

ETJs, MUDs, and other TLAs: How SB 2038 Changes Development

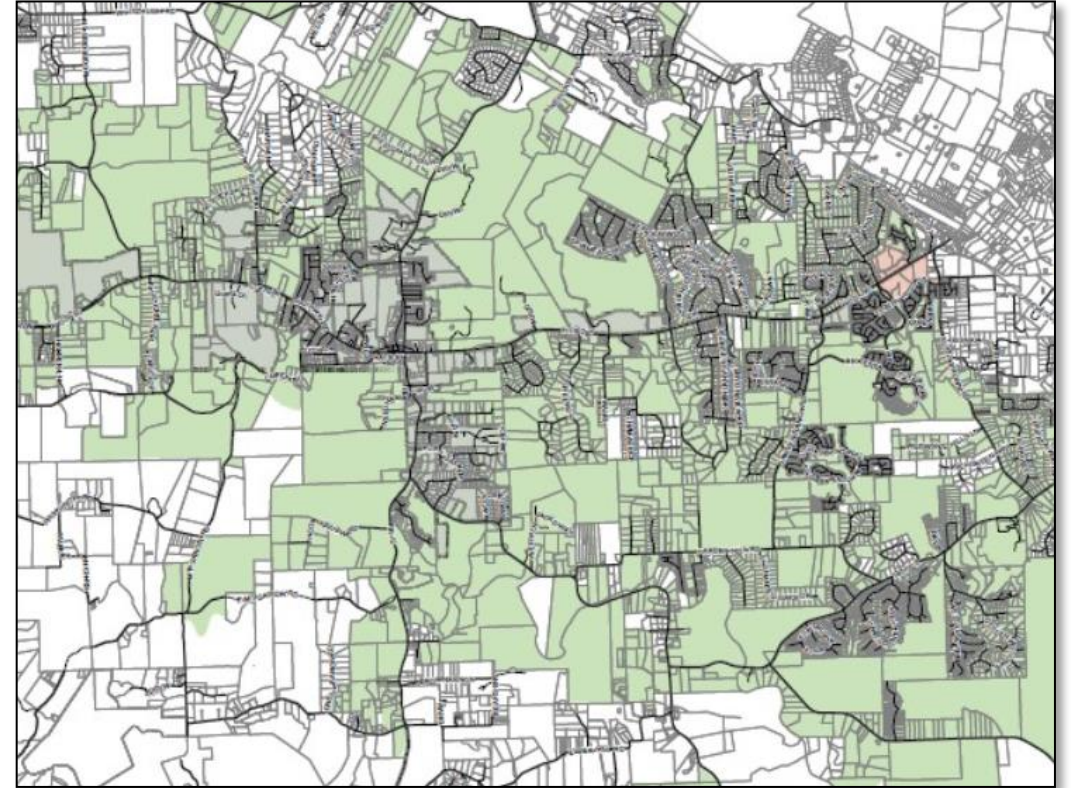
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Paprika



ETJ FAQs

- Where do they come from?
 - LGC Ch. 42
- What's their purpose?
 - Health, safety, welfare
- Where are they?
 - Depends on your size!
 - Cities of < 5,000: ½ mile
 - Cities > 100,000: 5 miles
- No one can annex into or incorporate within ETJ without city's consent.



ETJ FAQs

- Expands with annexation
- In some cases can be released or exchanged
- Some regulatory authority within ETJ



ETJ REGULATORY AUTHORITY: **YES**

- Local Government Code – Chapter 212
 - Platting, subdivision authority
 - City can seek injunctive relief for violations in ETJ
 - Development Agreements

ETJ REGULATORY AUTHORITY: **NO**

- Use of buildings/property
- Bulk/height/number of buildings on a tract
- Size of a building
- Number of residential units per acre
- Cities can't issue fines or penalties for violations in the ETJ
- 1445 Agreements may limit city platting regulations
- CCN opt-out legislation – Texas Water Code Section 13.2541

