

**TAKINGS IMPACT ASSESSMENT REGARDING PROPOSED SUBDIVISION AND
MANUFACTURED HOME RENTAL COMMUNITY REGULATIONS
FOR GILLESPIE COUNTY, TEXAS**

Introduction

- (1) On this the 14th day of November, 2022 and pursuant to Chapter 2007 of the Texas Government Code and other authority, Gillespie County, Texas, by and through its Commissioners Court, hereby approves and adopts this Takings Impact Assessment regarding the following proposed governmental action: the proposed approval, adoption, and enactment of the Subdivision and Manufactured Home Rental Community Regulations for Gillespie County, Texas (“Regulations”) pursuant to the express and implied authority of the County to enact the Regulations under Chapters 232 and 233 of the Texas Local Government Code and all other authority described in the Regulations and this instrument, the contents of which are incorporated by reference.

Definitions and Interpretation

- (2) The following terms shall have the following meanings, unless otherwise designated, whether a term appears in capital letters or in bold, italicized, or underlined print:
- (a) “Act” or “Chapter 2007” shall mean chapter 2007 of the Texas Government Code (TEX. GOV’T CODE §§ 2007.001-.045);
 - (b) “Chapter 232” shall mean chapter 232 of the Texas Local Government Code;
 - (c) “Colonias” shall mean substandard, generally impoverished, rural subdivision or other developments that lack basic utilities and other infrastructure;
 - (d) “County” shall mean Gillespie County, Texas, acting by and through its Commissioners Court (“Commissioners Court”), the County’s governing body;
 - (e) “County floodplain regulations” shall mean the flood damage prevention order or other floodplain management regulations adopted by the County;
 - (f) “County sewer, septic, and OSSF regulations” shall mean the sewer, septic, and OSSF regulations adopted by the County;
 - (g) “Guidelines” shall mean the guideline analysis developed by TXOAG for implementation of a takings impact assessment pursuant to Chapter 2007;

- (h) “MHRC” shall mean manufactured home rental community development as defined by Chapter 232 and the Regulations;
 - (i) “NFIP” shall mean the National Flood Insurance Program pursuant to 42 U.S.C. §§ 4001 *et seq.*, 44 C.F.R. Ch. I, subch. B, parts 59, 60, and other authority;
 - (j) “OSSF” shall mean septic and onsite sewage facilities;
 - (k) “Proposed action,” “proposed governmental action,” “order,” or “project” shall mean the County’s final approval, adoption, and enactment of the Regulations;
 - (l) “Regulations” shall mean the proposed Subdivision and Manufactured Home Rental Community Regulations for Gillespie County, Texas, the contents of which are incorporated by reference;
 - (m) “State sewer, septic, and OSSF regulations” shall mean the sewer, septic, and OSSF regulations applicable for use in Gillespie County pursuant to the Texas statutes, TCEQ regulations, or other administrative agency regulations;
 - (n) “Stated Authority” shall mean Chapters 232 and 233 of the Texas Local Government Code, the NFIP and TFCIA, the State sewer, septic, and OSSF regulations, the County floodplain regulations, the County sewer, septic, and OSSF regulations, and all other authority described in this TIA and the Regulations;
 - (o) “TCEQ” shall mean the Texas Commission on Environmental Quality;
 - (p) “TFCIA” shall mean the Texas Flood Control and Insurance Act pursuant to Chapter 16, Subchapter I, of the Texas Water Code (TEX. WATER CODE §§ 16.311-324);
 - (q) “TIA” shall mean a takings impact assessment pursuant to Chapter 2007; and
 - (r) “TXOAG” shall mean the Office of the Texas Attorney General.
- (3) Unless otherwise designated, the past, present, or future tense shall each include the other, the masculine, feminine, or neuter gender shall each include the other, and the singular and plural number shall each include the other where necessary for a correct meaning.

- (4) This TIA is approved and adopted by the County pursuant to Chapter 2007 and the other authority described in this instrument.

TXOAG Guidelines

- (5) According to TXOAG guidelines: (a) a TIA is required to describe the purpose of the proposed governmental action and whether it may constitute a taking of private real property rights; and (b) if so, the TIA is required, among other things, to identify any reasonable alternative action that might accomplish the same purpose, and to evaluate such alternative, including whether it would constitute a taking as described by Chapter 2007.

