

Policies of the University of North Texas Health Science Center	Chapter 04 –
04.115 Takings Impact Assessment	Administration

Policy Statement.

Pursuant to the Private Real Property Rights Preservation Act ("Act") which is set forth in Chapter 2007 of the Texas Government Code and the accompanying Guidelines issued by the Office of the Attorney General, the University of North Texas Health Science Center at Fort Worth (UNTHSC) has promulgated specific procedures to be followed in making a Takings Impact Assessment and in determining which of its activities, programs, policies, rules or regulations trigger the need for a Takings Impact Assessment. Takings Impact Assessments will be used to ensure that the implications of actions involving private real property are considered before decisions are made and such actions are taken by UNTHSC.

Application of Policy.

1. This policy shall apply to the following types of actions on the part of UNTHSC:
 - a.) the adoption or issuance of an ordinance, rule, regulatory requirement, resolution, policy, guideline, or similar measure; or
 - b.) an action that imposes a physical invasion or requires a dedication or exaction of private real property.
 - c.) enforcement of an action listed in (1) or (2) above, whether enforcement is accomplished through judicial or quasi-judicial proceedings or other similar actions.

2. This policy shall not apply to the following types of actions on the part of UNTHSC:
 - a.) a lawful forfeiture or seizure of contraband as defined by Article 59.01, Code of Criminal Procedure;
 - b.) a lawful seizure of property as evidence of a crime or violation of law;
 - c.) an action that is reasonably taken to fulfill an obligation mandated by federal law or an action that is reasonably taken to fulfill an obligation mandated by state law;
 - d.) the discontinuance or modification of a program or regulation that provides a unilateral expectation that does not rise to the level of a recognized interest in private real property;
 - e.) an action taken to prohibit or restrict a condition or use of private real property if UNTHSC proves that the condition or use constitutes a public or private nuisance as defined by background principles of nuisance and property law of this state;
 - f.) an action taken out of a reasonable good faith belief that the action is necessary to prevent a grave and immediate threat to life or property;
 - g.) a formal exercise of the power of eminent domain;
 - h.) an action taken under a state mandate to prevent waste of oil and gas, protect correlative rights or owners of interests in oil or gas, or prevent pollution related to oil and gas activities;

i.) a rule or proclamation adopted for the purpose of regulating water safety, hunting, fishing, or control of non-indigenous or exotic aquatic resources;

j.) the appraisal of property for purposes of ad valorem taxation;

k.) an action that:

(1) is taken in response to a real and substantial threat to public health and safety;

(2) is designed to significantly advance the health and safety purpose; and

(3) does not impose a greater burden than is necessary to achieve the health and safety purpose.

3. This Policy does not apply to the enforcement or implementation of Subchapter B, Chapter 61, Natural Resources Code, as it existed on September 1, 1995, or to the enforcement or implementation of any rule or similar measure that was adopted under that subchapter and was in existence on September 1, 1995.

Definitions.

In the application of this policy, the following definitions shall apply:

1. "Owner" means a person with legal or equitable title to affected private real property at the time a taking occurs.
2. Market value" means the price a willing buyer would pay a willing seller after considering all factors in the marketplace that influence the price of private real property.
3. "Private real property" means an interest in real property recognized by common law, including a groundwater or surface water right of any kind that is not owned by the federal government, the State of Texas, or a political subdivision of the State of Texas.
4. "Taking" means: an action on the part of UNTHSC 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 an action on the part of UNTHSC;
 - a.) 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 action on the part of UNTHSC; and
 - b.) is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the action on the part of UNTHSC is not in effect and the market value

of the property determined as if the action is in effect.

Procedures and Responsibilities.

Procedure / Duty

Responsible Party

1. **REVIEW PROCEDURES**

Administrative
Affairs/ Office of
Legal Affairs

a.) In considering whether to take an action that is covered by this Policy, UNTHSC shall develop a written Takings Impact Assessment of the proposed action. The Takings Impact Assessment shall be conducted in the following manner:

(1) When an employee believes that a proposed action on the part of UNTHSC may come within the provisions of this Policy, the employee shall notify the UNTHSC Office of the Vice President for Administrative Affairs.

(2) The UNTHSC Vice President for Administrative Affairs shall notify the UNTHSC Office of Legal Affairs to consider the proposed action. This meeting may include other parties as determined to be necessary.

