

## TAKINGS IMPACT ASSESSMENT

Proposed Action: The County proposes to adopt an ordinance concerning the regulation of Subdivisions of Land in unincorporated areas of Mills County

County Department: Commissioners Court

Contact Person: Ed Smith, County Judge

Phone: (325) 648-2222

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### **I. Stated Purpose**

The purpose of the Proposed Regulation is to regulate the development of subdivisions of land, ("Proposed Regulations") as defined by Chapter 232, Texas Local Government Code in order to protect the health, safety, and welfare of the citizenry; protect the citizens from inadequate infrastructure; preserve the quality of life; preserve property values and the character of the surrounding neighborhoods; and deter the spread of community blight.

As allowed pursuant to Chapter 232, clear and limited regulations protect the unrestricted subdivision of land that can be detrimental to the public health, safety and welfare. It is the judgment of the Mills County Commissioners Court that:

- (a) the unregulated development of subdivisions of land in the unincorporated areas of Mills County, present an unnecessary threat of harm to citizens by way of inadequate or unsuitable buildings and/or neighborhoods;
- (b) further damage is caused from inadequate or improperly designed utility infrastructure for water/wastewater and drainage and such damage may also cause harm to the groundwater; and
- (c) these minimal regulations improve the ingress and egress of vehicular traffic, especially for emergency vehicles.

This Takings Impact Assessment (hereafter “TIA” is intended to satisfy the statutory requirements of the Texas Private Real Property Rights Preservation Act (the “Act” or PRPRPA), now codified in Chapter 2007 of the Texas Government Code (TGC). The overriding purpose of the Act was to ensure that governmental entities in Texas take a “hard look” at the effects on private real property rights of the regulations they adopt.

Definition of a Regulatory Taking Pursuant to the Act

The following information is taken from a guidance document prepared by the State of Texas Office of the Attorney General (OAG). The Act [specifically TGC §2007.002(5)] defines a “taking” as follows:

*(a) a governmental action that affect 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:*

*(1) 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*

*(2) 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.*

The Act, in TGC §2007.002, thus sets forth a definition of “taking” that (i) incorporates current

jurisprudence on “takings” under the United States and Texas Constitutions, and (ii) sets forth a new statutory definition of “taking.” Essentially, if a governmental entity takes some “action” covered by the Act and that action results in a devaluation of a person’s private real property of 25% or more, then the affected party may seek appropriate relief under the Act. Such an action for relief would be predicated on the assumption that the affected real property was the subject of the governmental action.

TGC §2007.003(a) provides that the Act applies only to the following governmental actions:

*(1) the adoption or issuance of an ordinance, rule, regulatory requirement, resolution, policy, guideline, or similar measure;*

*(2) an action that imposes a physical invasion or requires a dedication or exaction of private real property;*

*(3) an action by a municipality that has effect in the extraterritorial jurisdiction of the municipality, excluding annexation, and that enacts or enforces an ordinance, rule, regulation, or plan that does not impose identical requirements or restrictions in the entire extraterritorial jurisdiction of the municipality; and*

*(4) enforcement of a governmental action listed in Subdivisions (1)-(3), whether the enforcement of the governmental action is accomplished through the use of permitting, citations, orders, judicial or quasi-judicial proceedings, or other similar means.*

The requirement to do a TIA only applies to §2007.003(a)(1)-(3).

### Governmental Actions Exempted From the Act

There are certain governmental actions exempted by the Act. The following actions are exempted from coverage of the Act under §2007.003(b):

*(a) an action by a municipality except as provided by subsection (a)(3);*

*(b) a lawful forfeiture or seizure of contraband as defined by Article 59.01, Code of Criminal Procedure;*

*(c) a lawful seizure of property as evidence of a crime or violation of law;*

*(d) an action, including an action of a political subdivision that is reasonably taken to fulfill an obligation mandated by federal law or an action of a political subdivision that is reasonably taken to fulfill an obligation mandated by state law;*

*(e) 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;*

*(f) an action taken to prohibit or restrict a condition or use of private real property if the governmental entity 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;*

*(g) 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;*

*(h) a formal exercise of the power of eminent domain;*

*(i) an action taken under a state mandate to prevent waste of oil and gas, protect correlative rights of owners of interests in oil or gas, or prevent pollution related to oil and gas activities;*