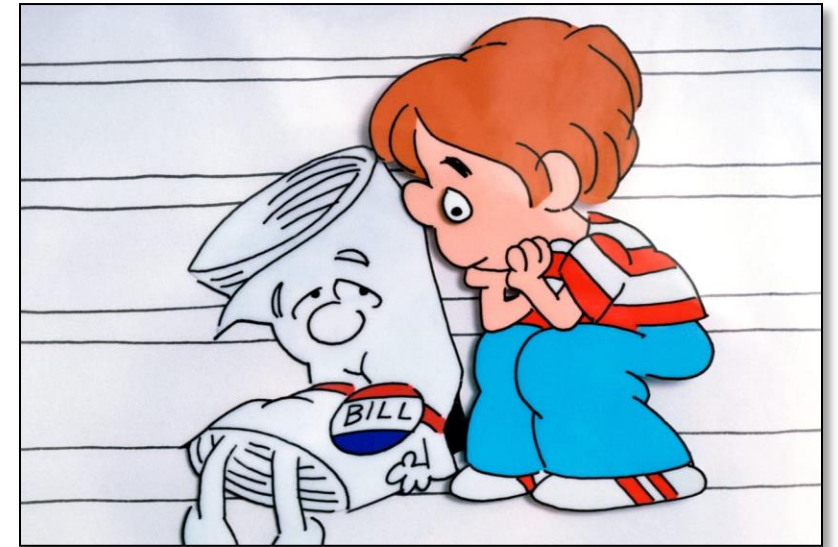
SUBDIVISION ORDINANCES

- Sign regulations
- Environmental regulations
- Provides for orderly development: Including extensions of utilities, drainage, roads, and sidewalks
- Provides criteria for minimum standards for platting/subdivision of lots



SB 2038

- Creates new LGC Chapter 42, Subsections D and E
- Allows landowners petition to have their property removed from ETJ with some exceptions:
 - 5 miles of military base
 - Bexar, Tarrant, Dallas, Harris counties and pop.>1.4 million
 - Designated industrial district
 - Area under strategic partnership agreement (SPA).
- Effective Sept. 1, 2023.



IMPACT OF SB 2038

- An annexation no longer automatically extends your ETJ.
- A few options for a landowner to petition to get out of the City's ETJ:
 - Petition of >50% of voters
 - Petitioner of owner of majority of property.
 - 5% of voters may request an election. City can voluntarily release instead of holding election.
- Must include map and boundary description by metes and bounds or lot and block number.

WHAT IF WE DON'T WANNA?

- As long as a petitioner meets the technical requirements of SB 2038, cities have no discretion to deny a petition.
- If city takes no action, petition becomes effective as a matter of law - 45 days after city receives it, or the next City Council meeting that occurs after 30 days after it receives the petition, whichever is later.
 - What about LGC 42.023, requiring written consent of city to reduce ETJ?

MUD DISTRICTS

- General Law District - Chapter 49 of Water Code
- Special Law District - Created by legislature
- General Law district, process is:
 - Landowner petition by majority owners
 - Review by TCEQ: “feasible, practicable, necessary, and beneficial to the land.”
 - Section 54.021 (comparable service from other systems, reasonableness of construction costs, tax and sewer rates, effect on land elevation, subsidence, natural run-off rates, water quality)
 - County/City review. City consent if in ETJ!
 - If protests, contested case hearing
 - TCEQ approval
 - Election



MUD POWERS – TWC § 54.021

- Levy taxes and impact fees
- Issue bonds
- Annex land
- Eminent Domain
- Obtain easements and property, even outside district boundaries
- Water and sewer service
- Roads
- Fire, peace officer, and solid waste service
- Build parks and playgrounds
- Elections



WHY CITIES MAY OPPOSE A MUD

- No ability to apply zoning ordinances
- Lack of traffic planning for areas in county
- Additional WWTP/operational concerns
 - Regionalization
- No ability to plan for water & sewer service outside city limits
- Stormwater effects
- Developer appoints initial board; low voter turnout
- Some bad apples



CAN A CITY STILL OPPOSE A MUD NEXT DOOR?