(3) At the meeting of the appropriate individuals from the UNTHSC Office of the Vice President of Administrative Affairs and the UNTHSC Office of Legal Affairs, and others as may be necessary, the following questions shall be answered:

(a) Is the proposed action to be undertaken an action that is covered by this Policy?

If the answer is "No": No further compliance with this Policy is necessary.

If the answer is "Yes": the following question should be answered.

(b) Does the proposed action result in a burden on "Private Real Property"?

If the answer is "No": A "No Private Real Property Impact" or No PRPI

Determination should be made. No further compliance with this Policy is necessary.

If the answer is "Yes": A Takings Impact Assessment is required.

b.) The Takings Impact Assessment must be in writing and must include the following information:

(1) A description of the specific purpose of the proposed

action;

(2) An identification of the following:

(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;

(3) A determination as to whether engaging in the proposed action will constitute a taking as defined by this Policy;

In making a determination as to whether the proposed action will result in a "taking", the following questions must be answered:

(a) Does the Proposed Action Result Indirectly or Directly in a Permanent or Temporary Physical Occupation of Private Real Property?

Regulation or action resulting in a permanent or temporary physical occupation of all or portion of private real property will generally constitute a "taking."

(b) Does the Proposed Action Require a Property Owner to Dedicate a Portion of Private Real Property or to Grant an Easement?

Carefully review all actions requiring the dedication of property or grant of an easement. The dedication of real property must be reasonably and specifically designed to prevent or compensate for adverse impacts of the proposed development. Likewise, the magnitude of the burden placed on the proposed development should be reasonably related to the adverse impacts created by the development.

(c) Does the Proposed Action Deprive the Owner of all Economically Viable Uses of the Property?

If an action prohibits or somehow denies all economically viable or beneficial uses of the land, it will likely constitute a "taking."

The action's impact on the property as a whole, and not just the impact on a portion of the property, should be considered. It is also important to assess whether there is *any* profitable use of the remaining property available. The remaining use does not necessarily have to be the owner's planned use, a prior use, or the highest and best use of the property. One factor in this assessment is the degree to which the action interferes with a

property owner's reasonable investment-backed development expectations.

(d) Does the Proposed Action have a Significant Impact on the Landowner's Economic Interest?

(e) Does the Proposed Action Decrease the Market Value of the Affected Private Real Property by 25% or More? Is the Affected Private Real Property the subject of the Covered Governmental Action?

(f) Does the Proposed Action Deny a Fundamental Attribute of Ownership?

Governmental actions that deny the land owner a fundamental attribute of ownership--including the right to possess, exclude others and dispose of all or a portion of the property--are potential takings.

(g) Does the Proposed 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?

(1.) A description of alternative actions that could accomplish the specified purpose of the proposed action;

(2.) A comparison, evaluation, and explanation regarding:

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

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

c.) A Takings Impact Assessment prepared under this policy shall be considered public information.

2. PUBLIC NOTICE

a.) If it is determined through the Takings Impact Assessment process that an action may result in a taking, then UNTHSC shall:

(1) Give at least 30 days' notice of its intention to take action prior to taking the proposed action.

(2) Such notice shall be given by filing a reasonably specific

UNTHSC
Management

summary of the Takings Impact Assessment with the Secretary of State for publication in the Texas Register in accordance with the following manner:

(a) During normal working hours, UNTHSC shall deliver to the office of the Secretary of State two certified copies of the document for filing; or

(b) UNTHSC shall send to the Secretary of State over dedicated cable or commercial lines between word or data processors one copy of the document to be filed and shall deliver to the Office of the Secretary a letter of certification that is signed by the UNTHSC Vice President for Fiscal Affairs and that contains a statement specifying the type of information electronically sent.

(c) The UNTHSC Vice President for Fiscal Affairs shall certify each document that is filed with the Secretary of State for publication.

(d) The UNTHSC Vice President for Fiscal Affairs shall act as the liaison through whom all required documents are submitted to the Secretary of State for filing and publication.

3. **LEGALITY**

This policy is created in accordance with existing State law and is subject to modification as determined by the Courts and the Legislature.

Office of Legal
Affairs

References and Cross-references.

Article 59.01, Code of Criminal Procedure

Forms and Tools.

Approved: September 2008

Effective: September 2008

Revised: