C, Title 6, Transportation Code, is amended by adding Chapter 258 to read as follows:

CHAPTER 258. ACQUISITION OF PUBLIC INTEREST IN
ROAD BY ADOPTION OF COUNTY ROAD MAP

Sec. 258.001. ACQUISITION OF PUBLIC INTEREST IN ROAD. Notwithstanding Chapter 281, a county may acquire a public interest in a road as provided by this chapter.

Sec. 258.002. ADOPTION OF COUNTY ROAD MAP. (a) The commissioners court of a county may propose a county road map that includes each road in which the county claims a public interest:

(1) under Chapter 281 or other law; or

(2) as a result of having continuously maintained the road with public funds beginning before September 1, 1981.

(b) A commissioners court that proposes a county road map under this section shall hold a public meeting at which a person asserting a private right, title, or interest in a road in which the county has claimed a public interest may appear before the commissioners court to protest the county's claim. A person asserting a private right, title, or interest in a road may also file a written protest

with the county judge at any time before the public meeting. The commissioners court shall appoint a jury of view consisting of five property owners who have no interest in the outcome of the protest to determine, by a majority vote after a public hearing and an examination of the county's road maintenance records and other information, the validity of the county's claim of public interest in the road. A county has a valid claim in a road if it provides written records or other information documenting the county's continuous maintenance of the road beginning before September 1, 1981. The determination of the jury of view is binding on the commissioners court, and the commissioners court shall revise the proposed county road map accordingly.

(c) The commissioners court shall publish at least once a week in a newspaper of general circulation in the county for at least four consecutive weeks preceding the date of the public meeting a notice:

(1) advising the public that the commissioners court has proposed a county road map including each road in which the county claims a public interest;

(2) identifying a location at the courthouse at which the proposed map will be available to the public during regular business hours; and

(3) stating the date and location of the public meeting.

(d) The commissioners court shall display the proposed map at the location and during the time described in the notice from the date on which notice is first published through the date on which the commissioners court formally adopts the proposed map. The map must be legible and not less than one inch equals 2,000 feet in scale.

(e) The commissioners court may formally adopt the proposed map, as revised after public comment and a determination by the jury of view, only at a public meeting held before the 90th day following the date of the initial public meeting required by Subsection (b).

(f) If a person asserting a private right, title, or interest in a road that the county has included in

the proposed map protests in writing or in person as provided by Subsection (b) before the conclusion of the public hearing, the county may not take possession of the road, but after the conclusion of the hearing the county may bring suit against the person for adverse possession of the right, title, or interest in the road.

(g) The county clerk shall keep a county road map adopted under this section in a place accessible to the public.

(h) The failure to include on a county road map adopted under this section a road in which the county has previously acquired a public interest by purchase, condemnation, dedication, or a court's final judgment of adverse possession does not affect the status of the omitted road.

(i) In this section, "continuous maintenance" means grading or other routine road maintenance beginning before September 1, 1981, and continuing until the date of protest.

Sec. 258.003. CONCLUSIVE EVIDENCE. Except as provided by Section 258.004, a county road map adopted under Section 258.002 is conclusive evidence of:

(1) the public's right of access over a road included on the map; and

(2) the county's authority to spend public money to maintain a road included on the map.

Sec. 258.004. CONTEST. (a) A person asserting a private right, title, or interest in a road in which a public interest is asserted under this chapter may contest the inclusion of the road in the county road map by filing a suit in a district court in the county in which the road is located not later than the second anniversary of the date on which the county road map including the road was adopted.

(b) The county has the burden of proving that the county has continuously maintained, as that term is defined by Section 258.002, the road in question.

Sec. 258.005. TRANSFER OF INTEREST. (a) The commissioners court shall include a notice of its intention to consider adoption of the county road map with the ad valorem tax statements for

the year before the adoption of a county road map under Section 258.002. If a property owner tenders a warranty deed to the county for property included in the right-of-way of a county road, the commissioners court shall accept and file the warranty deed.

(b) The commissioners court shall include a notice of the adoption of the county road map with the ad valorem tax statements for the year after the year in which the county adopts a map under Section 258.002. The notice must include a list of all roads in which the county has claimed a public interest by adoption of the map, the date of the adoption, and the date on which the statute of limitations will bar a landowner from filing a suit in district court to dispute the county's claim.

Sec. 258.006. TAX ABATEMENT; REVERSION OF INTEREST. (a) A private right, title, or interest, other than a mineral interest, held by a person in land underlying a road in which the county has acquired a public interest under this chapter is exempt from ad valorem taxation by any taxing authority.

(b) A right, title, or interest described in Subsection (a) reverts completely to the person who held the right, title, or interest at the time the county acquired the public interest in the land if the county ceases to maintain the road, and the person is liable for all ad valorem taxes levied on that right, title, or interest on or after the reversion.

(c) To levy and collect an ad valorem tax on a right, title, or interest described in Subsection (a) that has reverted to the landowner under Subsection (b), the taxing authority must obtain from the county an order stating that the county has ceased to maintain the road. The owner of the right, title, or interest will be liable for any ad valorem tax levied on the right, title, or interest on or after the date of the county's order.

SECTION 2. This Act takes effect September 1, 2001.

Charge 3

Pursuant to H.B. 2684, 77th Legislature, conduct a study on the placement and use options for dredged material from the Gulf Intracoastal waterway.

THE SUBCOMMITTEE ON DREDGED MATERIALS

Background

The Gulf Intracoastal Waterway (GIWW) is approximately 1108 miles long, partly natural and partly formed from man-made land cuts. A major transportation artery, the GIWW provides sheltered passage for commercial and leisure boats from northwest Florida to Brownsville, Texas. This toll-free waterway requires periodic dredging to remove eight million cubic yards of sediment per year along the Texas coastline. There are several ways to dispose of the dredged sediment.

Although the U.S. Army Corps of Engineers is responsible for maintaining the waterway, which includes dredging it, the Texas Transportation Commission is authorized to acquire land for the placement of dredge spoils, a method of disposal known as “upland disposal.” This land can be acquired by gift, purchase, or condemnation of property.

HB 2684

House Bill 2684, as introduced last session, prohibits the Texas Transportation Commission from condemning privately owned land that is part of a habitat conservation plan. The bill, as passed, prohibits the Commission from acquiring property before September 1, 2005 for use as a disposal site for dredged material from the Laguna Madre if the property on October 1, 1997 was subject to a habitat conservation plan. The bill requires the House Committee on Land and Resource Management to conduct an interim study on placement and use options for dredged material from the GIWW, and to report its recommendations no later than November 1, 2002.

Summary of Testimony from Public Hearings

The Subcommittee on Dredged Materials heard testimony on April 5, 2002, in Kingsville, Texas. Those who testified and their representation were:

Frank Brogan, *Port of Corpus Christi*
Raymond Butler, *GICA*
Tom Calnan, *Texas General Land Office*
H.C. “Chuck” Cazalas, *Citgo Petroleum Corporation*
Kenneth Dunton, *The University of Texas at Austin*
Tim Fulbright, *Representing Himself*
Jack Hunt, *King Ranch*
Walt Kittelberger, *Lower Laguna Madre Foundation*
Janell Kleberg, *Representing Herself*
Tio Kleberg, *King Ranch*
Carolyn Murphy, *U.S. Army Corps of Engineers - Galveston District*
Christopher Onuf, *Representing Himself*
Jim Randall, *Texas Department of Transportation*
John Rappole, *King Ranch*
Terry Roberts, *U.S. Army Corps of Engineers - Galveston District*
John Stone, *King Ranch*
Les Sutton, *Texas Waterway Operators Association*

The Value of the Waterway

Private interests completed construction of the first navigable coastal passage in Texas, the Galveston and Brazos Canal, in 1853. The value of such a waterway was recognized by Congress, which passed the Rivers and Harbors Act of 1873 to appropriate a survey to connect the inland waters from Donaldsonville, Louisiana to the Rio Grande River in Texas. Construction of the waterway as we know it today was authorized by Congress in 1919, and actual construction of the entire waterway from Texas to Florida was completed in 1949.

The Gulf Intracoastal Waterway not only links commercial trades to the inland waterway systems of the United States, it provides protective passage for working and recreational vessels, and is considered an integral part of our national defense.

The latest statistics compiled by the Corps of Engineers indicate that an annual average of 64.7 million tons was barged along the Texas part of the GIWW between 1992 and 1998. The majority of the tonnage, 85%, consists of petroleum and petroleum products. The rest are various bulk materials such as manufactured goods, grains and metals.¹³ More than \$20 billion of Texas goods are transported along the waterway each year, providing about 110,000 jobs in Texas and \$58 million in state and federal payroll taxes each year.

The Laguna Madre

The Laguna Madre, located in South Texas, makes up a portion of the final miles of the waterway. This unique area is about 117 miles long, averages less than three feet in depth, and is a hypersaline bay, saltier than the ocean. Kept in its salty condition by a warm, dry climate and low annual rainfall, there are very few bays like it in the world.¹⁴ The clear and shallow waters of the Laguna Madre promote seagrass growth, which serves as food and shelter for most of the life in the open bay. The seagrass, which was not as abundant in this area prior to the dredging of the intracoastal canal, is considered by environmentalists to be sensitive to continued dredging. Refuters cite studies alleging that the infusion of fresh water provided by the GIWW helps the ecology of the area.

The Laguna Madre is one of the most productive fishery areas along the Texas coast. The wetlands along this area are considered critical breeding and feeding grounds for waterfowl, fish and shrimp, host for over 260 species of migratory birds, and a habitat for several threatened and endangered species.

Due to seagrass and other environmental considerations, a coalition of environmental groups threatened to file suit on September 2, 1994, seeking an injunction to stop the practice of dredging, and of placing dredged material in the Corpus Christi Bay to Port Isabel reach of the GIWW. A settlement was reached when the Corps agreed to prepare an environmental impact statement to analyze the pros and cons of different spoil disposal alternatives, including the alternative to stop dredging the Laguna.

Seagrass

Only about twenty percent of the seagrass plant is visible; the bulk of the plant is below ground.

Most of the production of the plant; new shoots, new leaves, occurs above ground. Shoal grass, which occurs from San Antonio Bay to Port Isabel, has its peak production times in late April and early May, and experiences a secondary peak in the fall. The other major species on the Texas coast, turtle grass, experiences its production peaks in early June. Both plants grow several millimeters a day during peak production times.

