

REAL ESTATE DEVELOPMENT IN RURAL AREAS IN CHILE

Daniel Cristi Le-Fort
Senior Associate Dentons

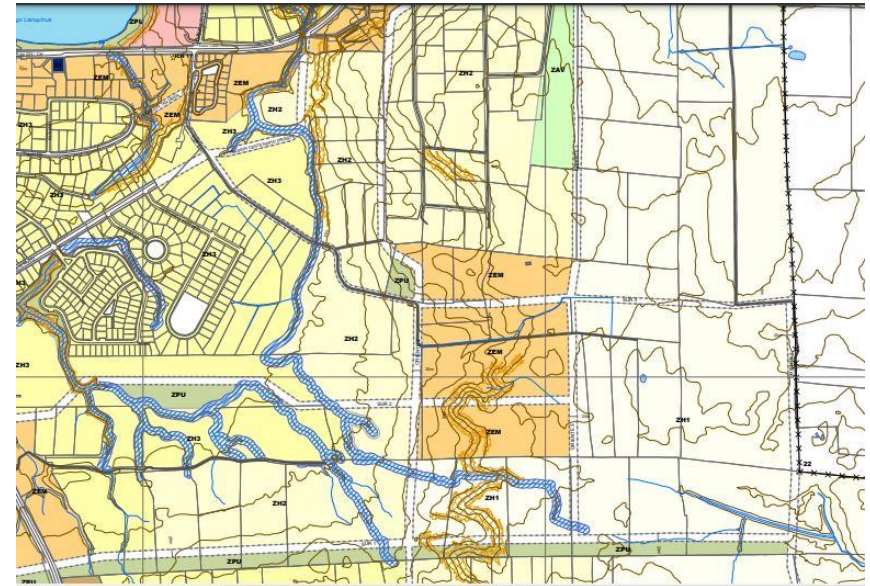
April 21, 2023

URBAN PLANNING

Broad Overview:

URBANISM AND CONSTRUCTION LAW: Urban planning is “the process carried out to guide and regulate the development of urban centers according to a national, regional and communal policy of socio-economic development”.

1. **National** > Example: National Land Management Policy (Published in the D.O. July 5, 2021).
2. **Intercommunal** > regulates the physical development of urban and rural areas of different communes that, due to their relations, are integrated into an urban unit > example Santiago.
3. **Communal** > defines urban limit and the constructing requirements applicable to the zones defined in the plans.



URBAN PLANNING

Broad Overview:

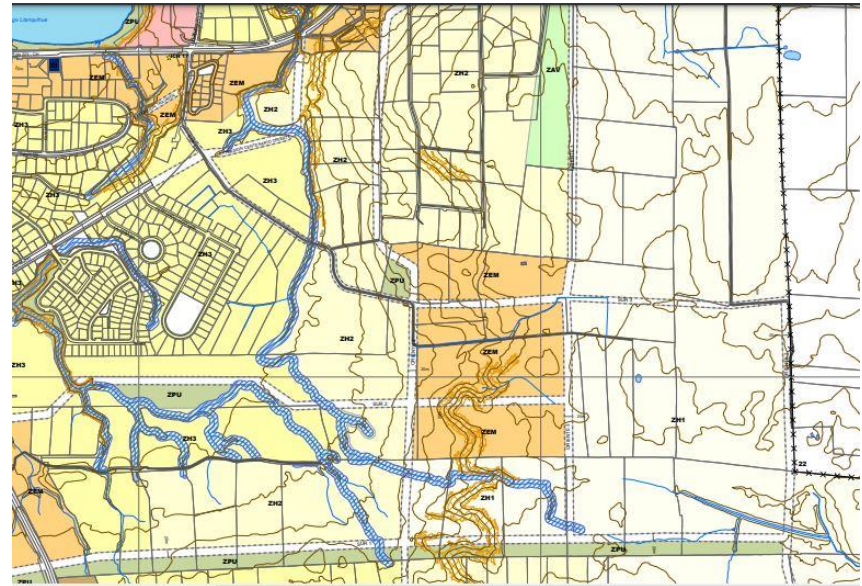
What happens with constructions beyond the dotted line?

