

Appendix A.ii

Detailed Narratives by County of Recorded CFD Estimates

Abbreviations:

CC = County Clerk's Office

CAD = County Appraisal District

VLB = Veteran's Land Board

CFD = Contract for Deed

In this appendix we describe how we obtained an estimate of CFDs recorded since 1989 in each of the ten counties we studied in Phase One. These estimates are summarized in Chapter 3. A detailed table containing year-by-year estimates for each county can be found at Appendix E.i. Developing the CFD estimate was much more challenging than we originally anticipated, in part because each county clerk's office has its own system for classifying documents, and because these systems have often changed over time and have not always been consistently applied,

Bastrop County

Gathering the Data

Initially, the CAD sent an excel spreadsheet of all CFDs in Bastrop County. The column headings were reformatted to combine the information and create one incorporated data set with 1187 records. All of these entries were categorized by CAD as "CONTDEED." The entries spanned the period between 1/4/1989 and 5/26/11.

The County Clerk's Office categorizes CFDs as the document type "CONTRACT FOR DEED." We performed an electronic search for the number of documents placed in this category from 1/1/1989 through 10/1/2011. The search resulted in 1187 records—the same number from the CAD dataset. Ten percent of the non-VLB documents were checked to confirm that these were contracts for deed. Out of the records checked, only one had been included erroneously, as it was an amended contract for deed.

Other Online Categories

The team next searched other categories within the CC website to make sure CFDs were not categorized in other places. The team ruled out the presence of contracts for deed in the "Miscellaneous" and "Option to purchase" categories.¹

The CC website categorized 1460 documents simply as "Contracts." Ten percent of the documents were examined. Of these 146 documents checked, 66 were verified to be CFDs. Consequently, the team included 45% of the contract category in our total recorded CFD

¹ There were 149 records in the CC's miscellaneous category from 1/1/1989 to 10/1/2011. We checked two records for every year there were records categorized as miscellaneous. These documents were noted to be marriage licenses, sworn authorizations for another person to pay real property taxes, right of entry agreements, or other records. Because we found an installment note in 2007, the team then went back and checked every miscellaneous record from 2007 through 2009 for CFDs. Next, we were able to exclude the "option to purchase" category because those contracts did not meet our contract for deed criteria. The team made this determination by sampling 50%, or every other contract, of the 26 total contracts filed since 1989.

estimates. Of the 66 CFDs verified, 41 were issued by the VLB. We used this ratio to estimate the total VLB CFDs recorded.

The Count and Outstanding CFDs

Having examined both sets of data from the CC and CAD, our team proceeded to estimate the annual counts of recorded CFDs. In order to report the number of CFDs that are still outstanding, our team then used the CC system to conduct deed record searches on 10% of the CFDs originally identified by the CAD data and those found in the additional CC contract category. Our “rough” title searches involved, first, our entering the original CFD instrument number. We then recorded the grantees and legal description. Then, a second search was performed using the name of the grantee. After sorting the data by year, any subsequent documents we came across were examined in an attempt to match the original legal description.

The title history for a total of 123 CFDs was reviewed, with the following findings regarding subsequent recordings:

- 51 were found to have been converted to Warranty Deed
- 12 were found to have been converted to Warranty Deed with a Vendor’s Lien not yet released
- 5 were found to have been cancelled due to the buyer’s failure to pay
- 1 was followed by a Special Warranty Deed
- 1 was found to have been cancelled under an Affidavit of Cancellation
- 1 was followed by a Cash Warranty Deed
- 1 was followed by as a Deed of Trust
- 1 was followed by a Quitclaim Deed
- 1 was followed by a Recession of Contract for Sale

The number of contracts for which a subsequent recording was not found was 49. This represents 40% of the 123 CFD title histories we conducted. Consequently, we estimate that there are approximately 739 outstanding CFDs in Bastrop County.

Putting It in Perspective

To determine the transaction usage rate, as described in Chapter 3, the transactional denominator we used for this county consists of the sum of the recorded CFDs we estimated and the CC category DEED.

Cameron County

Gathering the Data

The first CC data, received on 09/13/2011, was an index file of all transactions recorded broken down by transaction type from 1989 through 2011. Staff at the CC office told our researchers that for the years from 1989 through 2011, “CD” (contract for deed) and “CS” (contract of sale) have been the prime labels used to designate CFDs. However, not all of those documents categorized in the CS category during this period were found to meet our CFD definition.

The second set of data, received on 10/03/2011, was a CAD set listing all recordings from 1989 through 2011. In this set, the total number of documents filed under the category “Contract for sale or deed” for the period in question was 2,978. Unfortunately, the set did not give us the ability to look at the contracts themselves, and the CAD was unable to assist us in sampling this

category. Resources did not permit our visiting the county for this purpose. The CAD file also included a separate spreadsheet of CFDs believed to be current or active.