Both plants store huge amounts of carbons in their below-ground systems, mainly as a result of their low-light environment. Between late fall and early winter, the plants are dormant, and do not receive much sunlight due to decreased sunshine and stormy weather. During this time, the plants depend on the stored carbons in their roots and rhizomes to survive. In March and April, the plants' growth is solely the result of stored carbon reserves; in May and June, however, the plants growth is completely fueled by photosynthesis, due to sunlight.¹⁵

Seagrasses need a fair amount of light to survive. At least eighteen to twenty percent of the light that hits the surface of the water three to five hours each day is needed by the plants. A dredging event can cause silt plumes that reduce water transparencies for up to ten months. Seagrasses can also be seriously stressed by natural causes. High wind events, such as a hurricane, suspend silt and endanger the seagrasses. Seagrasses are also affected by a persistent phytoplankton bloom known as the brown tide. This tide is especially hard on shoal grasses, the main food source of the redheaded duck. Seventy five percent of the world's redheaded duck population winter in the Laguna Madre. The redheaded ducks also stress the seagrasses by eating an average of 75% of the roots of shoalgrass each winter.

Studies on the problems that seagrasses are experiencing due to dredging events are mixed. No one disputes that seagrasses need sunlight, and a dredging event stirs up silt. However, the infusion of fresh water caused by a dredging event seems to have lessened the events of "brown tide," which thrive in a high salinity environment. As one researcher working on the effects of brown tide and dredging said, "The problem (with trying to prove that brown tide and turbidity harmed seagrasses and by inference fish populations) is that the damned fishing keeps getting better and better."

The Laguna Madre ICT

The U.S Army Corps of Engineers and TxDOT, committed to find solutions for navigation needs and environmental concerns, created the Interagency Coordination Team in 1995. The members of the team include the United States Army Corps of Engineers (chair), United States Environmental Protection Agency, United States Fish and Wildlife Service, United States National Marine Fisheries Service, Texas Department of Transportation (lead state agency), Texas General Land Office, Texas Commission on Environmental Quality (formerly TNRCC), Texas Parks and Wildlife Department, Texas Water Development Board, Corpus Christi Bay National Estuary Program (advisory), and Padre Island National Seashore (advisory). The team came up with a list of study needs, and then pared them down to the most important due to budgeting concerns. The fate of dredged materials topped the list. Release of the report on the disposition of dredged materials has been delayed numerous times. Currently, the report is expected to be completed October 2002.

The team first met in 1995. During that time, the team has funded approximately 35 studies to

gather information in an effort to determine how disposal of dredged material is to take place. Offshore placement, upland disposal, beneficial uses and open bay disposal have all been studied at a cost approaching \$4.5 million dollars. No one disposal method is applicable to all divisions of the GIWW, also known as “reaches.” All methods have advantages and disadvantages.

Disposal Methods

There are four broad categories of disposal available: upland disposal, open bay disposal, beneficial use, and deep ocean disposal.

Historically, open water and upland placement have been the choices for the disposal of dredged material. However, upland placement sites have become less available due to technical, economic and environmental considerations, and open water placement has received environmental objections.

Laguna Madre dredged spoils are particularly problematic. The spoils are hypersaline, and tend to destroy vegetation when dumped on upland disposal sites. Many of the upland sites are environmentally sensitive. Although Texas uses some dredged material from other areas for beach nourishment, the Laguna Madre spoils are high in clay content and low in sand. The federal government will not allow spoils, even those of beach quality sand, to be dumped at South Padre Island National Seashore.

Upland Disposal

In the upland disposal method, land is acquired by the Texas Department of Transportation by gift, purchase, or condemnation. For the 1999-2000 biennium, the Texas Legislature appropriated \$1.35 million to acquire upland dredged material placement sites.¹⁶ The “thin-layer” method of disposal requires large land tracts. The “confined” method uses less land, but relies on three-story high diked containment areas. Either method destroys the shoreline and wetlands. The “confined” method drives salt and clay particles as far as 60 miles inland, with impacts on crops and critical habitats. The material also leaches back into the shallower waters, impacting seagrasses closer to shore. Environmental concerns in recent years have made it increasingly difficult to find suitable land for disposal.

This method has been used as a cost-effective solution in the past. The Corps, however, does not consider the costs to the state of Texas of land condemnation or of lost tourism, recreational and environmental impacts onshore. Only engineering costs are considered by the Corps. The Texas Department of Transportation roughly estimates that an average eminent domain case may result in an additional \$10,000 to \$20,000 in added costs to the state, depending on the complexity of the case and the number of experts required.¹⁷

The Laguna Madre has been broken down into six areas, or reaches. According to the Corps of Engineers, the average annual cost for upland confinement for one site (cost to construct, operate and maintain each upland site) are as follows:

Reach 1	\$ 87,100
Reach 2	\$ 118,600

Reach 3	\$ 52,500
Reach 4	\$ 82,800
Reach 5	\$ 54,681
Reach 6	\$ 110,400

These costs do not include site prep costs for dredging pipelines and equipment access channels to each upland site from the GIWW, daily operation and maintenance costs for placing dredge material at the site during each cycle of dredging, or pipeline costs for transport of dredged material to the site.¹⁸

Open Bay Disposal and Spoil Islands

Spoil islands are created when dredged material is placed on the ocean side of the waterway. This method was used extensively in the Laguna Madre area in the thirty years prior to the lawsuit. These islands create barriers to protect the shore from erosion, and in some cases, become refuges for waterfowl. Most birds, including the endangered brown pelican, want to nest on barren grounds. The islands also bring in money to the state, as the General Land Office holds leases for cabins located on some of the islands.

The difficulty with spoil islands is that they continually leak plumes of silt back into the waterway, blocking sunlight from the seagrasses, and causing the canal to have to be dredged sooner than if the spoils were deposited further out into the ocean. The spoil island leakage is at a high level at the present time because the lack of dredge placement in the past few years has caused the islands to deteriorate.

Geotubes, massive fabric tubes filled with sand, show some promise for the future of spoil islands. TxDOT, along with the Corps, Fish and Wildlife, and National Marine Fisheries are currently building a new spoil island. The goal of this site is to have high land that is vegetated, some low sandy/mud flats, some grassy marsh, and some open water areas. Geotubes were used to make the island, so the majority of the material will not erode. Another benefit is that the island protects the GIWW and the shoreline behind the island from waves and erosion.

Beneficial Uses

Some dredged material has beneficial uses. Sundown Island in Matagorda Bay has received dredged material to replenish bird habitat, beach nourishment has been provided to Rollover Bay, and a barrier island that has eroded due to the wave energies of West Galveston bay has been restored. Beneficial uses, however, cannot absorb all of the dredged material that is removed from the GIWW.

Deep Ocean Disposal

This method removes dredged materials to the deeper part of the Gulf of Mexico. This method would necessitate the use of pipelines or barges to transport the material, and the cost is significantly higher, approximately \$6 to \$14 per cubic yard.¹⁹ It is considered a more permanent disposal tactic, however. Currently, deep ocean disposal is used around the entrance channels to the bays. A large, ocean-going vessel takes the material off the bottom of the sea floor and stores

it in tanks. When full, the boat goes to a designated offshore site and the bottom of the dredge opens up and the material falls out. These vessels, unfortunately, are too large to work the shallow waters inside Texas bays.²⁰

Texas Funding

The Texas funding of its portion of the GIWW has not changed in ten years. This, in spite of the fact that new projects, such as the widening of the Houston Ship Channel, must be maintained by the Corps of Engineers without additional appropriation. The Corps has also found that costs for environmentally related activities, such as habitat maintenance, have increased.

To add to the fiscal crisis, in 1998, the Corps' Galveston District was notified of a 15 percent budget reduction that would occur over the next several federal fiscal years.

Approximate Dredge Funding for GIWW States

Texas	423 miles	8,317,000 cubic yards	\$22 million
Louisiana	306 miles	521,000 cubic yards	\$1.3 million
Mississippi	67 miles	no dredging	n/a
Alabama	55 miles	no dredging	n/a
Florida	275 miles	286,000 cubic yards	\$986,000

Comparing the Dredge Costs of Texas and Louisiana

To compare the dredge activities of each state is literally a comparison of apples and oranges, but is necessary to explain why Texas, with approximately one-quarter more miles of coastline than Louisiana, has significantly greater dredging costs.

Louisiana is basically one large wetland. There is very little elevation change, and less sand movement. In Texas, streams travel over a lot of limestone in the hill country and then empty into the bays. Louisiana has a lot of fresh water movement all year round; their rivers carry over ten times the amount of the water that Texas rivers do. The rivers in Louisiana are therefore, deeper, and don't require dredging. Louisiana is also blessed with a lot more lock type structures on the GIWW, separating the rivers from the GIWW. The material that does make it out into the Gulf is finer, and stays in suspension. The sand and limestone moved by Texas rivers settles quickly into the Gulf.²¹

Funding figures for Louisiana are misleading in that much of Louisiana's Corps funding originates further inland. The New Orleans District jurisdiction includes more than 2,800 miles of navigable waterways, 950 miles of levees and floodwalls, 12 navigation locks, six major flood control structures, one freshwater diversion structure, and other projects to protect and enhance the coastal and inland wetlands of Louisiana. In FY 2000, New Orleans District will employ 1,200 people and administer an annual budget of more than \$500 million.

The total budget for the Galveston District is \$200 million, with 370 employees. The Galveston District is almost entirely coastal in nature, encompassing the entire Texas coast from Louisiana to Mexico--50,000 square miles. Its length includes Houston, the fourth largest major metropolitan area in the country.

Florida, Mississippi and Alabama have the advantage of having bay areas that are naturally deeper than the GIWW's 12-foot project depth. In addition, the eastern portion of the Gulf Coast does not experience the daily sea breeze phenomena to the same strength that Texas does.

Other Funding

Texas, with its extended coastline, does not seem to be receiving a proportional share of federal money for beach nourishment programs. From fiscal years 1995 to 2002, Texas has received \$700,000 for beach nourishment. As a comparison, the number one state for beach nourishment funding, New Jersey, received \$168,005,000. Texas ranks 24th in funding for beach nourishment.²²

Louisiana receives \$50 million dollars per year through the 1990 Coastal Wetlands Planning, Protection, and Restoration Act. Twenty-three other states, including Texas, received a total of \$32 million over a ten year period. Louisiana uses much of their money for beneficial use of dredged material for wetlands restoration and creation.

Corps Activity

At the time of this report, some members of congress were working on a bipartisan proposal to overhaul the Corps of Engineers. Several senators are making plans to attempt to revamp the Corps with legislation this fall. Others have threatened to block the biennial bill authorizing new Corps projects if it includes so-called reform.

