

1. Title

Procedures for Takings Impact Assessments

2. Policy

Sec. 1 Introduction. The Office of General Counsel of The University of Texas System (System) has prepared the Procedures for Takings Impact Assessments (the Procedures) in compliance with the Texas Private Real Property Rights Preservation Act¹ (the Act) and guidelines promulgated by the Office of the Attorney General of Texas thereunder.² The failure to prepare a Takings Impact Assessment, if one is required, renders the action in question void. Consequently, System employees and officers should immediately contact the Office of General Counsel with any questions about the application of these Procedures.

Sec. 2 Scope of the Act.

2.1 Applicability. The Act applies to, among other things, the following governmental actions³:

- (a) the adoption or issuance of an ordinance, rule, regulatory requirement, resolution, policy, guideline, or similar measure;
- (b) an action that imposes a physical invasion or requires a dedication or exaction of private real property; and
- (c) the enforcement of any of the actions listed in (a) or (b) above, whether through the use of permitting, citations, orders, judicial or quasi-judicial proceedings, or other similar means.

2.2 Exemptions. Certain actions are exempt, including the following⁴:

- (a) an action that is reasonably taken to fulfill an obligation mandated by federal law; and
- (b) a formal exercise of the power of eminent domain.

2.3 If System engages in an action described in Section 2.1(a) or (b) above and no exemption applies, System must prepare a written Takings Impact Assessment⁵.

Sec. 3 Guidelines of the Texas Attorney General. As directed by the Act, the Texas Attorney General prepared guidelines to implement the Act.⁶

Those guidelines direct that an agency's Procedures for Takings Impact Assessments contain not only the procedures for conducting a Takings Impact Assessment, but also procedures for making a "Categorical Determination" that certain categories of actions affect no private real property rights, and procedures for making a "No Private Real Property Impacts Determination" consisting of a quick, efficient and effective mechanism for making a determination that an action does not affect private real property rights.⁷ Both the Categorical Determination and the No Private Real Property Impacts Determination eliminate the need for further compliance with the Act as to the subject action.⁸

Sec. 4 Policy Statement. This policy sets forth the requirements and guidelines for the preparation of a Takings Impact Assessment by the U. T. System and its affiliated institutions.

Sec. 5 Categorical Determinations.

5.1 Board of Regents. The Board of Regents (the Board) is the governing body of System. Although the Board has delegated to selected System offices some of its authority, the Board retains ultimate responsibility for System actions. For ease of administration, the following Categorical Determinations are organized by System offices, but these Categorical Determinations also apply to the Board, although it may not be specifically identified, when it takes actions ascribed herein to a specific office.

5.2 System Offices. The Board has delegated some of its authority with respect to real property to the Chancellor, the Executive Vice Chancellor for Business Affairs, the Executive Director of Real Estate, and the president of each institution (and, in appropriate circumstances, the delegates of such officers) (collectively referred to herein as the Officers).⁹ The Board has made no such delegation to other System offices, however, and therefore all other System offices (including all sections within those offices), when acting in their authorized capacities, are categorically excused from further compliance with the Act. To the extent that any System office has responsibilities regarding facilities planning and construction, those actions will be covered by these Procedures as they pertain to the Officers.

5.3 Matters Not Pertaining to Real Property. Notwithstanding that the Officers are delegated certain responsibilities regarding System owned and controlled real property, many of the functions of those offices do not pertain to real property.

Consequently, to the extent that real property is not the subject of an action by those offices (including the sections within those offices) or the delegates of those offices, a categorical determination is made that no private real property rights are affected by those actions.