Looking for Hidden Recordings

The deputy clerk at the CC relayed that while it is possible that CFD had on occasion been categorized in another more general category such as the “Contract” category, this was highly unlikely to have happened with any frequency.² Therefore, our team focused on the CS and CD categories, which contained a total of 311 and 1533 entries, respectively. We performed a 10% sample of each of these categories, found CD to contain only CFD, and found a prevalence rate of 78% among the non-VLB transactions in the CS category. Applying this rate to the CS filings within each year, and adding in those transactions from the CD category each year, we estimated the annual recordings of CFD for the county. We also were able to see the actual number of VLB contracts for deed recorded each year, and included this number in our findings.

Our team believes that our Cameron County CFD estimate is likely an undercount of the recorded CFDs in the county, for two reasons: First, as we note above, the CAD had a category for the period that appeared to include only documents meeting our criteria, with more than a thousand additional recordings. Second, CAD had a second large category (“CONTRACT”) of recordings that, based our experience in other counties, we believe is likely to contain at least some CFDs. Unfortunately, our researchers were not able to calculate a prevalence of CFDs that met our criteria within these CAD categories because the contracts themselves were not viewable in the materials sent to us.

Outstanding CFDs

The CAD calculated that there are 409 outstanding CFDs in Cameron. If this figure is correct, then out of a total of 1,791 CFDs recorded from 1989 to 2011, approximately 23% (n=409) are outstanding. An initial 10% check on the reported 409 was conducted in order to confirm that these were indeed outstanding contracts for deed. Out of the records checked, only one had been included erroneously, as it had since been followed by a warranty deed with vendor’s lien.

We next looked at the possibility that 409 was under-inclusive—that is, that the CAD had missed some outstanding contracts in compiling its set. To do this, we took a small (1% sample) of the CFDs found in the CC set to see if that set yielded a different rate of conversion and cancellation.³ The 1% sample was spread out so as to be representative of the 20-year time frame. Of the 18 contracts sampled, only three were confirmed to be outstanding CFDs, or 17%. However, an additional three were unable to be tracked, and it may therefore be that the prevalence rate in the CC set is as high as 33%. From these figures, our team concluded that the 23% current prevalence rate found in the CAD set is likely to be accurate.

Putting it In Perspective:

² A check on this statement was not performed because the contracts in the “CONTRACT” category were not available online and were not sent in the CC dataset. The CC staff with whom we interacted did not include the CONTRACT category because of their certainty that CFDs would not have been categorized as such during the time period studied, repeatedly assuring us that we were examining the only categories containing CFDs.

³ A 1% check was conducted, as opposed to a 10% check, because of the time consumed in performing these particular title history checks. The CC index of contracts for deed did not include property identification numbers, and the contracts were extremely difficult to locate using grantor/grantee name and legal description.

The following CC deed types were added to our CFDs estimates to form a denominator with which to calculate transaction usage rates for Cameron County: CONT DEED, CONT SALE, WARRANTY DEED, W/D & V/L, GEN W/D, GEN W/D-V/L, SP W/D, SP W/D & V/L.

El Paso County

Gathering the Data

The CAD provided data in an excel spreadsheet of all recordings from 1989 to present. Unfortunately, we discovered that the CAD office has no specific category for classifying CFDs. The CC office uses a “Contract of Sale” category (COS), though that office lacked the ability to send detailed data. However, they did send deed instrument numbers by year for the COS category for each year from 1989 to 2011 and totals per year of all recorded property transactions.

The Count

Using the instrument numbers provided us by the CC office, we pulled 10% of the COS documents per year (or 10 if there were fewer than 100 in a particular year). We learned that 202 of the 238 documents pulled were in fact CFDs. Applying this rate of prevalence to each year studied, we estimated the number of CFDs recorded in each year. In total, we believe there to be about 1,021 CFDs within the category COS. Where we came across VLB contracts in our sampling, we so note.

We supplemented this count by conducting an online search of the only additional category we felt likely to contain some CFDs. We conducted a 1% sample of the “contract” category, which contained roughly 5,000 entries for the time period. Of the 52 documents we pulled and examined, only 11 were CFDs. We used this prevalence rate to estimate the number of contracts filed in the category by year, and added it to our annual reported filings.

Our team did not feel confident basing our CFD estimates on a single data source with a single deed type category. We decided to visit the El Paso CC office in person to conduct a review several months after completing the above tally. We were surprised to see that the number of COS filings for the periods in which we searched were considerably greater than the number of such filings reported to us by the CC during our fall research.⁴ We added these corrected new numbers into our totals.

Outstanding CFDs

In order to report the total number of CFDs that are still outstanding, we used the CC online search system to conduct rough title searches on the 202 documents identified as CFD. We performed this search by putting the grantee name into the “deed name” search field, which retrieved subsequent transactions involving the grantee. The subsequent transactions with the grantee’s name were then compared to the legal description in the original transaction to ensure that the subsequent transaction involved the same property.

Of the 202 documents checked:

- 65 were replaced by Warranty Deeds
- 18 were followed by Warranty Deeds with Vendor’s Lien
- 5 had subsequent Quitclaim Deeds

⁴ In each county, we relied upon staff whose time was already in high demand; in so doing, we were unable to avoid human error, although we have attempted to report error where it was apparent to us.