All Corps projects must be approved by Congress. But first, the projects must receive favorable recommendations from the Corps, and those recommendations have been criticized by the General Accounting Office, the National Academy of Sciences, the Office of Management and Budget, and internal Pentagon investigators. The agency's civil works director, Maj. Gen. Robert Griffin, has announced an effort to improve its environmental and economic planning.²³

The U.S. Army Corps of Engineers has been studying the dredge issue for seven years. Their deadlines have been pushed back numerous times. Although the Subcommittee had been told the preliminary report would be due August 26, the deadline was postponed, once again, to mid-October. The Subcommittee does not have the luxury of continuously moving deadlines, and thereby submits its report without the Corps' report. However, a letter from Colonel Leonard D. Waterworth, District Engineer, Corps of Engineers, outlines several aspects of the expected report. That letter, addressed to Chairman Geren, is included with this report.

Conclusion and Recommendations

Dredging

Although many activists have argued for the closing of the GIWW along the Laguna Madre, the Subcommittee does not see this as a feasible option. Recognizing the economic benefit of the GIWW, the Subcommittee recommends that the waterway remains open.

Recognizing that creating an environmental problem to solve a prior one would be a waste of time and resources, the subcommittee recommends deep ocean disposal of dredged materials as a more permanent solution.

As advocates of private property rights, the Subcommittee recommends that upland disposal should be considered only as a last-ditch effort, and take place on land already owned by the State or federal government.

Spoil islands do provide some benefit to the state of Texas, in the form of shore protection and bird habitat. The committee strongly urges further use of geotubes to reduce silting and erosion.

Due to the sensitivity of the seagrasses, the subcommittee recommends dredging events to take place during the months of November through January. Care should also be taken to ensure that impacts be spread evenly among the seagrass beds.

Funding

The Corps of Engineers should consider all costs associated with disposal methods, including land acquisition, maintenance, operation, and infrastructure costs. Deep ocean disposal should be evaluated in light of the total costs associated with the other disposal methods.

The Subcommittee strongly urges Congress to consider proportional funding for dredging by the Galveston district. Specific factors affecting the Texas portion of the GIWW should be considered.

Keeping in mind the use of permits for large trucks to utilize the highway system, the use of fees for barges should be examined in the future. Fees for fishing boats in the lower Laguna Madre should also be considered.

Studies

The Interagency Coordination Team has spent seven years studying various methods of disposal for dredged materials. Their studies, along with those done by other entities, have been helpful towards understanding the methods available. Having completed their work, the Interagency Coordination Team should be disbanded.



DEPARTMENT OF THE ARMY
GALVESTON DISTRICT, CORPS OF ENGINEERS
P.O. BOX 1229
GALVESTON, TEXAS 77553-1229

REPLY TO
ATTENTION OF:

Executive Office

Honorable Charlie Geren
State Representative
House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Dear Mr. Geren:

The U.S. Army Corps of Engineers, Galveston District (District), has been providing the Subcommittee on Dredged Materials that you chair with information on a study of dredging and placement alternatives for maintaining the Gulf Intracoastal Waterway (GIWW) in the Laguna Madre, Texas to help them prepare a report for the State Legislature. I am providing the following summary of a draft Dredged Material Management Plan (DMMP) that has been prepared by an Interagency Coordination Team (ICT) composed of representatives from nine State and Federal resource agencies, including the District, and two advisory members.

The ICT has worked diligently since it was formed in 1995 to prepare a management plan for disposing dredged material from the GIWW that would minimize, if not eliminate, impacts to the lagoon's natural resources. The draft DMMP is the culmination of this effort by the ICT and presents a conceptual management plan to reduce impacts to seagrass and fishery organisms and provide an enhancement for birds utilizing the disposal islands along the GIWW. The draft DMMP also takes into consideration, to the maximum extent practicable, the special concerns and management needs of the National Park Service for ten of the placement areas (PA) that lie within the boundaries of the Padre Island National Seashore (PINS). Additionally, the ICT considered the issues raised by the public, environmental organizations, and land owners along the GIWW at several public meetings and ICT meetings and incorporated these concerns in the draft DMMP to the maximum extent practicable.

It is important to note also that the ICT considered several different dredging and placement alternatives for six different reaches of the Laguna Madre before determining it would be necessary to prepare a management plan for each PA separately. There were several constraints to consider, including impacts to natural resources, engineering capabilities, and economic feasibility, before the ICT reached consensus on each management plan.

After lengthy discussions, the ICT rejected most offshore alternatives, all beach and washover nourishment, and all upland disposal plans for new sites on the mainland or Padre Island for a variety of reasons. These include unacceptable impacts to lagoon resources, lack of beach quality material for beneficial uses, regulations prohibiting pipelines crossing the PINS, lack of willing land owners for upland use, and lack of engineering feasibility. This left the ICT with only the remaining feasible alternatives of unconfined, semi-confined, or fully confined placement in the existing PAs, with two exceptions. The District is determining the engineering and cost feasibility of using a pipeline or bucket dredge and scows to take material from a

frequently dredged section of the GIWW at its intersection with the Mansfield Channel and another area near the Brownsville Ship Channel to an offshore site for disposal. Preliminary cost estimates for offshore disposal at these sites indicate the costs may be prohibitive. The feasibility of this alternative will be described in the final DMMP and Supplemental Environmental Impact Statement (SEIS).

The ICT determined the best management plan to minimize disposal impacts on seagrass beds near an unconfined or semi-confined PA is to limit disposal of dredged materials to the period between November 1 and February 28 when seagrass is dormant. This dredging window would allow water turbidity to subside before the seagrass started its rapid growth phase in the Spring. Additionally, best management practices would be used to retain as much of the sediments on the emergent areas of the PAs as possible. Examples of these practices include retaining levees to direct the sediments away from circulation channels and seagrass beds, baffles to slow the effluent flow to allow for greater settling of the sediments, and diffusers on the end of the dredge pipe to dissipate the energy of the water flow and decrease scouring at the end of the pipe.

The ICT also proposed extending the boundaries of some of the existing PAs north or south to include all of the emergent areas that presently extend outside the PAs so that sediment retention could be maximized. At other PAs where there is deep water nearby and insufficient emergent area to allow adequate sediment retention, the PA boundary would be extended east or west to allow pipeline placement in nonvegetated deep water.

In addition to the two fully confined PAs in use, the ICT proposed enclosing all or portions of another 12 PAs to eliminate impacts to nearby sensitive resources, such as seagrass. The District is currently studying these sites to determine the size needed to accommodate 50 years of dredged material, the height of the levees needed to confine the material, and whether the foundations will support the levees. The District is also determining if levees have to be extended into the water to provide sufficient storage capacity. Should the levees be extended into the water, the impacts to fisheries habitat resulting from removing lagoon bottom from the ecosystem will be described and quantified in the SEIS.


If cost estimates for offshore disposal for the two special cases near the Mansfield Channel and Brownsville Channel are economically unacceptable, alternate disposal sites have been proposed in the DMMP in nearby deep, nonvegetated water that will reduce shoaling and eliminate seagrass burial. Additionally, another PA at the intersection of the Mansfield Channel and GIWW will be expanded to encompass an island that is heavily used by birds to protect the island from erosion and expand it for increased bird use.

Because the Laguna Madre is a dynamic and changing system, the DMMP is intended to be a flexible document that can be updated as warranted by future conditions. To help ensure that the management plans function according to the intent of the ICT, the ICT will remain as an organized group and continue to meet, as needed, to update the DMMP and review the District's dredging and disposal plans before each dredging cycle.

Additional information on the studies conducted by the District to provide data for the ICT to use in preparing the management plans and other information to explain the project will be provided in the District's website later this week at www.swg.usace.army.mil. Once the final draft DMMP is completed, it will be added to the website for public review. The subcommittee may also access this website for information that is not provided in this letter.

I trust this brief summary of the management plans and actions taken to protect the sensitive resources of the Laguna Madre will provide enough information to help your subcommittee prepare its report to the State Legislature. If you require additional information, please do not hesitate to contact Dr. Terrell Roberts at (409) 766-3035.

Sincerely,


For Leonard D. Waterworth
Colonel, Corps of Engineers
District Engineer

Charge 4

Actively monitor agencies and programs under the committee's oversight jurisdiction, including the implementation of H.B. 7, 77th Legislature, and the new Office of Rural Community Affairs.

THE RURAL SURVEY

Introduction

The state of being rural has been well documented in the past. In addition, the Rural Caucus has been actively working to favorably impact rural areas, passing many bills during the 77th session. Most notable was HB 7, creating a state agency designed to bring the various rural programs administered by the State to one central location.

The survey sent out by the Committee on Land and Resource Management sought details, asking mayors of small towns what advice they would give ORCA, and what specifically hampered their enjoyment of rural life. Many of the replies highlighted problems that ORCA is currently dedicating resources to try to resolve.

Nine hundred and sixty-six surveys went out to towns listed in the 2002 Texas State Directory as having a population of 10,000 or less. Of those surveys, eight towns responded that they did not consider themselves rural, due to considerations such as close proximity to a major metropolitan area. Four letters were returned with no forwarding address, which is, in itself, a comment on the state of being rural. Fifty-five towns responded to the survey. Although the viable return rate was only a little under six percent, the letters were thoughtful, honest, and provided a good overview of what those who live in rural areas really think.

The Good Life

*“You have the feeling of being secure, happy, and at peace with yourself.” --Frances Smith, Mayor of Beasley.*²⁴

“Knowing your neighbors” and “friendly people” were overwhelmingly cited as the best thing about living in a rural area. High marks also went to a lower crime rate, less traffic, and less noise and pollution. Many of those who responded to the survey tried to describe a way of life that resulted in a slower, friendlier pace. The Mayor of Falfurrias, Wesley Jacobs, described it as “a more relaxed attitude toward life.”²⁵

“The very best part of living in a rural community is knowing and trusting our neighbors and friends. People in rural communities are kind hearted and friendly by nature. Our citizens are genuinely concerned about the well being of others. Our community is virtually free of crime and the only traffic jams are the ones at the local cafe at lunch hour.”²⁶

“I...recently returned after three years of living in the Houston area. I can’t tell you how many people at Johnson Space Center expressed extreme envy of my return to the rural life...”²⁷

“In this day and age, the advantage to living rurally is usually lower crime. With lower crime or less fear of crime comes a higher quality of life. True or not, since 9/11, we in rural areas feel less of a target and thus less vulnerable.”²⁸

However, even the good parts about living in a rural area sometimes have their drawbacks:

“Real estate and property values here seem very low compared to larger towns but that also means that we have a small tax base.”²⁹

“The best thing about living in a rural area is that everybody knows everybody... The worst thing about living in a rural area is that everybody knows everybody and knows what, when and where you do... Today, for instance, is water cut-off day. I know everybody in town. It is very difficult to take a cussing from your “neighbor” you’ve known all your life knowing you sent them a bill and they didn’t pay it on time.”³⁰

The Challenges of Rural Life

Businesses and Shopping

*“You should redefine your definition of a rural town. Any town without a Wal-Mart should be considered rural.” --Connie Goodwin, City Administrator of Royse City.*³¹

Small businesses are having a difficult time surviving in rural areas. Once thriving downtown areas are now empty in small towns. Many people find the 30 to 50 miles of travel worth it to buy their goods cheaper at a large discounter, but wish for local businesses for regular and emergency purchases. Picking up a gallon of milk can often require serious planning.

“We have to send our dry cleaning to Odessa. It is picked up on a Wednesday. If we get it to the shop on Thursday, it isn’t picked up until the next Wednesday and isn’t returned until a week later. We have to plan our cleaning very carefully.”³²

“The worst thing about living in a rural area is the lack of variety in the commercial district. Increasing the number of merchants would be the one thing I would change if that were possible.”³³

“I would like to see a convenience store where gas can be purchased on weekends.”³⁴

“I chose Melvin because at one time it was a small town that had everything--stores, service stations, hotel, theatre, fire department and post office. Now it only has a post office and feed store.”³⁵

Small city government has found that another downside of traveling miles to shop is that the sales tax travels away, too.

“The use of sales tax to fund cities is very unfair to small communities. The Bertram people have very few retail stores. We have to shop in Burnet or Marble Falls, and our tax dollars support those cities rather than our own. Sales tax should be collected on a statewide basis and distributed based on population. The tax for the people who live outside unincorporated areas should go to the counties. This would not be a perfect solution, but much better than it is at present.”³⁶

“The State felt the Robin Hood approach to school funding was a fair and equitable way to distribute money. Small town merchants all over Texas cannot compete with National Discount chains so a lot of our folks’ sales tax funds end up in Abilene. (If the money were distributed back

to the communities of origin) that would start a dandy ruckus.”³⁷

Infrastructure

*“Rural communities need help with infrastructure. Priorities are water, sewer and street projects.” --Martin Gustafson, Mayor of Somerville.*³⁸

Many small towns have not had serious infrastructure upgrades since the 1950's. Small towns like Throckmorton make headlines when their citizens get together to dig an emergency pipeline to provide water. Emergency scenarios are becoming more common throughout Texas.

“Our electricity, water and sewer systems are all owned by the city and many lines have not been replaced since their creation in the 1950's. We are implementing a five year plan which we hope will give us a better grasp on the situation.”³⁹

“Our water tower is in need to replaced very soon. This tower was built in 1937 and we bought it used in the mid 1950's. It is rusting more and more daily.”⁴⁰

“More monies (need to be made) available for small communities that are not under TNRCC violations. Two grants we submitted were turned down through TDHCA due to the fact we were not in violation with TNRCC. If the need is here, which it is, to build our infrastructure, and meeting all guidelines, money should be made more available without controversy. Plus currently we have a \$2,000,000 project in the works to enhance our infrastructure, however, 1/2 of the project is grant and the other 1/2 is loan. The loan itself is going to be quite interesting for us to pay back over a period of 40 years. 40 years. That is an incredible amount of time to be making a loan payment for such a small town of limited funds.”⁴¹

“(T)here is a need for water in this area in the future, at present we are able to keep up with the usage but during the summer months our wells are having problems keeping up with the demand.”⁴²

Streets

*“Generally, the rural towns and communities cannot generate the needed income to support adequate road construction and repair.” --Les Alley, Mayor of Itasca.*⁴³

Crumbling streets are an eyesore and a safety hazard. Many small communities cannot raise the revenue to repair the streets themselves, and grants for such work are hard to come by. Businesses don't want to locate in towns where access may be compromised.

“We have pleaded with TxDOT for widening of an FM road that is close to our city with three schools within five miles and have received no response. We are directly affected by the enormous growth of the larger cities around us but the wear and tear on our roads is not taken into consideration.”⁴⁴

“We need help with streets and bridges but there are no grants for that. An 18 wheeler backed into a bridge and smashed one corner. It needs to be fixed but there is no assistance for that. It's on

the street that everyone takes to church, the street runs past city hall. What if it should fall one day? The county won't help because it is considered a state problem. The state won't help because they consider the bridge condemned. Of course, it's condemned but we don't have the money nor the facilities to build a new bridge or even repair the old one. So who is going to help us fix our bridge?"⁴⁵

"Our streets are heavily used, but are in poor condition. Our tax base is not sufficient to cover the capital expenditure associated with substantial street improvement. Grants and/or low interest loans for street improvements in rural communities would help with economic development of those communities."⁴⁶

"If our streets were blacktopped, we could draw more residents to help pay for them. (E)ven though we are off the big main highways we have people coming in to our city hall asking about putting in businesses and if we have plans on getting in better streets. I haven't been able to give them much hope or encouragement."⁴⁷

Other small towns experience the hassles of continually increasing traffic:

"It is amazing how affluent subdivisions...get overpasses and red lights almost on demand and our communities must register a high death county or raise the money for the projects."⁴⁸

"We are directly affected by the enormous growth of the larger cities around us but the wear and tear on our roads is not taken into consideration."⁴⁹

"Increased traffic flow on State Highway 1431 with the lack of assistance from the Highway Department for a traffic signal, extended center turn lanes, and lower speed limits in the Down Town area, seriously hamper our quality of life."⁵⁰

"NAFTA has already caused more truck traffic through this area. Our infrastructure is not geared to bear the additional traffic and will crowd our local traffic, thereby creating a dangerous situation. When the new highway from the Pacific Coast to the border town of Ojinaga is completed, the projections indication an additional five to eight hundred trucks will travel through our town. This will have a disastrous impact on our quality of life. Our geographical location is not conducive to taking advantage of this heavy truck traffic and can only create a negative impact on our community. In order to maintain or improve on our quality of life, we in Marfa, Texas are pushing for a truck by-pass to avoid the traffic rumbling through our town."⁵¹

"Despite a city population of 489 in our incorporated four square miles, nearly 5,000 students come to our city daily during the school year. The city experiences a daily traffic count on state highways 105 and 149 of between 27,000 and 34,000. Our infrastructure is worn out."⁵²

Medical

*"With many elderly people, we need medical help. We were fortunate to have an individual open a clinic, but then the major medical facility in the area where most have insurance...would not allow them to be a provider. Said they had enough podunk towns already." --Ken Hensel, Mayor of Rosebud.*⁵³

Medical shortages have affected larger cities. It is not surprising that rural areas are experiencing those shortages much more deeply than their urban cousins.

“The nearest hospital is 36 miles away and the doctors only come to town one or two days per week from their practices in larger towns.”⁵⁴

“The large percentage of uninsured people who work but cannot afford health insurance and don’t qualify for Medicaid is what closed our hospital and many other rural hospitals across the state. We’re having a difficult time finding anyone willing to reopen the facility without the guarantee that the community will subsidize at least part of this gap. Tell us how we can do this.”⁵⁵

“Our basic medical needs are met in a fine hospital but our more specialized needs are not. If our rural hospitals could have the services of medical specialists on a rotating basis, people could be better served closer to home where healing best takes place.”⁵⁶

“Our nursing home has closed in the last few years and our hospital is not doing well at the present time.”⁵⁷

Employment

*“Rural area life seems to be more for the heart than the pocketbook.” --Carrie Edwards, City Secretary of Colmesneil.*⁵⁸

Good, quality jobs are hard to come by, especially for small towns. When new jobs do come to town, the pay is often considerably less than what would be provided to an urban worker. Rural Texas towns who depended on agriculture and oil in the past are struggling to turn their economy around and look at it in a new way.

“Bring more QUALITY jobs to town, there are plentiful jobs, but underemployment is a large problem.”⁵⁹

“We really need some new industry to provide quality jobs to encourage our young people to stay here after high school or to come back after college.”⁶⁰

“The issues that hamper our quality of life are in town job opportunities to a town that was once based on agriculture and oil to now being a town of mostly commuters.”⁶¹

“There are not enough jobs to keep the youth in the community. Need something to keep the community economically stable.”⁶²

Dealing with the Bureaucracy

*“Before my term as Mayor, I believe we worked with the State on cementing a portion of a bridge to keep our roadway from eroding. I was on the City Council at that time and if I remember correctly, the experience was not a pleasant one.” --F.O. Jackson, Jr., Mayor of Roman Forest.*⁶³

Bureaucracy is never a pleasant experience. Rural citizens find the process particularly frustrating.

Small towns do not have the money to do anything more than operate the day-to-day running of their town. They do not have the expertise, let alone the time, to make numerous phone calls to Austin to find someone who can answer their questions. Grant writers are highly praised by those towns lucky enough to have the funds to hire them.