Urbanism and Construction Law exceptionally allows to build outside the urban area (Art. 55) >

*“Outside the urban limits established in the Regulatory Plans, **it shall not be permitted** to open streets, subdivide to form towns, or erect constructions, except for those that are necessary for the agricultural exploitation of the property or for the dwellings of the owner and his workers [...]”.*

Authority in charge shall (Seremi Vivienda y Urbanismo) ensure that subdivisions and constructions on rural lands, for purposes other than agriculture, do not give rise to **new urban zones** outside of intercommunal urban planning.

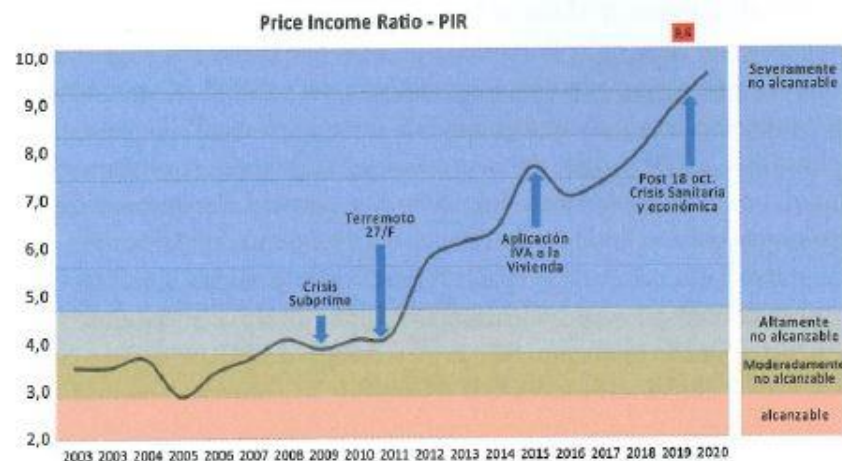
- Construction for other purposes in rural areas:
 - Requires the authorization of the Agricultural Ministry, with the prior report of Ministry of Housing and Urban Development.
 - The change of land use must be approved > it is assumed that land outside the urban area will have mainly an agricultural destiny.



REAL ESTATE DEVELOPMENT

Paradigm shift:

- Paradigm shift: rural-urban migration > urban - rural migration > around 334,000 people left Santiago during the pandemic.
- Rising housing costs:
 - a) Increase of land Price, which is about 46%-49% of the cost of a Project.
 - b) New regulation applicable to real estate projects.
 - VAT over sales of new buildings since 2014 (19%)
 - New construction requirements (thermal insulation, contributions to public space, among others).
 - Development Risks.
- COVID-19 Outbreak.
- Reduction of attendance to work.
- Change of perception of the concept of the city: "*The city ceased to signify many of the virtues that for a long time it represented for the people*" (Ricardo Greene, EMOL, 2020).
- **Living on rural areas has become very attractive.**



Fuente: CChC en base a CASEN 2020 y Mercado inmobiliario CChC.

“*Como crecen Las Ciudades*”, Logros y desafíos en políticas públicas, Ediciones LYD (2023).

SUBDIVISION OF LAND PLOTS IN RURAL AREAS

Decree Law 3,516 of 1980.

On the other hand > Decree Law 3,516 of 1980.

It allows the subdivision of rustic properties (i.e., land suitable for agriculture, livestock or forestry) outside the urban zone or the intercommunal regulatory plans of Santiago, Valparaíso and metropolitan regulatory plan of Concepción, which may be freely divided by their owners into plots of land with an area of not less than 0.5 hectares.

The new land plots will be subject to a prohibition of change of use > agriculture, livestock or forestry.

Subdivisions executed in breach of this decree > subject to sanctions (void + fine).

The Agricultural and Livestock Service (SAG) is responsible for approving subdivision plans for rural properties.

According to SAG: *"In 2019 we had an average of 10 thousand requests and we have risen, by 2021, to 19 thousand, a 90% increase. In addition, we are projecting for 2022 to reach 20 thousand requests"* (www.sag.cl, 2022).