- 2 were replaced by Deeds
- 2 were followed by Affidavits of Forfeiture
- 3 were followed by default notices
- 1 was followed by a judgment quieting title in favor of the grantee
- 1 had a subsequent mutual rescission of the COS
- 1 was followed by a trustee's foreclosure deed.

Therefore, 104 documents of the 202 checked (or 51%) did not show a subsequent recording that had the effect of cancelling the CFD. This 51% rate allows us to estimate that 678 CFDs in El Paso County are still outstanding.

Putting it in Perspective

To determine the transaction usage rate for El Paso County, out of the list of 221 document types used by the CC, we included the following in our denominator in addition to the CFD documents: DDD (Deed), DWW (Deed Without Warranty), QCD (Quitclaim Deed), WAD (Warranty Deed), WDL (Warranty Deed With Vendor Lien), and WLE (Warranty Deed With Life Estate).

Guadalupe County

Gathering the Data

The initial data, obtained on 09/19/2011, was a CAD file of all records that could potentially include CFDs; the records included in this dataset thus include mainly those labeled as "OTHER" (OT) (26,783). The CAD staff relayed that the data had a high rate of clerical error since the data had been entered manually. She also reported that prior to 2001, any CFDs in the appraisal district system were tagged only as "OTHER." After 2001, CFDs were to be coded as "Contract of Sale" (COS). Unfortunately, even after a preliminary sampling was performed, our team was not able to whittle down the OT category to get to a clear set of CFDs, although we did manage to discern that only a subset of the OT category (containing roughly 8,000 records) contains CFDs. For this reason, we chose to rely on the CC data.

Looking for Hidden Recordings & Suspicious Categories

The categories in the CC system, which we accessed onsite, contained the following relevant categories:

- CONTRACT (352) (1989-2005)
- CONT (213) (2005-2011)
- CONT DEED (147) (1993-2004)
- CONT SALE (294) (1993-2004)
- CONTRACT SALE (3)
- TOTAL (1009)

Our team performed three days of onsite checking of these categories to learn the rates of prevalence of CFDs within each of them. However, we report these results with some reservation because of the obviously complicated systems of categorization used by the CC during this period. We were assured these were the only categories possibly containing CFDs. However, we think it possible, given the number of changes to the system that happened in such a short time, for a number of CFDs to have been categorized in a category that remains unknown to us.

The configuration of the CC's onsite search engine permitted our team first to extract all contracts involving the VLB.⁵ One in ten of the contracts remaining were then examined without reference to year to determine prevalence rates of CFDs within each category. The prevalence rates by category were used to estimate the total number of CFDs within each category filed across the entire period. Because of the number of categories containing CFDs in this county, it was impossible for us to make annual estimates of CFDs filed without returning to re-sample by year instead of by category type. These annual estimates appear in Appendix E.i.

Outstanding CFDs

Next, we conducted deed histories for one in ten⁶ of the non-VLB⁷ CFDs in the CONT DEED and CONT categories (those used most recently to categorize CFDs) to determine what fraction of the contracts remain active. We found there to be an estimated 280 active CFDs.

To check this estimate, we returned to the CAD data. According to CAD data, there are 79 outstanding recorded CFDs in Guadalupe County. A 10% check was performed on these to ensure that they were outstanding. Out of these only one was erroneously included in the set, since it had since been followed by a warranty deed (WD). Because the CAD reported to us only those properties for which the last recorded transaction was a CFD, it makes sense that the CAD number would be significantly lower than the actual number of CFDs outstanding. Based on our understanding of the inconsistencies in the CAD system described above, we felt that this figure, while lower, was not inconsistent with our CC-based estimate.

Putting It in Perspective

The following CC deed type categories were added to the CFDs in each year to create the denominator used in calculating the transaction usage rates: WD (Warranty Deed), DEED (Deed), Gen WD (General Warranty Deed), Gen WDV (General Warranty Deed with Vendor's Lien), W/D &V/L (Warranty Deed and Vendor's Lien), SP WD (Special Warranty Deed), SP WDV (Special Warranty Deed with Vendor's Lien), and QC (Quit Claim Deed).

Hidalgo County

Gathering the Data

The first data obtained was a CAD file in MS Excel format including the CFDs filed by year, 1989 through 2011.⁸ The CAD property records supervisor was confident that CFDs would not

⁵ In some counties, the VLB CFDs were easily viewed by date. In Guadalupe, there were a large number of VLB CFDs for which dates filed were not immediately apparent. Our team chose to not focus our resources on the task of categorizing these VLB CFDs by year filed.

⁶ Because the number of non-VLB CFDs in any particular category was quite small, our researchers sometimes sampled more than every tenth contract to enhance reliability. To ensure that these additions were selected randomly, in some cases we chose every tenth contract from the entire category of contracts. Where a tenth contract turned out not to be a CFD, we would pull the 11th and so on until we found a CFD. In this way, at the end of the sample, we would have pulled greater than one in ten of the CFDs. (To see this, suppose a category containing CFD and non-CFD had 100 entries, listed chronologically, only 40 of which were CFD. Pulling every tenth of just the 40 CFDs would yield a sample of four. Pulling every tenth of the 100 mixed entries, and then pulling the 11th, 12th, and so on until a CFD was pulled, would yield close to 10 CFDs, or 40% of the CFDs in that category.)