“All levels of state government...should realize in their rulemaking and dealings with rural communities, the size of city staff available to comply. Some state agencies seem to think we have nothing better to do than deal with their demands.”⁶⁴

“We have applied for state services like community grants for a park and TxDOT assessment of a several year old underpass project. There seems to be no particular time frame for feedback on grant applications and no one who can tell you when a decision will be made. It’s discouraging.”⁶⁵

“We are so poor that we find it difficult trying to have grant writers even though we do occasionally use them...We do not have funding available locally to do what we think needs to be done. Even if we had the funds, we probably need expertise to make sure we do the right things.”⁶⁶

“The only minor problem we had was receipts of grant funds must be disbursed within five days. Often we did not receive anything for our bank stating that a direct deposit had been received for 3-4 days after receipt. This left only a day or two to disburse the funds. Because we are a small city our Mayor, and Councilmen are all volunteers who each hold full-time jobs. Sometimes it was hard to get a check signed to disburse the funds in the time allowed.”⁶⁷

“In January 2000, we received a grant to improve our sidewalks. We wrestled with TxDOT for over two years to get this project moving. We opted to put it out for bid and supervise the construction locally. In April of 2002, this project was started. TxDOT has missed two payments to the contractor and we cannot get anyone from TxDOT to respond to requests for payment.”⁶⁸

“For the most part, these (grants and loans) have worked well for our community, as long as we can abide by the restrictions, timing, justifications and criteria required. It’s always a time consuming and laborious process, but we have been successful and the grants and loans have helped us a great deal.”⁶⁹

“For the most part, small cities like Montgomery are required to meet the same regulations of law and State agencies as metropolitan cities. We are diligent in our compliance efforts, but it is difficult when you consider that this responsibility falls to the city secretary and myself--much different than larger cities that delegate these responsibilities. While larger cities may rightfully feel that larger populations generate larger problems, I point to the fact that our city park was recently the site of the first africanized bees identified in Montgomery County, the KKK has scheduled a recruitment rally in our city, annexation requests are on hold because the city does not have a sufficient water supply, and urbanization is bringing increased crime.”⁷⁰

“I really did not encounter any more barriers with the state than with other agencies. I would like to see the state help more with small cities. What works and what doesn’t? I wish someone would tell me. The most important thing I have learned in dealing with the State is to give them all the information they request and be honest.”⁷¹

“Regional Councils of Government cater to the urban areas and treat rural cities as an afterthought.”⁷²

“Federal assistance is even more frustrating. The detailed data that is required and the explicit form required makes the process very difficult.”⁷³

“We have had no problems dealing with the State of Texas, however, we do have constant battles with the Edwards Aquifer Authority. Nothing seems to work dealing with the Edwards.”⁷⁴

“I wouldn’t wish my worst enemy to have to deal with the Texas Water Development Board. They drag out a one year project into three because they have to examine all documents. They have to approve your method of hiring a contractor after you go through a proper advertisement and bidding process and once a council approves the bid, it isn’t approved until TWDB says so and they take an additional six weeks to say so. They want to provide a loan/grant to you, but want you to start payment on the loan/grant before the project is complete and you don’t have any way of generating revenue for 12 months, yet they want the first check in 30 days.”⁷⁵

Funding

*“We have many needs and little money.” --Roy Friemel, Mayor of Kemp.*⁷⁶

Those communities who do manage to discover available opportunities find that their problems are only just beginning. Large cities are awarded the largest share of available dollars. Part-time, overworked employees in small towns must somehow find the time to fill out enormous amounts of paperwork, make numerous follow-up calls, and put together a suitable presentation. Small communities also find the matching fund requirements impossible to accomplish.

“Rural Texas is treated like poor relatives--we always get the left-overs in funding when large metro areas are better able to fund projects themselves.”⁷⁷

“Finding the information about the opportunities available is probably the one largest challenge.”⁷⁸

“The problem we have with matching grants is the match from the Town. We have no extra money and can offer very little in the way of in-kind contributions. Smaller grants with no match would help us much more.”⁷⁹

“We have also found that most grants require such elaborate presentation applications. We do not have the funds to hire this (to be) done. Since we have to compete with larger cities, we are often overlooked.”⁸⁰

“We need new equipment for the fire department. At the present they have good volunteers but they are forced to work with inadequate equipment.”⁸¹

“In considering funding opportunities for rural communities, it is important to note that many rural areas are considered ineligible to apply for private or foundation funds simply because they do not serve as a site for the funding sponsor or because they are too far away from a metropolitan area. Considering this, the agency might consider giving rural areas greater opportunities to apply and

qualify for state/federal sponsored supplemental funds, as compared to urban areas that can easily qualify for both private and public funds.”⁸²

“We are in a county of more than 100,000 and by those standards, are not considered rural at all. Small towns in counties with large populations should in no way be considered urban.”⁸³

“Grants with no matching funds or low matching funds work better. Some small cities do not apply for grants, because they cannot afford the matching part. The worst grants are TxDOTs and Parks and Wildlife that require 50% matching.”⁸⁴

Computer Access

*“We are too small to invite high speed...(it’s) too costly to provide on our own...(it) limits our position globally.”--City of Goliad.*⁸⁵

The internet is rapidly causing globalization of the marketplace. Meanwhile, rural businesses are being deprived of economic opportunities due to inadequate and slow internet connections. Without high speed, computer services are useless to potential businesses.

In one small town, there was a man who made his living by repairing antique light fixtures with his collection of antique parts. His specialty business was much in demand. Customers would send him computer photos of their lamps. The man would then determine from the photo if he had the parts to do the job. The typical time to download a single photo was three hours. Other small towns relayed similar frustrations:

“Three local men started a wireless internet service, utilizing a guarantee from our Economic Development board, and they have provided broadband to local citizens. We still have a few complaints about pricing, but we believe that broadband is very essential for our citizens.”⁸⁶

“We do have problems getting on the web and it is slow since DSL is not available in this rural part of America. Since we all pay the USF charges on our home based phones plus on our cellular phones, it would be GREAT to spend that toward getting rural America with DSL.”⁸⁷

“Greater access is always welcome, but we need high speed capabilities long promised but not delivered by our phone company.”⁸⁸

“At the present time, we only have DSL through the satellite companies. We have an IBSN service with Southwestern Bell, but this is not what our business needs.”⁸⁹

“The worst thing about living in rural Texas is the unavailability of high speed internet connections and telecommunication services.”⁹⁰

“We all need high speed internet capabilities. Our cable company keeps delaying its promise for that service.”⁹¹

“We only have dial up internet connection available, which is extremely slow. At this time, there is no DSL, cable modem, or satellite internet connection available. We also have difficulty getting

good reliable pager service, which we are told is due to the fact that we live in a rural area.”⁹²

Miscellaneous Concerns

“*Only the Lord can help us with this one--We need for it to rain!*” --Carl St. Clair, Mayor of Iraan.⁹³

Respondents from small towns had many concerns that go beyond the larger items such as infrastructure, medical needs, and shopping challenges. Concerns were expressed about those who are unwilling, or unable, to keep their property looking nice. There was a longing for cultural activities, fitness centers, and activities for their children:

“In general, we have great kids. However, we really have no facility to keep them occupied when not participating in school activities. Would be great to provide a center or types of activities for them to join in.”⁹⁴

Small towns also expressed concern that the larger towns, with their annexation capabilities, would destroy their way of life:

“Urban sprawl could be managed if larger cities were stopped from engulfing rural areas through annexation. Rural life can be protected and maintained if smaller cities are afforded home rule status and the capability of some expansion.”⁹⁵

Several small towns expressed environmental concerns:

“Another concern is our historic Salado Creek. It is frequently in need of clean up both from debris from storms here and west of us and from contamination from up stream ranches and highway construction. We often find ourselves in a quandary of authority with the Brazos River Authority and the Texas Natural Resource Commission on who is responsible. We have been told in the past that we, as citizens of Salado are not allowed to clean the Creek.”⁹⁶

Concerns about school funding and the possible loss of schools were also on the minds of some small communities:

“For truly rural Texas (which is much smaller than 10,000) the school finance situation is critical to our survival. If the state shuts our schools down, the demise of Miami and every rural community is eminent. There won’t be anything that ORCA or any other state agency can do to save rural Texas. Our schools are the heart and soul of the community. Our school district sends 70% of our local tax dollars to Austin. The quality of education our kids receive diminishes with every dollar we send to Austin. We are the only town and the only school in Roberts County; without a school, we will be paying local school taxes and transporting our kids twenty-five miles to another county to sit in *their classroom*.”⁹⁷

Other considerations mentioned by several towns included affordable housing for the elderly and handicapped, police protection, and transportation.

ORCA Considerations

“There are two types of rural cities for your agency to assist: rapid growth rural areas and isolated rural areas.”--Mary Coker, Assistant City Manager of Tomball.⁹⁸

Many small towns enjoyed the opportunity to give advice directly to ORCA. Overall, small communities want the chance to compete with larger cities for funding. They want their town to retain its charm, yet attract vibrant newcomers. They want rural towns to be considered individually, as the unique towns they truly are. Some even offered specific suggestions.

“I believe the time has come for this agency to really look at the needs of small communities and provide them with the same opportunities given to the metro areas. Why are the large metro areas given the bigger portion of federal funds? Rural area communities are just not receiving a fair allotment.”⁹⁹

“If you are the agency in charge of assisting rural Texas, then know your cities and towns. A city with less than 500 in population cannot be treated like a city with 10,000. We do not even have the facilities that a city with 2,000 to 5,000 population would have. Don’t assume that we do!”¹⁰⁰

“With higher education, the major ownership of our lands by the university system has liberally sucked and continues to suck the monies and resources of our area and sent them to other areas to be used without anything back in either resources or higher education, but also continues to limit our resources so that our ability to address higher educational needs is severely limited.”¹⁰¹

“(We need) on-line courses and testing made available for things such as municipal court training. When there is a one-girl office, it is impossible to vacate the position for the period of time required for these courses. Even presenting these on weekends would help.”¹⁰²

“Our council needs to know what is available to them, and how, when and where to access help in emergencies at a moment’s notice. The agency needs to focus on needs rather than how fancy a town looks. Needs first--cosmetics later.”¹⁰³

“There are many small towns like Blanket with populations under 1,000. It would be helpful if they were considered in a separate bracket...We sometimes have different needs and solutions.”¹⁰⁴

“Make a more level playing field for small town businesses. Internet sales should be taxed at the same level as local merchants.”¹⁰⁵

“Perhaps the agency should focus more on the local businesses that need help and incentives so that they can continue to meet the needs of the local people.”¹⁰⁶

“Is it possible that ORCA could help organize, obtain funding, facilitate...the creation of a Youth Center in these small towns? A place where kids, under competent adult supervision, could just hang out. Large screen TV, pool tables, shuffleboards, computers to use and learn on, movies available, snack bar, juke box, books--wouldn’t all those things in one safe place be a great boon to any community? Surely funding is available for the future of our State and nation’s citizens.”¹⁰⁷

“I thought the STEP program was great. It was easy to hire contractors, easy to work with the people in Austin. Just not enough money to complete the contract.”¹⁰⁸

Despite the Drawbacks

Many towns expressed their desire to continue to be God-centered, healthy, comfortable places to live out their lives and raise their children. Despite the problems they face, they continue to hope that their towns will survive.

“We have had our ups and downs, but when faced with adversity, we have always managed to put our hearts and minds together and persevere.” --Frances Smith, Mayor of Beasley.¹⁰⁹

THE OFFICE OF RURAL COMMUNITY AFFAIRS

Background

House Speaker James E. “Pete” Laney appointed the House Select Committee on Rural Development following the 76th regular session. The charge of the interim committee was to search for ways state, local, and federal governments can improve the quality of life in rural Texas. The committee found there was no focal point at state or federal levels for rural policy formulation or implementation, which tends to result in fragmented policies spread among a myriad of governmental agencies.