- Effect of SB 2038 on city's standing?
 - TWC § 54.016: MUD can't include land within city limits OR ETJ without city's consent.
- What if anyone can get out of your ETJ?
- What would a city have to show to be a party in a contested case hearing?
 - Affected person: "One who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest." 30 TEX. ADMIN. CODE § 55.256(a)

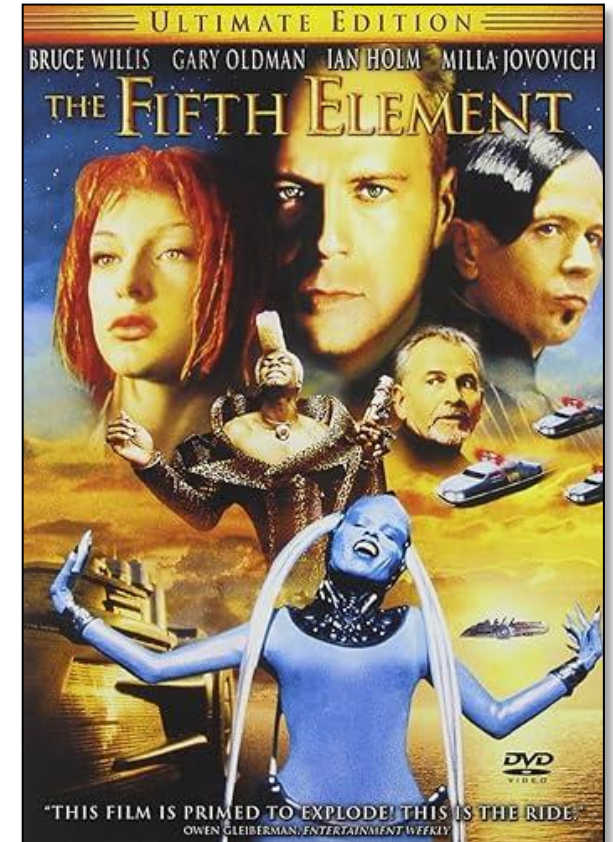
SHOW YOU'RE AN AFFECTED PERSON

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health, safety, and use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- **(6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.**

- 30 TEX. ADMIN. CODE § 55.256(c).

THE SIXTH ELEMENT

- Do you have water wells nearby?
- Do you have a regional WWTP that could serve?
 - TCEQ regionalization policy
- Water quality effects of MUD on municipal surface water supply river/lake?
 - Specific to your city, not general environmental concerns.
- Emergency Services
- Traffic
- Stormwater runoff