⁷ Our team felt that our analysis should calculate the number of active CFDs between private parties as distinct from the current prevalence rates of those contracts in which the government acted as seller.

⁸ The data set included entries through 9/16/2011.

have been categorized outside of the categories included in this set during the timeframe in question. Our team then visited the CC in September to obtain a second set of data.

Comparing the Sets

During our efforts to synthesize the two data sets, we learned from CAD staff that the CC data would not necessarily match the CAD data provided because the categorization used by the CC had been inconsistent over time. This claim was later confirmed by the CC office manager, who informed us that while CFDs had been most recently been categorized as “contract of purchase,” “contract for deed” and “contract of sale,” they had previously been categorized in a general category of “contracts” which included many other kinds of documents during the years 1989 through 1998.

The CAD data included two categories for deed type: contract for deed (CFD) and contract of sale (CS). The property staff manager at the CAD and others emphasized repeatedly that their dataset included all CFDs. However, we did come across some records filed at the CC that had not been included in the CAD dataset. These entries were added to the CAD set to correct for this under-inclusivity.⁹

The CAD set was also over-inclusive. When a 10% check was performed on the CS category, only 81% were found to be CFD. We applied this 19% mis-categorization rate to the CAD set to estimate the total number of CFDs, which totaled 3,462.

Checking the Estimate

Because there were important discrepancies between the data provided by the CC and the CAD, our team next performed a separate check using the CC website. The following categories were explored online:

- CONT Contract: 1989-today¹⁰ (4712)
- CFD Contract for Deed: 1999-today (948)
- CS Contract of Sale / Purchase: 1989-today (194)

A roughly 10% sample of the total of 5,854 records identified (583) were examined. Of these, 173 (30%) were found to be CFDs. To get to annual estimates of CFDs filed, we calculated a rate of prevalence of CFDs within each category and applied it to the total number of filings to arrive at a total of 2,692 CFDs. Based on these findings, we concluded that the total number of CFDs filed in the county falls somewhere between 2,692 and 3,462, based on the CAD dataset. We have chosen to report the larger CAD figure because, in comparing the CAD and CC sets year-by-year, we saw a consistent pattern of undercounting within the CC set. We suspect that the additional CFDs reported to us by CAD lie hidden in other categories within the CC system that we were unable to uncover.

Using the appearance of VLB contracts in our online CC sample, we estimate there to have been 185 VLB CFDs recorded from 1989 to present. As the CC appears to have mis-

⁹ When asked about these discrepancies, CAD personnel explained that these were caused by faulty or idiosyncratic data entry.

¹⁰ This category was broken into two time periods, and two separate prevalence rates were calculated, because it was suspected that the category definition was applied one way from 1989 to 1999 and another from 1999 to present.

categorized a large number of CFDs, we strongly believe this VLB estimate to be an undercount.

Outstanding CFDs

The CAD also reported to us that there are 670 outstanding contracts for deed in Hidalgo.¹¹ In order to ensure that these were in fact outstanding CFDs, a 10% sample (67) was taken and a deed history conducted by inputting the property identification numbers on the CAD website. Within the 67 deed histories conducted, we found only 7 records to have been incorrectly reported as outstanding. In other words, these had subsequently been replaced by a general warranty deed (GWD), warranty deed (WD), or warranty deed with vendor's lien (WDVL). Applying this error rate, we estimate the total number of outstanding CFDs as 600, or 17% of those recorded since 1989.

Checking the Prevalence Rate

In order to check the accuracy of the prevalence rate we calculated, we returned to the 10% sample pulled above (from the CC website) to see how many of these were outstanding CFDs. In checking the title histories of 590 CFDs, we found a current prevalence rate of 18%, which strongly supports our earlier finding based on the CAD data.

Putting It in Perspective

Recorded CFDs are reported as a fraction of overall similar transactions recorded (transaction usage rates). To create this denominator for each year, we added to recorded CFDs the total recordings in the following CAD categories: General Warranty Deed (GWD), Warranty Deed (WD), Warranty Deed and Vendor's Lien (WDV), Assumption Warranty Deed (AWD), Assumption Warranty Deed with Vendor's Lien (AWDV), and Special Warranty Deed (SWD).

Maverick County

Gathering the Data

Our first data received, a CAD set, reported 119 recorded "contracts of sale" (CS) from 1989 through 1997. A second CAD set reported 4,675 "contracts of sale" (CS) believed to be current or active. A third reported 144 recordings of "contracts for sale" (CS) for 2010 and 2011. Our team had difficulty interpreting these different datasets, as it was difficult to imagine such a high number remaining active had so few in fact been recorded during the first eight years and last two years of the time period of interest. We were unable to resolve these inconsistencies through communication with CAD staff, and chose for this reason to move on to another data source. A dataset from Stuart Title reported 2,503 CFDs (CONT) recorded from 1989 to present. Finally, the CC verbally reported 2,497 CFDs and sent copies of every 100th contract.