The Office of Rural Community Affairs (ORCA) was created by the passage of HB 7 during the 77th regular session in 2001. ORCA was designed by the authors of the bill as a stand-alone agency to assure a continuing focus on rural issues, monitor governmental actions affecting rural Texas, research problems and recommended solutions, and to coordinate rural programs among state agencies.¹¹⁰

ORCA is overseen by a nine member board. The Speaker of the House, the Lieutenant Governor, and the Governor each appoint three members.

HB 7 directs ORCA to accomplish several things. Among them are:

Developing and implementing policies that provide the public with a reasonable opportunity to appear before the executive committee and to speak on any issue under the jurisdiction of the office;

Develop a rural policy for the state in consultation with local leaders representing all facets of rural community life, academic and industry experts, and state elected and appointed officials with interests in rural communities;

Work with other state agencies and officials to improve the results and the cost-effectiveness of state programs affecting rural communities through coordination of efforts;

Develop programs to improve the leadership capacity of rural community leaders;

Monitor developments that have a substantial effect on rural Texas communities, especially actions of state government, and compile an annual report describing and evaluating the condition of rural communities;

Administer the federal community development block grant nonentitlement program;

Administer programs supporting rural health care;

Perform research to determine the most beneficial and cost-effective ways to improve the welfare of rural communities;

Ensure that the office qualifies as the state's office of rural health for the purpose of receiving grants from the Office of Rural Health Policy of the United States Department of Health and Human Services;

Manage the state's Medicare rural hospital flexibility program.

Summary of Testimony from Public Hearings

The full Committee heard testimony regarding ORCA during a scheduled hearing September 19th, 2002, in Austin. Those who testified and their representation were:

Dr. Glenda Barron, *Texas Higher Education Coordinating Board*
Michael W. Behrens, *Texas Department of Transportation*
Connie Berry, *Texas Department of Health*
Edwina Carrington, *Texas Department of Housing and Community Affairs*
Cassie Carlson Reed, *Texas Workforce Commission*
Alfonso Casso, *Comptroller's Office*
Donna Chatham, *Association of Rural Communities in Texas*
Susan Combs, *Texas Department of Agriculture*
Robert L. Cook, *Texas Parks and Wildlife Department*
Terry Harlow, *TEA Region 14 Service Center*
Jim Hine, *Texas Department of Human Services*
Margaret Hoffman, *Texas Commission on Environmental Quality*
Dirk Jameson, *Telecommunications Infrastructure Fund Board*
William "Bill" Jeter, *Office of Rural Community Affairs*
Ignacio Madera, Jr., *Texas Water Development Board*
Gerry McKimmey, *Texas Department of MHMR*
Jeff Moseley, *Texas Economic Development*
Lawrence Oaks, *Texas Historical Commission*
David Swinford, *Representing Himself*
Greg Taylor, *Texas Cooperative Extension*
Robt. Sam Tessen, *Office of Rural Community Affairs*
Pam Whittington, *Public Utility Commission of Texas*

Developing Rural Policy

For the past ten months, the Executive Committee of ORCA has been holding its monthly meetings in rural communities across the state. Locations have included Jefferson, Carrizo Springs, Albany, Childress, and Monahans. The Executive Committee meetings have focused on specific topics that rural communities face, such as community development, health care, and agriculture. Stakeholders from a broad range of entities, including state agencies, legislators and private and non-profit organizations, have been invited to make presentations on these topics at the meetings.

The Executive Committee received input from a broad spectrum of constituents regarding the needs of rural Texas. The Executive Committee then devised five exception items strategy allocations, as listed below, to meet these needs.

Rural Health Facility Capital Improvements
Grants for Community and Economic Development Projects
Natural Resources and Wildlife Management
Leadership Capacity Building
Rural Housing Construction Guarantee Loan Program

Working with Other Agencies

The mission of ORCA is to work with other state agencies and officials to improve the results and cost-effectiveness of state programs affecting rural communities. ORCA has established an inter-agency working group, comprised of other state and federal agencies, to address rural needs and concerns. The initial meeting of all of the agency heads was at ORCA's Executive Committee meeting in Austin on April 5, 2002. Each agency was contacted to request that a single point of contact be named. A meeting was held on July 30, 2002, with those individuals to establish a working relationship.

Team Turnaround is a pilot project to see if state agencies can help individual communities learn to solve their problems. The Department of Agriculture, Texas Cooperative Extension, the Texas Municipal League, the Association of Regional Councils, Association of Counties, Rural Conservation and Development, and United Way have all joined with ORCA to form a team to visit six rural communities and try to make a difference. Several state agencies have also volunteered their staff to join the teams. The six pilot communities are Iraan, Newton, Morton, Falfurrias, Dalhart and Jacksboro.

According to testimony by Sam Tessen, Executive Director of ORCA, state agencies are doing a lot of things in rural Texas, and putting a lot of money in rural Texas. But in many instances, it is not coordinated. In discussions with other agency heads, ORCA has found that the definitions of programs are limiting the ability of the agencies to coordinate proposals and programs. Tessen feels that one of the most critical things the Legislature could do would be to establish some flexibility on the part of agencies to tailor some of these funding programs to allow leverage between the programs. As an example, if Texas Department of Transportation programs were leveraged with the Texas Education Agency, they would be able to work together when a bridge collapses so that school buses don't have to go thirty miles out of their way.

Rural Leadership Programs

What makes one community achieve more than another? Executive Board Chair Bill Jeter believes it is leadership. Jeter sees leadership training as one of the most important tasks ORCA should take on.

ORCA has hired a full time staff person dedicated to rural leadership capacity development, and is developing an inventory of existing community leadership training programs and opportunities. These opportunities are expected to include skill sets training, such as how to write a grant application. Once it is in its complete form, the inventory will be available on the ORCA website, with contact information and a brief description of each program and its target audience. Also in development is a working calendar of leadership training opportunities for the website. ORCA is also currently soliciting curriculum from existing programs to identify a set of core leadership

skills being taught in most programs, and to identify areas of opportunity for additional training.

An additional person has been hired to work on technology and telecommunications issues to provide assistance and promote the use of technology and telecommunications in rural communities.

Monitoring Developments

ORCA has created a division dedicated to Research, Policy and Planning. That staff is currently compiling the annual report on the status, priorities and needs of rural communities, which is required by HB 7. The staff is also monitoring high-speed bandwidth access for rural communities and advocating for increased availability.

Staff members are also currently building a matrix of all programs with rural implications available at thirty-five state agencies. They hope to have these programs and their guidelines up on their website by the time this report has been printed. This will allow community leaders to be able to access from one location, rather than searching for help by hopping from agency to agency.

Administering Programs

Part of ORCA's mission is to administer the federal Community Development Block Grant (CDBG) nonentitlement program. Texas Community Development Program funding programs include Colonia Funds, Community Development Fund, Disaster Relief/Urgent Need, Housing Infrastructure Fund, Housing Rehabilitation, Planning and Capacity Building Fund, Texas STEP, and the Texas Capital Fund. \$88 million of federal money is provided to Texas to operate CDBG programs, which help communities with infrastructure and other needs. ORCA is currently evaluating the program to see if the funds can be used for other programs as well.

ORCA also administers programs supporting rural health care as provided by Subchapters D-H. ORCA board members feel the agency has been especially effective in administering these programs, and has asked the Legislative Budget Board to recommend providing more money for the next few fiscal years.

ORCA is also currently working to simplify grant applications for rural health services.

Performing Research

ORCA is working with the Texas Cooperative Extension at Texas A&M University to develop a "yardstick" for rural communities with respect to demographics, economic strengths and weaknesses, development opportunities, and other areas. When completed, it is expected that a community could "plug in" all of its attributes and weaknesses, getting a better picture of its strengths, weaknesses, and opportunities. Once these things have been identified, a community would be able to better search for resources to suit their needs.

ORCA has established a partnership with Texas Tech and the University of Texas to consult with rural communities and health care providers regarding community needs and the development of programs to address them and to conduct research activities directed toward the design and

conduct of studies illuminating the interface between rural community and economic development and rural health and health care, and the design and evaluation of innovative academic-community partnerships to address rural health and health care needs.

ORCA has created a quarterly newsletter to inform stakeholders on rural issues and policies. It is available as hard copy or on-line.

Receiving Grants

The Federal Office of Rural Health Policy designated the Office of Rural Community Affairs as the administrator of grants for the following programs: Capital Improvement Program, medically Underserved Community-State Matching Incentive Program, Outstanding Rural Scholar Recognition Program, Rural Scholarship Incentive Program, Rural Physician Assistant Loan Reimbursement Program, and the Texas Health Service Corps.

Managing Medicare

The Critical Access Hospital (CAH) program in Texas has been successful in preserving and enhancing small hospitals in rural parts of the state. Since the inception of this program in July 1999, thirty-three hospitals have received the CAH designation, with seven more currently in the application process. The Office of Rural Community Affairs has identified approximately fifty additional hospitals that can benefit from this model--many of which will likely join the program in the coming years.

The Rural EMS Flex Grant Program has provided funding for fourteen CAHs to purchase training equipment and/or provide certification/re-certification course for EMS staff.

Creating a Budget and Hiring Staff

Starting an agency is a difficult task. ORCA was created partly by taking programs from two other existing agencies, and according to Executive Director Sam Tessen, creating a budget proved to be a "task beyond measurement." ORCA ran into situations where line items were defined differently between agencies, and getting the agencies affected to define the funds that were supposed to be transferred was an enormous undertaking. Months were spent creating an operating budget for the existing fiscal year, while trying to look ahead to the next fiscal year. In April, May and June, the agency spent time developing a strategic plan, a Legislative Appropriations Request, a workforce plan, and many other required reports. ORCA remains in transition, and it is believed that the agency will have a much clearer picture of where to go from here by next year.

ORCA has recently acquired capitol office space, and will soon be able to hire the employees that it has been allocated. ORCA has not been able to fully staff itself due to the lack of space to house the employees.

The Relocation of ORCA

The Executive Committee of ORCA commissioned Texas Tech University and St. Edward's

University to evaluate the cost-effectiveness of moving at least one-half of its operations to a location outside Travis County.

The Texas Tech study found that relocating was cost-effective, but found that the key issue was whether or not some relocation option would foster greater agency-constituent interaction to better promote sustainable rural communities and the general interests of rural Texas.¹¹¹

The report suggested that the Executive Committee determine whether the data in the report was supportive of the contention that relocating ORCA is cost-effective. If so, the Executive Committee should set a time-line for relocation, establish criteria for site selection, and then select a site or sites for relocation in accordance with the mission of the agency and state laws. The Tech study also indicated that such a move, if undertaken, should be done gradually to mitigate employee loss.