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

*(k) an action taken by a political subdivision:*

*(1) to regulate construction in an area designated under law as a floodplain;*

*(2) to regulate on-site sewage facilities;*

*(3) under the political subdivision's statutory authority to prevent waste or protect*

*rights of owners of interest in groundwater; or*

*(4) to prevent subsidence;*

*(l) the appraisal of property for purposes of ad valorem taxation;*

*(m) 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; or*

*(n) an action or rulemaking undertaken by the Public Utility Commission of Texas to order or require the location or placement of telecommunications equipment owned by another party on the premises of a certificated local exchange company.*

Based on the types of actions anticipated under the Proposed Regulations, Mills County believes that while certain actions included in the Proposed Regulations are exempt, other actions may not be exempt and will require the County to prepare this TIA.

#### Lawsuit to Invalidate a Governmental Taking

The Act allows landowners whose property is significantly impaired by governmental regulations to sue the governmental entity to invalidate the regulation. As an alternative to invalidation of the governmental action, the governmental entity may elect to pay the landowner compensation for the loss in value of the property interest. The Act is generally applicable to any governmental action (e.g., adoption of an ordinance, regulatory requirement or policy, or a governmental exaction) that restricts or limits the landowner's rights in the real property and that causes a reduction of 25% or more in the market value of the property. Any lawsuit by an affected real property owner against the governmental entity must be filed within 180 days after the owner knew or should have known

of the governmental action. The prevailing party in the lawsuit against the governmental entity is entitled to recover reasonable and necessary attorney's fees and court costs from the losing party.

Requirement to Prepare A Takings Impact Assessment (TIA)

In addition to a lawsuit to invalidate a taking by a governmental entity, all governmental entities in Texas (including the County) are required to prepare a TIA evaluation of any Proposed Regulation that may impair private real property interests and to provide public notice of the takings impact assessment.

**II. The Nature of the Action**

A takings impact assessment is required only for two types of governmental of actions. State whether the Proposed Regulations are one of the following:

- 1) The adoption or issuance of an ordinance, rule, regulatory requirement, resolution, policy, guideline, or similar measure; or
- 2) An action that imposes a physical invasion or requires a dedication of private real property;

Yes. The proposed course of action is to adopt an ordinance that regulates land development.

**III. Potential Effect on Private Property**

- 1. Does the county action require a physical invasion, occupation or dedication of real property?

Yes \_\_\_\_\_ No \_\_x\_\_

- 2. Does the county action limit or restrict a real property right, even partially or temporarily?

Yes \_\_\_\_\_ No \_\_x\_\_

The Proposed Regulations do place restrictions on the use of property for the subdivision and development of land in the unincorporated areas of Mills County, Texas. However, the Texas Legislature has found that the unrestricted subdivision and development of land in the unincorporated areas of a Texas county may be detrimental to the public health, safety, and welfare by contributing to the decline of residential and business neighborhoods and the installation of inadequate or unsuitable residential or industrial infrastructure, including the provision of utilities, including water, wastewater and drainage, as well as suitable access, ingress and egress by vehicular traffic, including emergency vehicles. Under Texas law, a county may adopt regulations regarding the subdivision of land, as defined by Chapter 232 of the Texas Local Government Code, as necessary to promote the public health, safety, or welfare of the citizenry. Subdivisions of land that

are in current operation and that may be affected by the regulations will be permitted to continue operations in their current locations so long as the same are not enlarged or expanded. The adoption of the Proposed Regulations does not result in the physical taking of private real property. The adoption of the Proposed Regulations does not deprive the owner of all economically viable uses of the property, have a significant impact on the property owner's economic interest, or deny a fundamental attribute of ownership. Therefore, the Proposed Regulations do not appear to be an action covered under the Texas Real Property Rights Preservation Act.

#### **IV. Exemptions**

After consideration, the Commissioners Court finds that the Proposed Regulations are an action a) taken in response to a real and substantial threat to public health and safety, b) designed to significantly advance the health and safety purpose, and c) one that does not impose a greater burden than necessary to achieve the health and safety purpose.

Based upon the above findings, the Proposed Regulations are exempt from the provisions of the Texas Real Property Rights Preservation Act.

#### **V. Analysis of Purpose, Burdens and Benefits**

- 1) Referring to the purpose of the county action in Section I above, state how the action achieves or advances its purpose.