Putting the Data Together

A sampling of every 10th document in the title company (TC) set revealed that only 12 of the 251 documents (4.8%) examined were not CFDs; only 3 of the total examined were VLB contracts. Subtracting 4.8% of the total number counted in each year, we estimated that 2,383 CFDs were recorded in Maverick County from 1989 to present, based on this dataset. We used the fact that only 3 of 239 CFDs we viewed were VLB CFDs to predict that about 30 of the total set were VLB CFDs, but were unable reliably to predict their filing dates.

The CC set containing 2,497 CFDs in categories CONTRACT/DEED and CONTRACT FOR DEED combined was reduced to 1,798, as 7 of the 25 reviewed in that set were found not to be

¹¹ These were the properties CAD pulled as having a CFD as the last recorded transaction.

CFDs. Note that this total does not include data for the years 1989 through 1991; however, it is still quite low in comparison with the TC set. In light of our confidence in the analysis used in compiling the TC data, our team believes that the discrepancy may stem from the sampling method used with the CC set. Because of the time and resource constraints of the CC office, we were permitted to view only 1% of the total documents in the relevant category. We believe that that our mis-categorization rate (7/25) was likely too high and would have been lower had a deeper sampling been possible.

Our team adopted the TC figures in this report because: (1) our discussions with the company agent led us to have strong confidence in his understanding of our definition of CFD; (2) 1 in 10 contracts were viewed as opposed to 1 in 100; (3) we were able to view one-tenth of the TC's reported CFDs in the context of their overall chains of title, as discussed below; and (4) the TC figures were not too far off from those obtained from the CC, yet covered the full time period we sought to study.

The TC figures were updated with an actual TC count (not a 1/10 estimate) performed with the TC assistance in the spring of 2012.

Outstanding Contracts

To determine how many CFDs remain active in Maverick County, our team again enlisted the assistance of the TC, which provided us the title history for 239 randomly selected properties with CFDs. Of these, only 37% were found to be outstanding. Others were followed by warranty deeds or other deeds, a cancellation through a recorded cancellation ("express cancellation"), or deemed by us to have been "implied cancellations" after our discovery of a subsequent CFD granted by the original grantor to a second buyer.

Putting It in Perspective

To compute transaction usage rates for Maverick County, we enlisted the assistance of a title company in creating transaction denominators inclusive of all deeds.

Starr County

Gathering the Data

Two site visits were made to the Starr CC in an effort to obtain data on CFDs, which were not made available to us online or via the mail. The team received approval for hard copies of CFDs at no cost at a Starr County Commissioner's Court meeting on December 11, 2011.

The CC provided us with a list of 1,058 instrument types that the office uses to categorize documents. From these, the team identified 20 suspect categories to investigate. We identified 391 CFDs that met our CFD typology, and uncovered seven VLB recordings. The different categories in which we found these CFDs are listed below:

C-D	CONT – DEED	100% of documents included
C-S*01	CONT – SALE	100% of documents included
CA*03	CONT AGMT	14% of documents included
CD*01	CONT DEED	100% of documents included
CS*01	CONT SALE	100% of documents included
CTR	CONTRACT	24% of documents included
CS	CONTRACT OF SALE	100% of documents included
CFD	CONTRACT FOR DEED	100% of documents included
COP	CONTRACT PURCHASE	100% of documents included

Outstanding Contracts

In order to report the number of CFDs that are still outstanding, our team used the CC database to conduct deed searches on 10% of the CFDs identified. We performed a “rough” title search by entering in the name of the grantee into the party summary search field. This brought up any subsequent transactions which the original grantee was a part of, whether as grantee or grantor. We then attempted to locate any entries that matched the original legal description.

A total of 39 CFDs were checked. Of these 39 documents:

- 19 were found to have been converted to Warranty Deed
- 1 was replaced by a Special Warranty Deed with Vendor’s Lien
- 1 was replaced by a Repossession document
- 1 was replaced by a Gift Deed
- 1 was replaced by an Agreed Termination of Contract
- 1 was replaced by a Deed of Trust

Therefore, that left 15 documents for which we did not find a subsequent recording that had the effect of cancelling or replacing the CFD. This represents 38% of the 39 documents searched. Therefore, we estimated that there are 149 outstanding CFDs in Starr County.

Putting It in Perspective

The team included the following deed types in the Starr County Transaction Usage Rate denominator: Assumption W/D, Assumption WD, Assumption Deed, Assumption Warranty Deed with Vendor’s Lien, Deed, Deed with Vendor’s Lien, Deed without Warranty, General Warranty Deed, General Warranty Deed with Vendor’s Lien, Quit Claim Deed, Special Warranty Deed, Special Warranty Deed with Vendor’s Lien, Surface Warranty Deed, and Warranty Deed with Mineral Lease.

Travis County

Gathering the Data

The CAD sent two data sets. The first set contained a list of the total numbers of transactions in each recording category per year. This data set also contained a listing of all properties having Contract of Sale (COS) as the last recorded transaction, totaling 475 properties. The second data set contained all properties that have ever had a COS recorded from 1989 to present.