The St. Edward's study expressed concerns associated with ORCA's relatively small size. With 65 of 74 full time positions filled at ORCA, one issue that was raised was whether or not dispersal would still serve the cities of Texas effectively. Additional costs were associated with the training of new staff to replace those who do not wish to relocate. Concerns were also expressed that adding to the three current satellite offices under ORCA would make monitoring difficult.¹¹²

Executive Director Sam Tessen, in a memo to the Executive Board's Relocation Committee, agreed that "the agency must establish and maintain a significant presence in rural areas of our state."¹¹³ In his memo, Tessen listed several items to consider:

1. The agency is soon to move to a building in the capitol complex, which will strain the budget for FY 2003. At the current time, there is almost no money in the budget for additional moves.
2. Any permanent relocation decision will require an open process in which the agency will have to decide upon minimum requirements for office space and conditions, post those requirements, create a list of finalists, and culminate in a decision. All Texas Building and Procurement Commission procedures and timetables will have to be met.
3. Although the planning process has begun to introduce the use of modern telecommunications and grants management technology to the agency, the agency is highly centralized in operations and dependent on paperwork. It will take some time to implement enough of the use of technology to make remote operations and decision-making work to the benefit of the agency.

Tessen suggested a phased in process over a 2-3 year period, with periodic evaluation of cost-effectiveness and other benefits of the results of the process for the agency to date and dependent upon securing adequate funds to pay for the moves. Tessen suggested this process would allow for gradual implementation, periodic review of status and progress, built-in decision points at which time to consider continuing the process or altering the plan, and an overall more accountable process.

ORCA currently has three existing field offices and funds border offices of the Texas Department of Housing and Community Affairs. Their Legislative Appropriations Request has asked for seven additional employees to be co-managed by the Texas Cooperative Extension. These employees would be community development specialists; ORCA employees, but located in Cooperative Extension field offices with full access to their resources.

Conclusion

As Robert “Sam” Tessen, Executive Director of ORCA, testified, “rural communities need the opportunity to become what **they** want to become...I think what our job will be now, and five years from now, is giving the local leaders in a rural community the opportunity to have easy access to all the resources they identify to meet the goals they identify for themselves. If it’s to keep the school open, if that’s their top priority, then our job ought to be to work with TEA to make sure that happens...if it’s to ensure the viability of a hospital, our job should be to work with the feds and the Texas Department of Health and anybody else to make sure that happens. Not to dictate to the community what it should be, what we think it can be, but what the community wants to be.”

Tessen went on to say that “we should identify at the state level, at the agency level...all those resources that are readily available and focus the ability of those agencies to better meet the needs of the rural communities. I see five years from now rural communities having a single place to come to, not to get everything, but to find out where it’s available, what’s available, how to set priorities, how to get leadership, how to make it happen what they want to happen in their communities.”

The Committee has no recommendations at this point, as ORCA’s existence has encompassed only ten months. However, the Committee would like to commend ORCA for its progress to this point, and its vision for the future.

THE GENERAL LAND OFFICE

Coastal Projects Division¹¹⁴

Coastal Erosion Planning & Response Act (CEPRA)

The 76th Texas Legislature created the Coastal Erosion Planning and Response Act (CEPRA) via passage of Senate Bill 1690, appropriating \$15 million for the 2000-2001 biennium. Texas' first-ever-coastal erosion program came into existence Sept. 1, 1999. The Texas General Land Office (GLO) administers CEPRA, which entails a coordinated effort of state, federal, and local entities to conduct erosion response projects and related studies.

Texas has the third longest coastline in the US, with 367 miles of gulf beaches and more than 3,300 miles of bay shoreline. Texas beaches also suffer from the highest erosion rates in the country. Based on the success of the initial 2000-2001 program (Cycle 1), the 77th Legislature appropriated an additional \$15 million for the CEPRA program during the 2002-2003 biennium (Cycle 2).

CEPRA Cycle 1 Projects and Studies

During Cycle 1, the GLO implemented the CEPRA program at the Land Office and built partnerships with coastal communities, state and federal agencies, technical experts, and affected landowners to combat erosion on barrier islands, tidal marshes, and bay shorelines. Project Cooperation Agreements (PCAs) were developed with these partners who provided matching funds or in-kind services; CEPRA legislation under the first biennium required the local partners to contribute a minimum of 25% of the project cost.

During Cycle 1, GLO allocated funds to 35 erosion response projects and three scientific studies. One-third of the projects focused on gulf beach restoration or dune construction, while two-thirds of the projects related to bayshore stabilization, marsh restoration, or bay beach restoration.

Less than five percent of the state erosion response funds was spent on studies. By leveraging the initial \$15 million with federal, local, and other sponsor funding, projects funded under Cycle 1 exceeded \$28 million. Cycle 1 project achievements included restoration or protection of 23 miles of shoreline.

CEPRA Cycle 2 Projects & Studies

Changes in the CEPRA legislation during the 77th Legislature requires the local partners to provide a 15% minimum match of local funds or in-kind services.

David Dewhurst, Texas Land Commissioner, announced January 28, 2002, priority projects that are eligible for funding under Cycle 2 of the Coastal Erosion Planning and Response Act (CEPRA), administered by the Texas General Land Office.

The projects and studies initially selected when leveraged with other funds are targeted to bring the total project budget this biennium to more than \$30 million. The Cycle 2 priority projects are

in areas experiencing some of the highest erosion areas of Texas, such as West Galveston Island, Bolivar Peninsula, and South Padre Island. Funds spent on these projects will place sand on some of Texas' most popular recreational beaches.

Other Cycle 2 projects will restore eroded bay beaches and provide shore protection to inland coastlines. Some erosion protection projects are coupled with marsh restoration work that will provide a habitat for wildlife in addition to shoreline protection. GLO estimates that completed Cycle 2 projects will include restoration or protection of more than 30 miles of shoreline.

Cycle 2 studies include continued work on sand source studies for beach nourishment, monitoring shoreline change rates and participation in a U.S. Army Corps of Engineers (USACE) Feasibility Study from Sabine Pass to San Luis Pass. The USACE feasibility study will allow Texas for the first time to become eligible for federal funding for beach nourishment projects. CEPR currently partners with the USACE on beneficial use projects by utilizing dredged material from navigation projects maintained by the USACE. Completion of feasibility studies would pave the way to tap an additional source of federal funding - beach nourishment funding through the Energy and Water Development Appropriations bill. Currently other coastal states have qualified for approximately \$700 million in federal funds for beach nourishment since 1995, while Texas has received no federal funding for beach nourishment.

Coastal Management Program¹¹⁵

Recent activities within the Texas Coastal Management Program (CMP) include the deliberations of the Council's Legislative Work Group, the adoption of a specific policy for structural shore protection projects, and preparation of the Texas Coastal Nonpoint Source Pollution Prevention Program (Coastal NPS Program).

Legislative Work Group

At its March 5, 2002, meeting, the Coastal Coordination Council (Council) voted to establish a Work Group to develop recommendations to the Legislature to address long-term solutions to beachfront erosion along the developed areas of the Upper Texas Coast. The Council designated the Executive Committee to be that Work Group.

The Work Group met for the first time in Austin on April 15, 2002. The Work Group met seven (7) times between April and September. The Work Group's report will include findings and recommendations relating to beach nourishment, the Open Beaches Act, additional funding sources for erosion response, and geotube shore protection projects. The Work Group plans to present their recommendations to the Council for approval at the Council's December 5, 2002, meeting in Austin.

Each of the Work Group's meetings have been posted in the *Texas Register* and on the Land Office's web page at <http://www.glo.state.tx.us/coastal/cc-c-ec-legwg.html>, and the public has been encouraged to attend.

Policies for Structural Shore Protection Projects

At its meeting in Palacios on June 11, 2002, the Council adopted rule amendments to institute policies for the construction of structural shore protection projects as recommended by the Council's Geotube Work Group, the Executive Committee, and the Land Office staff. The Geotube Work Group consisted of Council members, local governments, local property owners, and other interested parties. Over the course of four meetings between March and June, 2001, the Geotube Work Group developed recommendations on the construction and placement of geotextile tube (geotube) shore protection projects.

Existing Council policies, as well as the Land Office's beach/dune rules, expressed a preference for non-structural erosion response methods, such as beach nourishment, dune construction, sediment bypassing, nearshore sediment berms, and planting of vegetation. Several local coastal governments, however, had expressed a preference for constructing structural shore protection projects along Gulf beaches in an effort to protect beachfront structures from erosion. The Council adopted the policies for structural shore protection projects to establish guidelines that a local government can rely upon when planning, approving, and constructing geotubes and other structural shore protection projects. The adopted policies provide standards and guidelines for evaluating proposed structural shore protection projects for consistency with the CMP.

Other GLO Items of Interest

The Kenedy Foundation Lawsuit

On August 30, 2002, the Texas Supreme Court ruled against the state, giving ownership of 35,000 acres of land in the Laguna Madre to the John G. and Maria Stella Kenedy Memorial Foundation. The oil-producing mudflats provide oil and gas royalties that previously helped to fund public schools. Approximately \$1.5 million has been in escrow since the Kenedy Foundation took the state to court seven years ago.

The lawsuit began in 1995, when the Kenedy Foundation went to court, arguing that the Laguna Madre boundary should be determined by mean average high-tide calculations. The state maintained that the boundary was the vegetation lines for property originally conveyed by Spain and Mexico in civil law grants. A Travis County jury and the 3rd District Court of Appeals ruled in the state's favor, and in 2000, the state Supreme Court, in an unanimous decision, affirmed the court of appeals' decision for the state.

In 2001, the state Supreme Court agreed to rehear the case, and ruled against the state a year later. Chief Justice Phillips, and Justices Hecht, Owen, O'Neill, Jefferson and Rodriguez found for the Kenedy Foundation. Justices Enoch, Baker and Hankinson dissented. Texas Land Commissioner David Dewhurst has announced that the state will request a rehearing.

Cabin Permits

Prior to 1973, numerous shacks and cabins were constructed by trappers, commercial fishermen and others through the bays and estuaries of the Texas Gulf Coast. Nearly 200 of these unauthorized cabins are constructed on approximately 44 spoil islands. Spoil islands are islands

created by the dumping of dredge spoils from the Gulf Intracoastal Waterway. The remainder of the cabins are on natural pieces of land.