As stated, the purpose of the Proposed Regulations are to promote the public health, safety, or welfare of the citizenry by requiring minimum standards for the planning, platting and development of subdivisions of land within the unincorporated areas of Mills County, Texas. This purpose is furthered by placing minimal standards upon the development of land for use as a residential or industrial development, and to required sensible standards regarding the provision of residential or industrial services, including utilities, including water, wastewater, drainage, and access,



ingress and egress by vehicular traffic, including emergency vehicles. Further, the Proposed Regulations provide legitimate accountability to developers of rural subdivisions outside of the incorporated areas of Mills County, by providing requirements designed to protect the public health and safety.

- 2) Describe the benefits to society resulting from the county action.

The benefits include 1) reasonable regulation of rural subdivision development in order to protect the health and well-being of the citizens; 2) provide accountability for developers of rural subdivisions of land outside the incorporated areas of Mills County, Texas by reasonable requirements designed to protect the public health and safety; 3) prevent the installation of inadequate infrastructure by requiring minimal standards upon the development of rural subdivisions of land located in the unincorporated areas of Mills County, Texas; 4) prevent a decrease in property value by placing reasonable requirements for utilities, including water, wastewater, drainage and access, ingress and egress of vehicular traffic, including emergency vehicles; and 5) prevent the spread of unregulated development that will be injurious to the public health and safety.

- 3) Discussion of the burdens that may be imposed on private real property by the county action.

After consideration, the Commissioners Court finds as follows:

1. The Proposed Regulations will not result indirectly or directly in a permanent or temporary physical occupation of private real property;
2. The Proposed Regulations do not require a propertyowner to dedicate property or grant an easement except as may be required to satisfy requirements addressing the provision of utilities, including water, wastewater, drainage, utility services, or access, ingress and egress for vehicular traffic, including emergency vehicles;
3. The Proposed Regulations do not deprive the owner of all economically viable use of their property;

4. The Proposed Regulations do not deny any owner the right to possess their real property, enjoy it, exclude others from it or sell it; and
5. It does not appear that the Proposed Regulations will serve to reduce the market value of any owner's property.

Presently established rural subdivisions that may be affected by the regulations will be permitted to continue in their current location and condition so long as these locations are not enlarged or expanded. Therefore, it appears that there will be no reduction in the market value of any owner's property.

Additional discussion of potential burdens:

The Proposed Regulations pose a minimal burden on real property owners and present a substantial benefit to society. The County is permitted to adopt regulations that address the public health, welfare and safety of its citizenry. Presently established rural subdivisions that are in current operation and that may be affected by the regulations will be permitted to continue operations in their current locations and conditions so long as the same are not enlarged or expanded. These subdivisions will also have adequate notice and opportunity to construct or renovate their premises and arrange their operations in order to comply with the Proposed Regulations should the present subdivision be enlarged or expanded. The adoption of the Proposed Regulations do not result in the physical taking of private real property. The adoption of the Proposed Regulations do not deprive the owner of all economically viable uses of the property, have a significant impact on the property owner's economic interest, or deny a fundamental attribute of ownership. Therefore, no existing property rights will be impinged and market value should not be affected.

**VI. Alternatives**

- 1) Describe alternative actions that could accomplish the same purpose as the Proposed Regulations.

After consideration, the Commissioners Court finds that there are no alternatives which

would effectively accomplish the same purpose.

- 2) Would these alternatives impose a lesser burden on the property which is the subject of the Proposed Regulation?

This section is inapplicable in light of the response to V(A.).

**VII. Potential Impact on Value**

- 1) Will the county action reduce the market value of any parcel of private real property by 25% or more?

Yes \_\_\_\_\_ No   x  

Presently legally existing rural subdivisions that may be affected by the regulations will be permitted to continue operations in their current locations and conditions so long as the same are not enlarged or expanded. In addition, this regulation does not restrict any use of the property other than for the development of a subdivision of land, as defined by Chapter 232 of the Texas Local Government Code. The Commissioners Court finds that there are alternative uses available for the property.

- VIII. Conclusion:**
- \_\_\_\_\_ Not a Covered Action
  - x   No Impact on Private Real Property
  - x   Proposed Action is Exempt
  - x   Proposed Action Fully Assessed for Potential Impact on Private Property

Read and adopted this 28<sup>th</sup> day of February, 2022, by a vote of 5 ayes and 0 nays.

ATTEST: Smyaun Beth  
County Clerk

[Signature]  
County Judge