In addition to the CAD data, we received data from a title company (TC). This data had two categories: “COS” (contract of sale) and “CFD” (contract for deed) from 1985 to present.

Putting the Data Together

We began with the category in which we felt most confident. Because we were relatively confident that the TC CFD category contained high rates of CFD, we pulled only two documents per year, and 10% in those years with a greater than 10% increase in recording. Of the documents categorized as CFD, 88% of the documents pulled met our CFD definition. No VLB contracts were found.

When we began a similar testing of the Travis County (TC) COS category, only 50% met our CFD criteria. Therefore, we reverted to our standard 10% sampling to determine a more reliable prevalence of CFDs in the category. The check showed a 58% rate of CFD. A total of 71 out of the 210 COS documents checked were VLB.

We then examined 10% of the CAD transaction category COS from 1999-2011. This category appeared significantly over-inclusive compared to the TC data in that it contained many business sale agreements or personal property sales in addition to valid CFDs.

Using the more reliable TC set, we estimated that the number of CFDs filed in the county from 1989 to 2011 was approximately 1,576. This number was found by applying the rates of prevalence of contracts for deed in the Title Company COS and CFD categories to the total number of recordings filed in each category, each year, respectively. The sum of these two adjusted categories appears, by year, in Appendix E.i, Table A.

Outstanding CFDs

In order to report the total number of CFDs that are still outstanding, we used the CC system to conduct searches on the 167 documents identified as CFD in the TC set. To do this, we first put the grantor name into the “grantor” search field and the grantee name into the “grantee” search field, which retrieved subsequent transactions involving the same grantor and grantee. If this search retrieved no documents, another search was performed by putting the grantee name in the “grantor” search field. We then attempted to match any subsequent transactions involving the grantee with the legal description in the original transaction.

Of the 167 documents checked:

- 36 were followed by Warranty Deeds
- 7 were followed by Warranty Deeds with Vendor’s Lien
- 3 had subsequent Quitclaim Deeds
- 35 had subsequent Deeds
- 1 had a subsequent affidavit of forfeiture
- 2 had subsequent notices of forfeiture
- 1 had a later rescission of the COS

Therefore, 82 of the 167 CFDs checked (or 49%) did not show a subsequent recording replacing the CFD. This rate allowed us to conclude that about 772 CFDs in Travis County are still outstanding.

Checking the Rate

To check the accuracy of our CFD prevalence rate, we compared these results with the CAD calculated rate of outstanding CFDs. Travis CAD provided us with a list of 475 properties believed to have a CFD as the last recorded transaction. To test the accuracy of CAD’s calculations, we first pulled a 10% sample of documents to verify that they in fact were CFDs. Of the 48 sampled properties which COS listed as the last recorded transaction, 38 were CFD

(15 of which were VLB contracts). This allowed us to estimate that only 375 of the entries in the set actually involved CFD.

We next turned to the question of whether or not these 375 were still outstanding. Of the 38 (10%) properties checked, one involved a subsequent foreclosure and two had converted to warranty deeds. Applying this rate of error, we predict that 345 of the set are truly outstanding CFDs.

The difference in the CAD and TC findings give our team pause. The difference in the fraction of CFDs active out of CFDs ever recorded (TC=49%; CAD=22%) means that we are unable to predict the number of outstanding CFDs with a high degree of confidence, although we would put the number somewhere between 345 and 772. We note that the method of pulling only those records for which the CFD was the last recorded transaction is likely to give an undercount, as those properties that still have outstanding contracts for deed will not be counted if their last recorded transactions are affidavits or other recordings that do not operate to transfer ownership. For this reason we concluded that the true number of outstanding contracts is likely closer to 772.

Putting it in Perspective

Out of the list of 30 document types, we used the following types to determine the total number of recorded property transactions in each year: AD (Assumption Deed), DW (Deed without Warranty), QD (Quitclaim Deed), SW (Special Warranty Deed), WD (Warranty Deed).

Val Verde

Gathering the Data

The first data set obtained was a CAD set reporting roughly 8,500 recordings in a category named "OTHER" from 1989 to the date we obtained the data in September 2011. The CAD staff reported to us on several occasions, with confidence, that no CFDs would appear outside of this category, but they also stated that the category was dramatically over-inclusive. Unfortunately, staff members were not able to suggest a way to narrow this category to only CFDs. For example, confining the search to OTHER recordings with a volume and page number, which eliminated some recordings not thought to be CFDs, served to eliminate only about 500 entries.

A second data set, obtained from the Southwest Abstract Title Company (TC), made use of three categories to describe CFDs: Contract for Deed (CFD), Sales Contract (SC), and Contract of Sale (CS). The title company representative was confident that CFDs would not have been categorized outside of these categories during the timeframe in question, though the data reported to us contained data only from the years 2003 to 2011.