In 1973, the Coastal Public Lands Management Act (CPLMA) became effective. The Act authorized the General Land Office to allow continued use of these cabins for recreational purposes only through the issuance of a GLO contract and payment of appropriate fees. The cabins are considered “state-owned structures” and contracts are issued to authorize use of the site, not ownership in the structure, for a term of five years.

The law mandates that no new cabins will be constructed, and 435 exist today. This increases the value of the current permits, which can be and are passed down through generations and privately bought and sold. Although the GLO must give approval to transfer a permit from one individual to another, the value of the transferring permit is not disclosed to the GLO. In interviews and in discussions with the local GLO staff members, local residents, and local chief appraisers, indications are that the sale value of a permit could range from \$7,000 for a poor cabin in a relatively inaccessible location to \$80,000 and up for premium cabins in popular fishing areas. Thus, permittees are making money selling their right to lease state-owned land. The state sees no money from the private transactions.

The state is also currently losing money through this program, as the revenue collected is based on the habitable square footage of the structures. Currently that rate is \$0.60 per habitable square foot. The average rental payment to the GLO for a cabin permit is \$628 per year. Studies have shown that the estimated value of the structures is actually \$18 per square foot.¹¹⁶

Conclusion and Recommendations

Legislation should be considered to ensure that no additional lands belonging to the state end up in private hands.

It makes good fiscal sense that the cabin permit program pay for itself. The state should look into raising the cost of the permit. Transfer fees should be made known to the GLO, and the GLO should receive a portion of that fee.

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16. The Gulf Intracoastal Waterway in Texas, prepared by the Transportation Planning and Programming Division, TxDOT, 2000
 17. E-mail information from John Zimmerman, Director, Acquisition Section, Right of Way Division, TxDOT, June 21, 2002
 18. E-mail information from Joe Hrametz, Chief Navigation Branch, Corps of Engineers, September 23, 2002
 19. Report from GBA Engineers regarding costs of Gulf Placement of Laguna Madre Dredge Spoils, April 12, 2001
 20. E-mail information from Patrick Marotta, Legislative Liaison, TxDOT, July 2002
 21. E-mail information from Patrick Marotta, Legislative Liaison, TxDOT, June 2002
 22. Federal Beach Nourishment Money: How Much is Available and Who's Getting It? Copyright 2001;2002, Marlowe & Company, Public Affairs Consultants, Washington, D.C.
 23. Michael Grunwald, Washington Post staff writer, Thursday, July 18, Page A27
 24. Frances Smith, Mayor of Beasley, letter dated July 30, 2002
 25. Wesley Jacobs, Mayor of Falfurrias, letter dated July 29, 2002
 26. Tresa A. Seuhs, Director of Miami Economic Development Corporation, letter dated September 23, 2002
 27. Desiree Bryant, Assistant Director, Silsbee Economic Development Corporation, letter dated August 6, 2002
 28. Beverly Phares, Mayor of Redwater, letter dated July 29, 2002
 29. Ken Hensel, Mayor of Rosebud, letter dated July 31, 2002
 30. Edie Sims, City Secretary of Blue Ridge, letter dated July 12, 2002
 31. Connie Goodwin, City Administrator of Royse City, letter dated August 6, 2002
 32. Carl St. Clair, Mayor of Iraan, letter dated July 28, 2002
 33. Kathy Mayfield, City Secretary of Fulshear, letter dated July 29, 2002
 34. Karen Brooks, City Secretary of Jayton, letter dated August 7, 2002
 35. Letter from the city of Melvin, dated August 22, 2002
 36. Kert Goode, Mayor of Bertram, letter dated August 6, 2002

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37. Jackie Cannon, Mayor of Merkel, letter dated August 7, 2002
 38. Martin Gustafson, Mayor of Somerville, letter dated August 19, 2002
 39. Lori Berger, Mayor of Flatonia, letter dated August 5, 2002
 40. Melanie Johnson, City Secretary of Josephine, letter dated August 7, 2002
 41. Edie Sims, City Secretary of Blue Ridge, letter dated July 12, 2002
 42. City of Morton, letter dated July 27, 2002
 43. Les Alley, Mayor of Itasca, letter dated July 25, 2002
 44. Lyn Hill, Assistant City Secretary of Oak Leaf, letter dated July 29, 2002
 45. Virginia Moore, City Secretary of Carmine, letter dated July 22, 2002
 46. Larry Lott, Director of Royse City Economic Development Corporation, letter dated August 8, 2002
 47. Melanie Johnson, City Secretary of Josephine, letter dated August 7, 2002
 48. Frank D. Jackson, Mayor of Prairie View, letter dated July 31, 2002
 49. Lyn Hill, Assistant City Secretary of Oak Leaf, letter dated July 29, 2002
 50. Earl Hambrick, City Administrator of Jonestown, letter dated July 29, 2002
 51. Oscar Rice Martinez, Mayor of Marfa, letter dated September 12, 2002
 52. Mary Sue Timmerman, Mayor of Montgomery, letter dated September 11, 2002
 53. Ken Hensel, Mayor of Rosebud, letter dated July 31, 2002
 54. Wesley Jacobs, Mayor of Falfurrias, letter dated July 29, 2002
 55. Desiree Bryant, Assistant Director, Silsbee Economic Development Corporation, letter dated August 6, 2002
 56. Robert Zap, Mayor of Andrews, letter dated July 27, 2002
 57. City of Morton, letter dated July 27, 2002
 58. Carrie Edwards, City Secretary of Colmesneil, letter dated August 15, 2002
 59. Robert Patrick, City Manager of Spearman, letter dated August 5, 2002
 60. John Adcock, Mayor of De Leon, letter dated July 24, 2002

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61. Jackie L. Cannon, Mayor of Merkel, letter dated August 7, 2002
 62. City of Morton, letter dated July 27, 2002
 63. F.O. Jackson, Jr., Mayor of Roman Forest, letter dated August 12, 2002
 64. Jackie L. Cannon, Mayor of Merkel, letter dated August 7, 2002
 65. Desiree Bryant, Assistant Director, Silsbee Economic Development Corporation, letter dated August 6, 2002
 66. Ken Hensel, Mayor of Rosebud, letter dated July 31, 2002
 67. Carrie Edwards, City Secretary of Colmesneil, letter dated August 15, 2002
 68. Connie Goodwin, City Administrator of Royse City, letter dated August 6, 2002
 69. Jack Calvert, Mayor of Lampasas, letter dated August 13, 2002
 70. Mary Sue Timmerman, Mayor of Montgomery, letter dated September 11, 2002.
 71. Roy Friemel, Mayor of Kemp, letter dated July 29, 2002
 72. Frank D. Jackson, Mayor of Prairie View, letter dated July 31, 2002
 73. Kert Goode, Mayor of Bertram, letter dated August 6, 2002
 74. Marty Mangum, City Administrator of Garden Ridge, letter dated August 23, 2002
 75. Danny Russell, Mayor of Sunset, letter dated September 3, 2002
 76. Roy Friemel, Mayor of Kemp, letter dated July 29, 2002
 77. Cay Frances House, Mayor of Emory, letter dated July 23, 2002
 78. Julie Lanphere, City Secretary of Hawley, letter dated August 2, 2002
 79. Billy Fricks, Mayor of Bayside, letter dated July 31, 2002
 80. Lyn Hill, Assistant City Secretary of Oak Leaf, letter dated July 29, 2002
 81. Jackie McLaughlin, City Secretary of Blanket, letter dated August 14, 2002
 82. Jose Moraida, Mayor of Roma, letter dated August 6, 2002
 83. Jackie L. Cannon, Mayor of Merkel, letter dated August 7, 2002
 84. Aref Hassan, City Manager of Winters, letter dated August 5, 2002
 85. City of Goliad, letter dated July 22, 2002

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86. Robert Patrick, City Manager of Spearman, letter dated August 5, 2002
 87. Edie Sims, City Secretary of Blue Ridge, letter dated July 12, 2002
 88. Robert Zap, Mayor of Andrews, letter dated July 27, 2002
 89. Connie Goodwin, City Administrator of Royse City, letter dated August 6, 2002
 90. Marty Mangum, City Administrator of Garden Ridge, letter dated August 23, 2002
 91. Charlotte Douglass, Mayor of Salado, letter dated August 20, 2002
 92. John O. Connor, Mayor of Palacios, letter dated August 26, 2002
 93. Carl St. Clair, Mayor of Iraan, letter dated July 28, 2002
 94. Ken Hensel, Mayor of Rosebud, letter dated July 31, 2002
 95. Vicki Michener, Mayor Pro Tem of Springtown, letter dated August 5, 2002
 96. Charlotte Douglass, Mayor of Salado, letter dated August 20, 2002
 97. Tresa A. Seuhs, Director of Miami Economic Development Corporation, letter dated September 23, 2002
 98. Mary Coker, Assistant City Manager of Tomball, letter dated August 9, 2002
 99. Ruberta Vera, Mayor of Natalia, letter dated August 8, 2002
 100. Virginia Moore, City Secretary of Carmine, letter dated July 22, 2002
 101. Robert Zap, Mayor of Andrews, letter dated July 27, 2002
 102. Lyn Hill, Assistant City Secretary of Oak Leaf, letter dated July 29, 2002
 103. Melanie Johnson, City Secretary of Josephine, letter dated August 7, 2002
 104. Jackie McLaughlin, City Secretary of Blanket, letter dated August 14, 2002
 105. Robert Patrick, City Manager of Spearman, letter dated August 5, 2002
 106. Doug Parish, Mayor of Earth, letter dated August 23, 2002
 107. John Adcock, Mayor of De Leon, letter dated July 24, 2002
 108. Danny Russell, Mayor of Sunset, letter dated September 3, 2002
 109. Frances Smith, Mayor of Beasley, letter dated July 30, 2002
 110. HB 7 Bill Analysis, Enrolled version

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111. Dr. Brian K. Collins and Dr. Brian J. Gerber, Principal Investigators, “The Cost-Effectiveness of Relocating the Office of Rural Community Affairs,” Volume I
 112. Professor Dianne Hill, Professor, “Office of Rural Community Affairs, 77th Legislature - House Bill 7 Analysis,” August 12, 2002
 113. Memo from Robt. J. “Sam” Tessen, Executive Director of ORCA, regarding Relocation of Agency, September 5, 2002
 114. CEPRA material provided via e-mail by Eddie Fisher, Director of Coastal Projects, General Land Office, September 30, 2002
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 116. “A Joint Study Report on the Parks and Wildlife Department’s Commercial Fishery Programs and the General Land Office’s Leases of State-Owned Lands,” December 2000