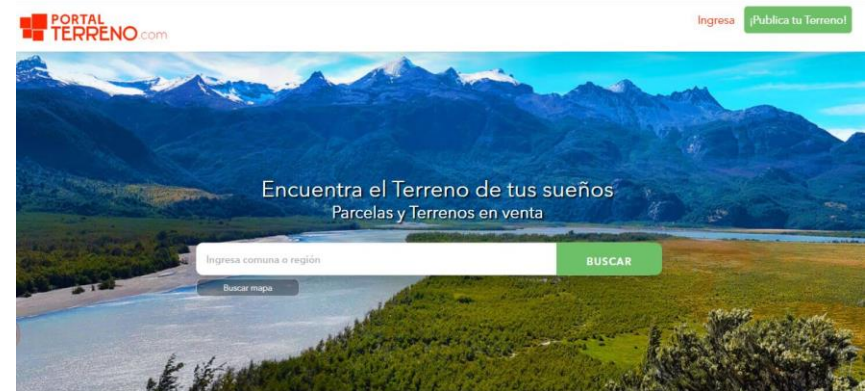


Fuente: página web del proyecto, www.bahiapanguipulli.cl

PUBLIC POLICY DEFICIENCY:

The problem starts:

- Under DL 3516, various real estate projects have been developed, without necessarily having agricultural purposes, and where houses are subsequently built for residential purposes (first or second homes). This would be generating the development of urban zones outside of the Territorial Planning Instruments.
- Issues that arise:
 - Water supply.
 - Environmental impact.
 - Collapse of local infrastructure.
 - Loss of land with agricultural value.
 - Impact on communities.
- It is incumbent upon the Regional Ministerial Secretariats of Housing and Urban Development, the corresponding Agricultural Services and the respective Municipalities to oversee compliance with the provisions of this Decree-Law.



PUBLIC POLICY DEFICIENCY:

How to approach it?

- **CLASH OF INTERESTS.**
 - **LEGISLATIVE PATH:** Various bills of law that seek to address the problem. Among them: Bill of law number 15.215-15 dated July 20, 2022.
 - **ADMINISTRATIVE:** Pronouncements by the competent authorities, and administrative appeals by individuals against projects
 - **JUDICIAL:** Filing of judicial actions in order to annul the associated administrative acts in contravention of the law.
- The legal framework is overtaken by reality.



RECENT JUDICIAL CASES

The Tipping Point

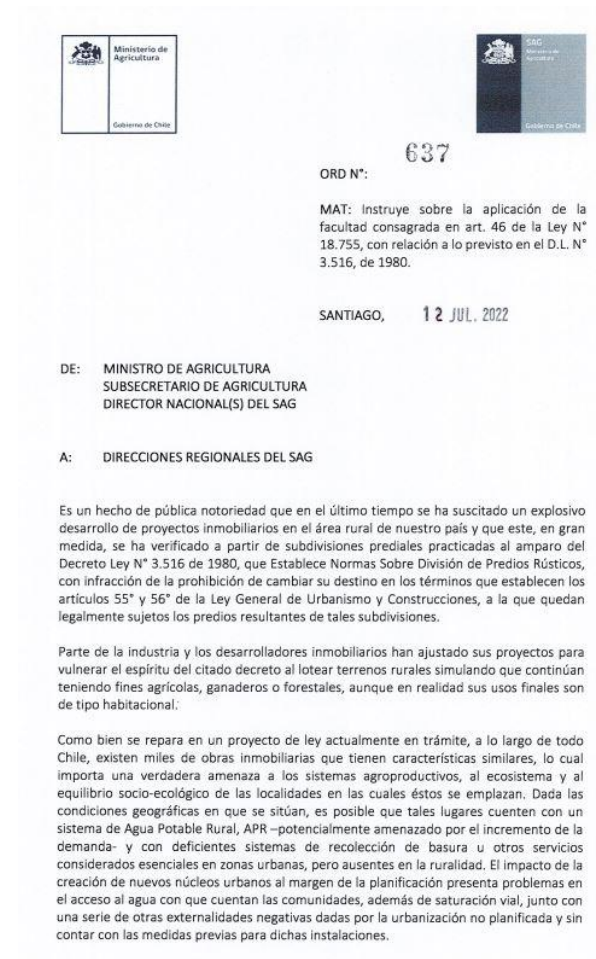


- **BAHÍA PANGUIPULLI CASE** (Supreme Court Case No. 62.948-2020):
- Project with 296 land plots, in the surroundings of Navidad.
- It is a project that would have a "housing" objective, the provisions of the aforementioned D.L. would have been violated.
- According to the CGR's interpretation of Article 55 of the LGUC, **prior to the subdivision, it would be necessary to have the authorizations indicated in article 55.** The absence of such these would mean that the subdivision was improperly carried out and that consequently the building permits requested would be improperly granted, which would result in their nullity.
- Then, owner was sanctioned by the Superintendency of the Environment with the amount of 351 UTA (about USD\$278,213)