Putting the Data Together

During a visit to the CC in October, we first attempted to cross-list the TC data with the CC documents categorized as "CFD" and "CFD*2," the two categories reported to contain CFD by a longtime employee of the office. The TC entries not found in the CC data were added to our CFD count, producing a list of unique CFDs by year. The CC data was digitized only after 1991, so the list we compiled included only data from the CC list from 1991 to 2003, and data from both sources from 2003 forward. Prior to 1991, CC data was recorded only in large books not searchable by deed type.

Next, we explored in more detail the CC categories in which those CFDs were caught by the TC but mis-categorized by the CC. It was important to explore these categories both because the

TC list appeared more comprehensive—catching what had been missed in the CC data—but also because the CC deed type designation system had been changed significantly over the years, causing us some concern that perhaps some older broader categories containing CFDs had not been recently searched for the purpose of recoding contracts for deed as CFD or CFD*2.

Looking for Hidden Recordings

In the first TC category, “CFD,” six entries meeting our CFD criteria appeared that had not appeared in our CC search of CFD and CFD*2. Of those, two were Veterans Land Board CFDs, one had received a CC designation of “CONTRACT,” one was labeled as a “CONTRACT OF SALE & PURCHASE,” and one was called an “AGREEMENT.” The headings appearing at the top of these documents, not surprisingly, were, respectively, “sales contract,” “contract for purchase,” and “sale of property agreement.” Each was judged to be a CFD based upon our team’s established criteria. The TC’s SC (Sales Contract) category contained three CFDs that the CC categorized as CONTRACT and one other CFD categorized as AGREEMENT. The final TC category of CS (Contract of Sale) contained 15 CFDs not involving the Veterans Land Board. One of these was coded as “AGREEMENT” and all others were coded by the CC as “CONTRACT OF SALE & PURCHASE.”

The CC’s CONTRACT category was found to have about 20 recordings for the period 1991 to present. Our team examined each recording in this category and analyzed only those involving real estate. Of these, only one involved the VLB and was segregated from our overall CFD count.

Because the TC data contained 25 examples of CFD labeled by the CC as CONTRACT OF SALE & PURCHASE, our team spent the most of the time examining this CC category as a place for possible hidden recorded CFDs. We began with a one-in-ten examination of the category instead of our more exploratory two-per-year search because of our strong suspicion that this category would contain CFDs. Because of the high representation of CFDs in our 10% sampling of this category with 290 recordings, our team opted to analyze every recording in the category. Out of the 290 recordings, 216 involved the VLB.¹² The remaining contracts were analyzed according to our CFD criteria.

Our team looked at two additional CC categories. The AGREEMENT category was briefly considered, but since the TC had found so few CFDs labeled by the CC in this way, and because the category included 274 recordings, it was determined that close inspection of the contracts in this category would not be a good use of our resources. We also analyzed each recording in the LEASE OPTION AGREEMENT category, but found only one in this category that met our CFD criteria.

The Count

Having completed our review of the CAD, TC, and CC datasets, and having spent time onsite at the CC office for the purpose of comparing the sets and analyzing the recorded documents themselves, our team completed the count of CFDs filed by year for Val Verde County.

Outstanding CFDs

In order to report the number of CFDs that are still outstanding, our team used the CC system to

¹² These 216 VLB contracts were added to the other three found by our team. Unfortunately, we were unable to see the filing dates on these contracts without pulling up the contracts. We opted not to devote resources to sorting these by date filed.

conduct deed searches on 54 CFDs originally identified by the county clerk. Thirty of those were found to have been followed by warranty deeds (not necessarily with the same parties). Six were found to have been followed by warranty deeds with vendor's liens. One was found to have been cancelled due to the buyer's failure to pay. One was found to have had a subsequently recorded executive deed, and one recorded CFD was not searchable in the system. Therefore, the number of CFDs for which we could not locate a subsequent recording was 15, or 28% of those CFDs for which a search was performed.

For each of the CFDs we believed to be outstanding, our team attempted a conversion search in the CC records that included: (1) using the original grantor and grantee names in the search index to locate subsequent recordings involving both parties; (2) use of the original grantee name in the general name-search index in order to pull up all subsequent recordings involving the original grantee; and (3) use of general name-search index to pull up all recordings involving the names of subsequent grantees to whom the original CFDs was assigned via a recorded instrument. Where our team could not find a subsequent recorded transaction granting an interest in the property to someone, the CFD was assumed to be outstanding. One complication with this method was that, in those cases where the particular grantee name generated more than a single screen of documents due to the prevalence of the particular name in the county, our team was unable to pursue each possibility within the time constraints of this particular project. In such situations, multiple searches were conducted in an effort to make a "best-attempt" search without engaging in the kind of exhaustive search that a title company, for example, would be likely to conduct.