- 5.4 Student Policies. A categorical determination is made that promulgation and implementation of student policies are excluded from application of the Act.¹⁰
- 5.5 Acquisition or Disposition of Real Property. Actions by the Board and by the Officers pertaining to (i) the acquisition of real property by purchase, lease, gift, or eminent domain, or (ii) the disposition of System property by sale, lease, or gift, are categorically excluded from the requirement of preparing a Takings Impact Assessment. When System is acquiring or disposing of real property either by lease or by outright purchase, System is guided by appraisals of market value of the property. Such transactions are arms length transactions with private property owners who receive or pay a negotiated price. Similarly, gifts of real property are categorically excluded because such transactions involve the voluntary transfer or acceptance of a gift. Finally, eminent domain actions are specifically excluded from the coverage of the Act.¹¹
- 5.6 Management of System Owned or Controlled Real Property.
 - (a) The Regents' *Rules and Regulations* give authority to administer and manage System owned or controlled real property to
 - i. the Real Estate Office (a department within the office of the Vice Chancellor and General Counsel), with regard to management of all real property owned or controlled by System, except for Permanent University Fund Lands, real property used for institutional purposes, and real property investments managed by The University of Texas Investment Management Company;
 - ii. West Texas Operations (a department within the office of the Executive Vice Chancellor for Business Affairs), with regard to management of the Permanent University Fund lands; and
 - iii. the presidents of each institution with regard to real property used for institutional purposes.¹²

- (b) The Executive Vice Chancellor for Business Affairs has certain authority with regard to construction, repairs, and rehabilitation for “Major Projects” as defined in the Regents’ *Rules and Regulations*, including those projects above a certain dollar amount, those the Board determines are architecturally or historically significant, and any debt-financed projects.¹³
- (c) The Board must authorize expenditures on Major Projects.¹⁴
- (d) The presidents of each institution have authority with regard to construction, repair, and rehabilitation below a certain dollar amount.¹⁵ Covered actions by these offices (and the relevant sections) and the delegates of these offices in the exercise of that authority are categorically excluded from the requirement of preparing a Takings Impact Assessment if
 - i. there will be no physical invasion of private real property (e.g., flooding the property);¹⁶
 - ii. there will be no physical or legal restriction on the use, possession, and enjoyment of private real property (e.g., blocking access)¹⁷; and
 - iii. there will be no dedication or exaction of private real property.¹⁸

Sec. 6 Elements of Takings Impact Assessment.

- 6.1 If no Categorical Determination applies, a Takings Impact Assessment (TIA) is required for actions described in Section 2.1(a) or (b) above. The form of TIA follows:¹⁹

Step 1: Does the proposed action constitute:

- (a) the adoption or issuance of an ordinance, rule, regulatory requirement, resolution, policy, guideline, or similar measure that imposes a physical invasion or legal restriction on the use, possession, and enjoyment of private real property (such as blocking access) or requires a dedication or exaction of private real property?

Yes or No

- (b) the enforcement of any action listed in (a) above?

Yes or No

- 6.2 If the answer to each question is no, stop here. If the answer to any question is yes, proceed to Step 2,

Step 2: Is the action exempt as:

- (a) an action that is reasonably necessary to fulfill an obligation mandated by federal law?

Yes or No

- (b) a formal exercise of eminent domain?

Yes or No

- (c) any other action exempted by *Texas Government Code* Section 2007.003(b) (consult System Office of General Counsel)?

Yes or No

- 6.3 If the answer to any question in this step is yes, stop here. If the answer to each question in this step is no, proceed to Step 3.

Step 3: Does the action result in a burden on private real property?

Yes or No

- 6.4 If the answer to the above question is no, stop here -- a No Private Real Property Impact Determination is made and no further compliance with the Act is necessary. If the answer to the above question is yes, a Takings Impact Assessment is required. Proceed to Steps 4 and 5.

Step 4: Describe the specific purpose of the proposed action and identify

- (a) whether and how the proposed action substantially advances its stated purpose; and
- (b) the burdens imposed on private real property and the benefits to society resulting from the proposed use of private real property.

Step 5: Determine whether engaging in the proposed governmental action will constitute a taking

(a) Does the action result indirectly or directly in a permanent or temporary physical occupation of private real property?