ADMINISTRATIVE MEASURES

DL 3.516 - Instructions Ministry of Agriculture

- **On July 12, 2022**, the Ministry of Agriculture issued Ordinary 637, which instructs the Regional Departments of SAG that if during the processing of the subdivision authorization it is noticed that such subdivision involves a *"possible violation of Articles 55 and 56 of the LGUC, it must suspend the processing"* and proceed as provided therein.
- **Real Estate Developers resorted to court to challenge this measure**
 - **Decision is pending > to be issued in the following weeks > Court of Appeal of Santiago Case N 100.856 – 2022 > Filed Criminal action.**
 - **Is this the best way to solve the issue?**



RECENT JUDICIAL CASE

Punta Puertecillo

- Supreme Court Case N° 14.568-2021.
- Project with 296 land plots, in the surroundings of Navidad.
- 25/03/2014 > First claim filed against the project by neighbors of the Project.
- 25/11/2022 > Supreme Court accepts the appeal of the claimants and impose a fine of 5.001 UTA (USD\$4,5 million).

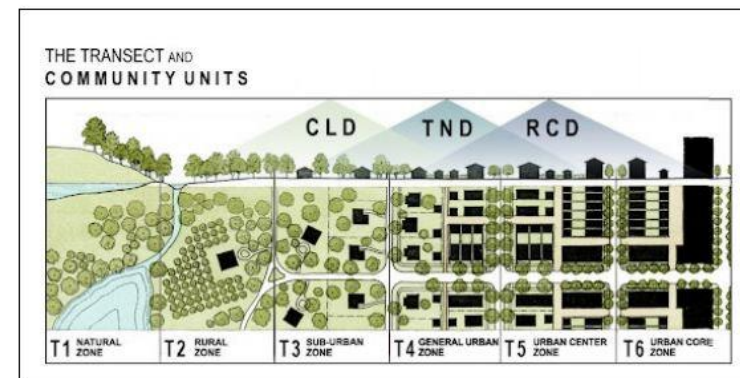
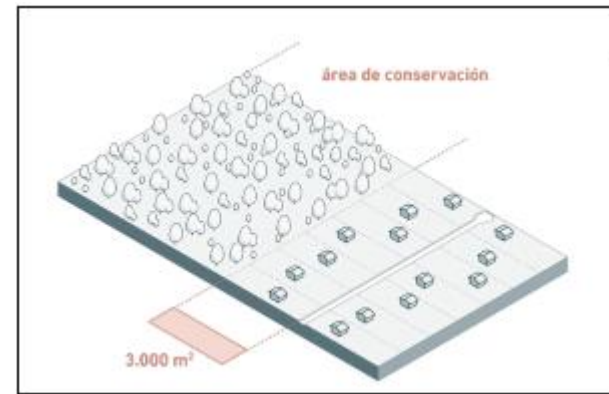


THE PROBLEM OF RURAL AREA SUBDIVISIONS:

Conclusions

We have a public policy issue > The existing framework must be adjusted.

- Should be less rigid > urban vs/ rural is not a black and white distinction.
- It must recognize the land outside the urban area with agricultural, livestock or forestry potential and the land without it.
- It must provide certainty regarding the authorizations required to develop a real estate Project in rural areas.
- Potential alternatives:
 - Conservation Design for subdivisions > Randall Arendt /Juan Pablo Allard – Dean of Faculty of Architecture of Universidad del Desarrollo.
 - Smart Code > Center for Applied Transect Studies.
- Pictures taken from *Punto de Referencia, Centro de Estudios Públicos, Octubre 2022.*



Thank you very much,

大成 DENTONS

Dentons Larrain Rencoret
Apoquindo Av. 3885 18th Floor
Las Condes
Santiago, Chile

Dentons is the world's largest law firm, delivering quality and value to clients around the globe. Dentons is a leader on the Acritas Global Elite Brand Index, a BTI Client Service 30 Award winner and recognized by prominent business and legal publications for its innovations in client service, including founding Nextlaw Labs and the Nextlaw Global Referral Network. Dentons' polycentric approach and world-class talent challenge the status quo to advance client interests in the communities in which we live and work. www.dentons.com.