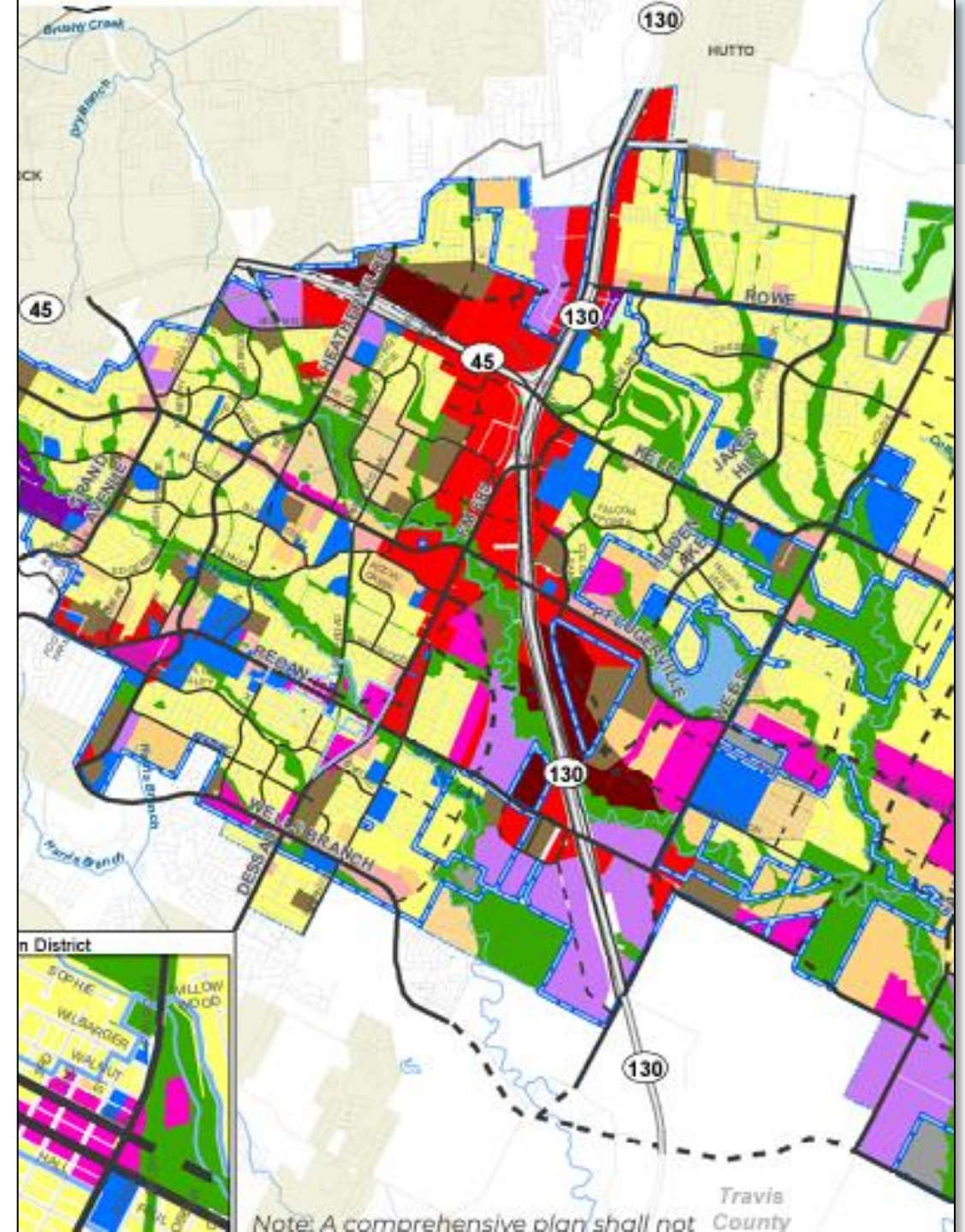


THE GRAND PRIZE?

- SOAH hearing!
-and then the TPDES draft permit gets filed.