Fortunately, in the case of Val Verde County, checking a percentage of the remaining CFDs (those that had been hidden in the other CC categories) yielded an identical rate of current prevalence. We found that only 5 of the 18 checked,¹³ or 28%, did not have a subsequent recorded transaction granting an interest in the property to someone. Thus, the number of recorded CFDs still outstanding in a Val Verde was estimated to be 44, or 28% of the total number of non-VLB CFDs identified in our recorded count.¹⁴

Putting It in Perspective

The following categories were included in the denominator in calculating our Val Verde transaction usage rate: AD-Assumption Deed, DEED-Deed, QC-Quitclaim Deed, SWD-Special Warranty Deed, WD-Warranty Deed (including WDLE-Warranty Deed Reserving A Life Estate and WDVL-Warranty Deed With Vendor's Lien). Because of the extremely small numbers of recordings by year, annual transaction usage rates were not calculated.¹⁵

¹³ Our researcher performed this second rate check on contracts hidden in other contracts until it became apparent that the rate was the same for this second group of contracts.

¹⁴ Because the majority of recorded CFDs in Val Verde County were VLB contracts, our team separated these VLB contracts out of the analysis at this stage in order to calculate a dropout rate comparable to the other counties lacking such a heavy VLB presence. Due to time constraints and our primary goal of being able to compare the contracting practices of non-governmental entities across counties, our team did not estimate the number of VLB contracts still active in Val Verde County.

¹⁵ The 16.7 transaction usage rate reported for Val Verde includes VLB CFDs. The transaction usage rate for non-VLB contracts is 12.3. We calculated this non-VLB rate only for Val Verde because of the very high fraction of VLB CFDs in that county.

Webb County

Gathering the Data

Upon following up with the CC about our written request for data, we learned that the office does not have the ability to sort recorded documents by type. Some staff have maintained rough lists of all contracts, as opposed to other kinds of recordings, but these lists included tens of thousands of entries for the time period of study without any further categorization. A CC staff member generously volunteered to pull out as many CFDs as he could within a period of several days' work. His review of some 7,000 documents yielded roughly 200 documents entitled "Contract for Deed;" however, time did not permit a closer review that would have enabled him to pull other documents titled differently that also conform to our criteria. The TC dataset was similarly unyielding of results, as it provided only barebones information about more than 8,000 undifferentiated contracts that we were unable to view.

The CAD set obtained in Webb allowed us to see the number of "contracts for sale" (CS) recorded by year from 2000 to present. We were assured that no other category in the CAD system had been used to categorize CFDs; however, contracts for sale recorded from 1989 through 1999 were lumped together in a single time category. Thus, we were not able to see the filing dates for these contracts, although we were able to view instrument dates. Further, we learned that the 1989 through 1999 figure might not represent the full number of recordings during this period, as the practice during that time had been to remove from the tally those CFDs for which a subsequent conversion or cancellation had occurred. As a result, we believe that our count for Webb County excludes a large number of CFDs recorded during the 1989-1999 period.

Our team chose the CAD set on which to base our estimates for several reasons: First, although we could not view the contracts themselves, the CAD set was the only set with subcategories that could help us hone in on the CFDs. Second, we conducted several interviews of the chief appraiser and his staff, and were assured that both shared our definition of a CFD (they maintained repeatedly that only those contracts involving real estate, with payments over time, and in which title was withheld, would have been categorized by them as CS). Third, the staff member who gave us these assurances had been working with the data system for many years, and we felt confident in his understanding of the classification system.

The Count

Our team adopted the CAD data in estimating CFDs in Webb County. Grantors in these recorded CFDs were viewable by our research team. We noted the presence of VLB CFDs where applicable.

Outstanding CFDs

The outstanding CFDs were found in Webb by identifying all contracts within the CS category that had on file as owner in the CAD contract records the original grantor listed in the CFD. We adopted this method because there was no way to identify the specific CFDs, and therefore no way to conduct deed histories, within the CC records. We were not able to find a local title company willing to assist in conducting the histories. Unfortunately, reliance on this methodology means that we were not able to perform sample histories and that the outstanding CFD count for Webb is likely an undercount. If a CFD buyer notified the CAD that they were the owner, then the original grantor would no longer be listed in the CAD records as the owner. We believe there could be many such cases, and they are not counted here because they no longer have a match between the original grantor name and the current CAD owner. With these reservations, we report an outstanding CFD prevalence rate of 32%.

Putting It in Perspective

To compute the transaction usage rate as a fraction of total similar transactions, our team first included in the annual denominator the following categories, in the years for which they were used: Deed, Deed of Life Estate, Deed Without Warranty, General Warranty Deed, General Warranty Deed With Vendor's Lien, Quitclaim Deed, Special Warranty Deed, Special Warranty Deed With Vendor's Lien, Warranty Deed, Assumption Warranty Deed, Warranty Deed With Life Estate, Warranty Deed With Vendor's Lien, and Assumption Warranty Deed With Vendor's Lien. However, we learned that the use of these categories changed dramatically across years, and these changes were operating to invalidate our usage rates. Therefore, we opted to use instead for our annual denominator what the CAD calls a "deed count." The category includes, unfortunately, wills and "other" recordings, which makes the Webb usage rates not comparable to those computed in other counties. However, in using this consistently calculated annual "count" we were able to get a clearer picture of what was happening within the county year by year.

We were unable to calculate transaction usage rates for the years 1989 through 1999 due to the absence of accurate denominator categories for those years. These years were lumped together in a single grouping.