Yes or No

(b) Does the action require a property owner to dedicate a portion of private real property or to grant an easement?

Yes or No

(c) Does the action deprive the owner of all economically viable uses of the private real property?

Yes or No

(d) Does the action have a significant impact on the landowner's economic interest?

Yes or No

(e) Does the action decrease the market value of the affected private real property by 25% or more and is the affected private real property the subject of the action?

Yes or No

(f) Does the action deny a fundamental attribute of ownership?

Yes or No

(g) Does the action serve the same purpose that would be served by directly prohibiting the use or action and does the condition imposed substantially advance that purpose?

Yes or No

6.5 If the answer to each question in this step is no, stop here. If the answer to any question in this step is yes, proceed to Step 6 and consult with the Office of General Counsel.

Step 6: Describe reasonable alternative actions that could accomplish the specified purpose and compare, evaluate, and explain

(a) how an alternative action would further the specified purpose; and

(b) whether an alternative action would constitute a taking (see Step 4).

Sec. 7 Records Maintenance. A copy of this Takings Impact Assessment should be maintained by the office that prepared it in accordance with its records retention policy.

END NOTES

¹ Tex. Gov't Code §§2007.001 - 2007.045

² *Texas Attorney General's Private Real Property Rights Preservation Act Guidelines*
https://www.oag.state.tx.us/AG_Publications/txts/propertyguide2005.shtml [hereafter, "AG Guidelines"]

³ Tex. Gov't Code § 2007.003(a)(1), (2), & (4)

⁴ *Id.* at § 2007.003(b)(4) & (8)

⁵ *Id.* at § 2007.043(a)

⁶ AG Guidelines

⁷ *Id.* at § 2.16

⁸ *Id.* at §§ 2.17-2.18

⁹ Regents' *Rules and Regulations*, Rules 10501, 70301, 80402 and 80403

¹⁰ The guidelines prepared by the Texas Attorney General to implement the Act specifically provide that student policies established by state institutions of higher education are an example of the types of activities that may be categorically excluded from application of the Act. AG Guidelines

¹¹ Tex. Gov't Code at § 2007.003(b)(8)

¹² Regents' *Rules and Regulations*, Rule 70301

¹³ *Id.* at Rule 80402

¹⁴ *Id.*

¹⁵ *Id.* at Rule 80403.

¹⁶ Tex. Gov't Code at § 2007.003(a)(2)

¹⁷ AG Guidelines at n.23

¹⁸ Tex. Gov't Code at § 2007.003(a)(2)

¹⁹ The content and scope of a Takings Impact Assessment is described in Tex. Gov't Code at § 2007.043(b) and in the AG Guidelines at § 3.3

3. Definitions

Taking - (A) A governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or (B) A governmental action that

(i) affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and

(ii) is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect

and the market value of the property determined as if the governmental action is in effect.

Takings Impact Assessment - a written assessment of a proposed governmental Taking that complies with the evaluation guidelines developed by the Attorney General before the governmental entity provides the public notice required by statute.

4. Relevant Federal and State Statutes

Texas Government Code, Chapter 2007

Texas Attorney General's Private Real Property Rights Preservation Act Guidelines

https://www.oag.state.tx.us/AG_Publications/txts/propertyguide2005.shtml

5. Relevant System Policies, Procedures, and Forms

[Board of Regents' Rules and Regulations, Rule 10501](#)

[Board of Regents' Rules and Regulations, Rule 70301](#)

[Board of Regents' Rules and Regulations, Rule 80402](#)

[Board of Regents' Rules and Regulations, Rule 80403](#)

6. Who Should Know

Administrators
Chief Business Officers
Employees

7. System Administration Office(s) Responsible for Policy

Office of General Counsel – Real Estate Office

8. Dates Approved or Amended

December 20, 2005
June 8, 2010
May 24, 2011

9. Contact Information

Questions or comments about this policy should be directed to:

- bor@utsystem.edu