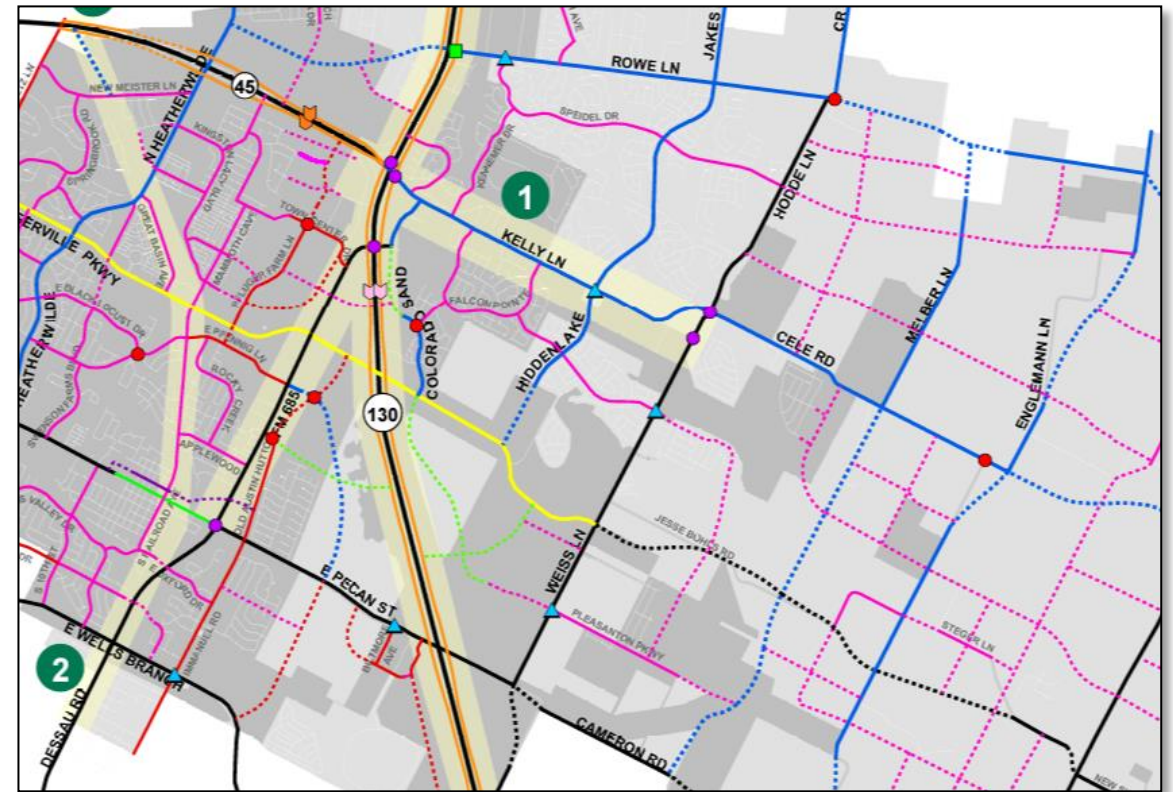


PLANNING IMPACT

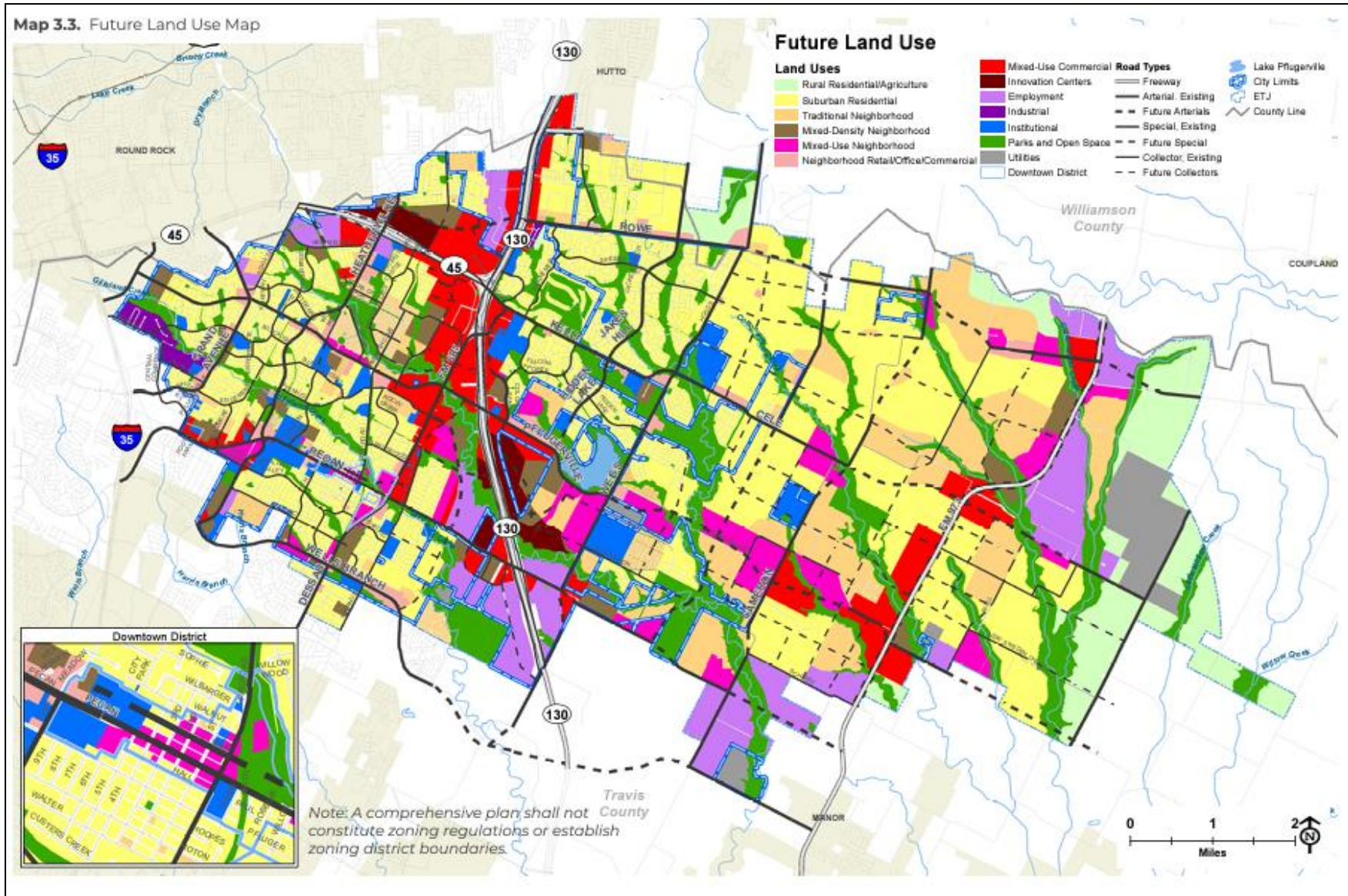


LONG-RANGE PLANNING

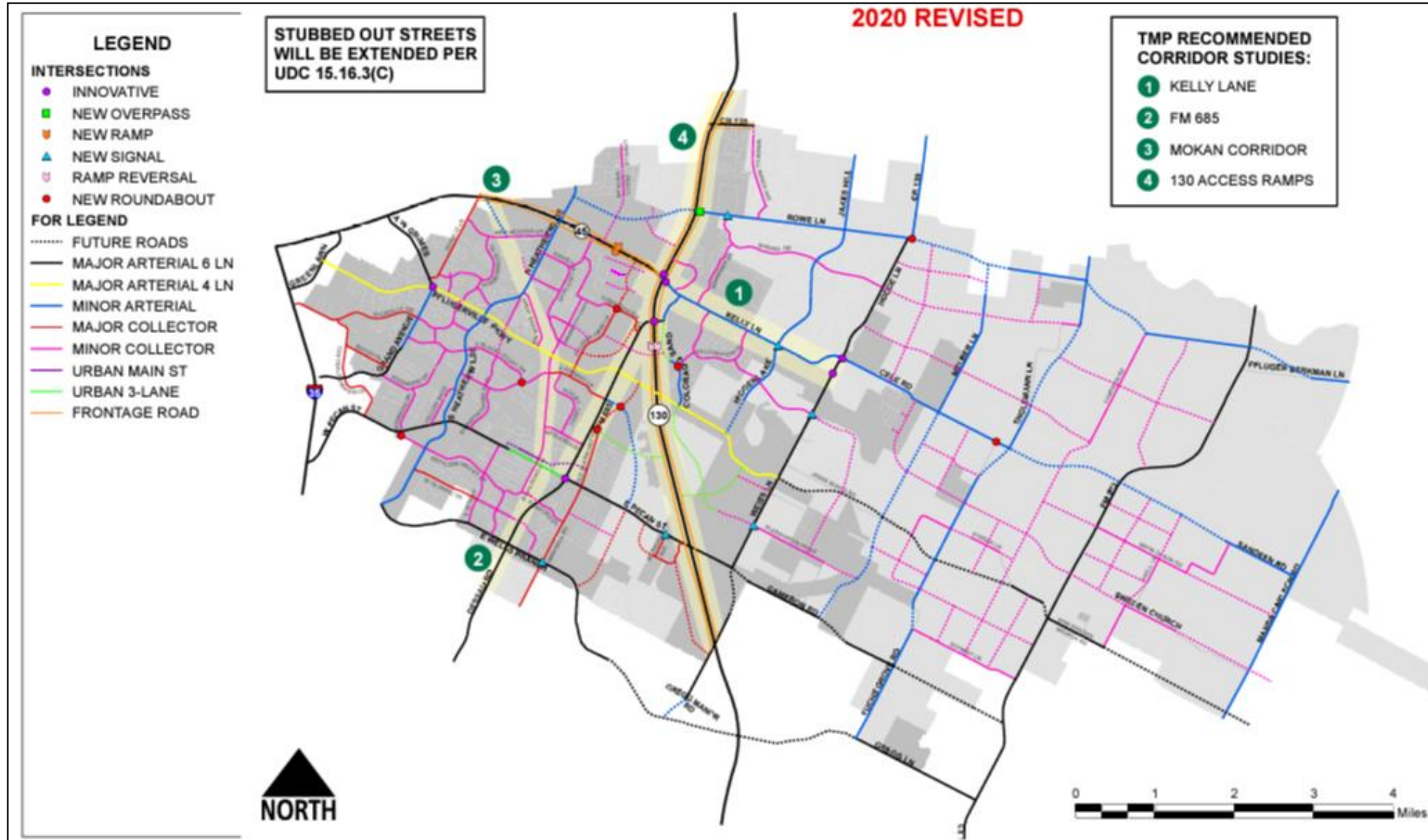
- Comprehensive Planning – City and ETJ – 20-year plan:
 - Future Land Use Map
 - Transportation
 - Water/Wastewater
 - Parks and Open Space
 - Drainage



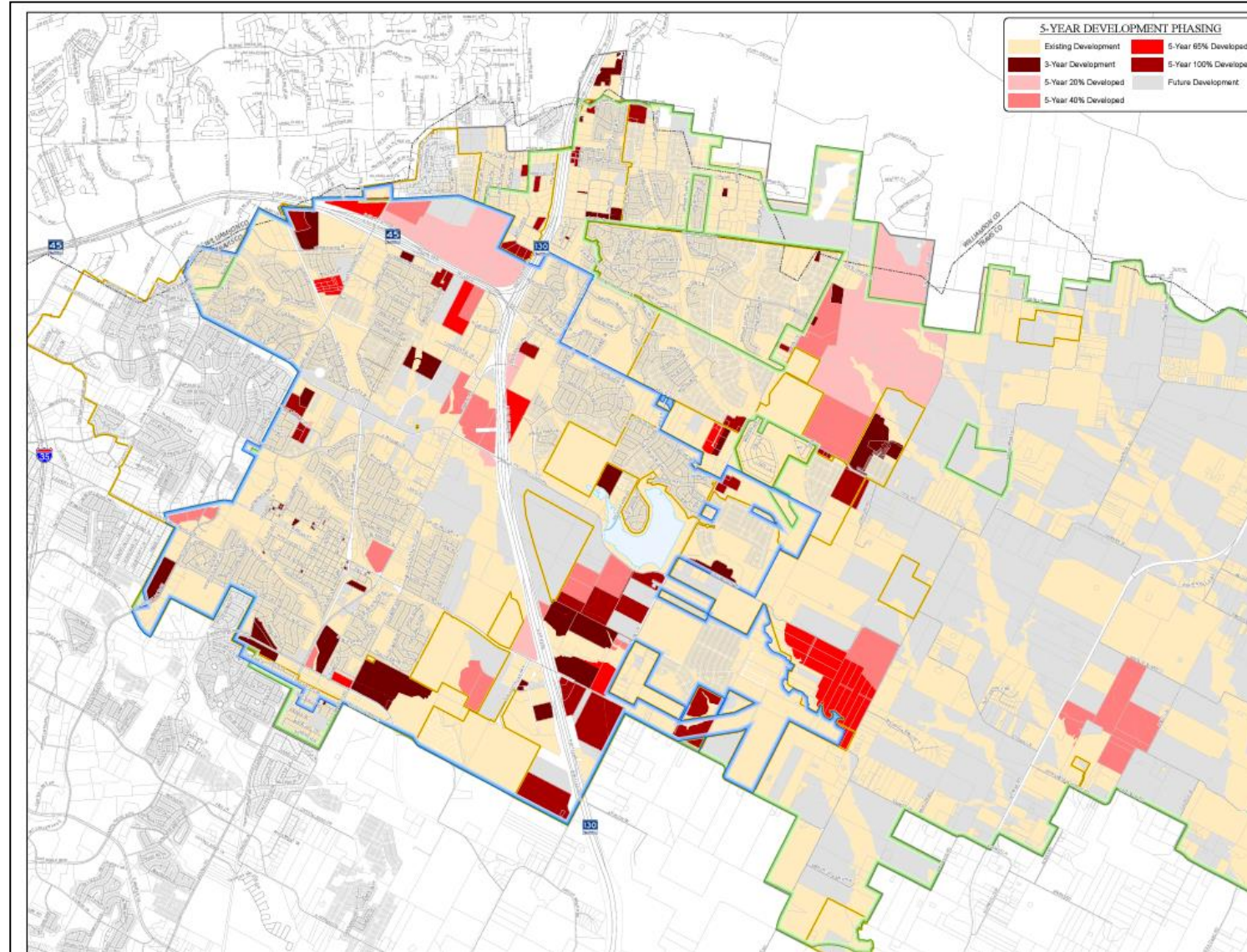
FUTURE LAND USE MAP



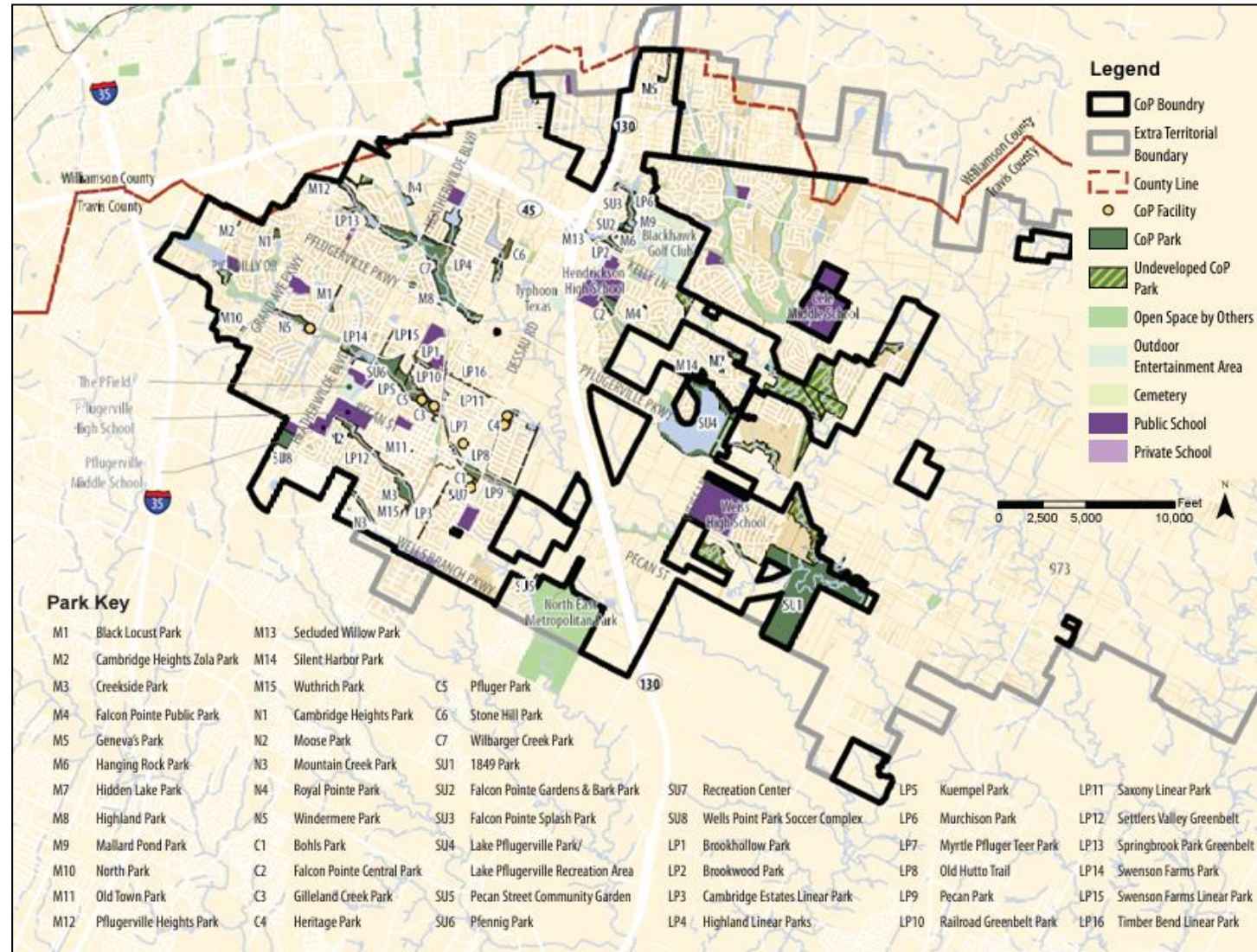
TRANSPORTATION



WATER/WASTEWATER PLANS



PARKS AND OPEN SPACE



SUBDIVISION ORDINANCES

- Minimum Frontage Standards
- Stormwater requirements
- Tree Preservation – minimize clear cutting
- Water Quality – buffer zones
- Infrastructure Design Standards
- Adequate infrastructure – water, wastewater, drainage, streets
 - Traffic Impact Analysis, drainage studies – minimize impact
- Parkland Dedication



IMPACT OF SB 2038 (so far)

- **Cities lose their planning power:**
 - Planning for properties out of your control.
 - No more subdivision/platting authority.
 - No longer required to comply with long-range planning documents.
 - Minimum standards set by the county.
 - Cities become a utility provider in areas previously planned for:
 - Water/wastewater metering, utility extensions only.



Litigation Status

Thank you!

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