Notice of Public Meeting to Consider Approval of Proposed Regulations

- (6) The County gives notice of its intent to consider the approval and adoption of the Regulations at the public meeting of the Gillespie County Commissioners Court on December 19, 2022, said meeting to begin at 9:00 a.m. in the Gillespie County Courthouse at 101 West Main Street, Fredericksburg, Texas 78624-3700.

Proposed Regulations

- (7) The proposed Regulations are authorized to be enacted by the County pursuant to the authority described in this TIA and the Regulations. The proposed Regulations are designed, among other things, to govern plats, subdivisions of land, and MHRC development in the unincorporated area of Gillespie County, Texas to: promote the health, safety, morals, and general welfare of the county and the safe, orderly, and healthful development of the unincorporated area of the county, and further, to prevent colonias or other substandard development in said area; and ensure that adequate plats, plans, design and planning procedure, water, sewer, septic, and OSSF facilities, and utility, drainage, and transportation infrastructure are provided in said area.
- (8) The proposed Regulations contain standards, requirements, and procedure for subdivision plats and MHRCs in the unincorporated area of the county relating, among other things, to: required compliance with federal law, state law, and County regulations; accomplishment of all public purposes described in the Regulations; definitions, an interpretation guide, establishment of an effective date, compliance with the Texas Open Meetings Act, application of certain legal authority, and other administrative provisions; development, design, and construction standards regarding land development in the unincorporated area; subdivision plat procedure and review, including requirements for recordation, exceptions or exemptions, variances, revision, vacation, amendment, dormant plats, subdivision regulation in the extraterritorial jurisdiction of an incorporated municipality, and other procedural matters; MHRC infrastructure development plan standards, requirements, and procedure, including restrictions on MHRC construction and occupancy unless first approved by the County; bond or other financial security requirements; a fee schedule and related procedure; subdivision plat and MHRC

infrastructure plan requirements relating to formatting, form, scope, content, disclosure, signature, and certification; division of land standards; survey, topographical data, lot/block, monumentation, and other data and disclosure requirements; water, sewer, septic, and OSSF facilities and service requirements, including compliance with minimum state and County standards; for certain subdivisions, compliance with the model subdivision rules described in Chapter 232 of the Texas Local Government Code (including sections 232.023, 232.032, 232.101, and 232.107-.108 of said code), Section 16.343 of the Texas Water Code, Sections 364.1 through 364.72 of Title 31 of the Texas Administrative Code, and other authority; engineer, surveyor, and/or geoscientist review, analysis, and disclosure requirements; utility standards, service, and connection requirements, including compliance with minimum state and County standards and disclosure requirements; floodplain identification/management and drainage requirements, including descriptions, plans, and disclosure; requirements for road access, lay-out, design, construction, and safety; requirements for road/driveway crossings, design, construction, and safety; requirements for drainage plans and related drainage facilities and infrastructure; requirements for lot frontages and building and set-back lines; purchase contract disclosure requirements and procedure related to water availability; groundwater and surface water availability, sufficiency, and disclosure requirements pursuant to Section 232.0032 of the Texas Local Government Code, Section 35.019 of the Texas Water Code, Sections 364.1 through 364.72 of Title 31 of the Texas Administrative Code, Sections 230.1 through 230.11 of Title 30 of the Texas Administrative Code, and other authority; requirements regarding fire safety and fire suppression systems and disclosure; lienholder identification and lien subordination requirements; developer participation contract requirements; access for emergency vehicle requirements; future transportation corridor requirements; limitations and restrictions regarding subdivision plat or MHRC approval by the County; site inspection authority; and enforcement remedies and penalties, both civil and criminal in nature.

Public Inspection of TIA and Proposed Regulations

- (9) The TIA and proposed Regulations may be: (1) reviewed and copied during regular business hours at the office of the Hon. Mark Strocher, the County Judge of Gillespie County, Texas, in the Gillespie County Courthouse at 101 West Main Street, Mail Unit 9, Room 101, Fredericksburg, Texas 78624-3700 (telephone 830-997-7502); or (2) reviewed and downloaded from the County's internet website at www.gillespiecounty.org.

TIA Analysis

- (10) Applying the TXOAG Guidelines, the County makes the following determinations regarding the County's proposed governmental action.

QUESTION 1: Is the Governmental Entity undertaking the proposed action a Governmental Entity covered by the Act, i.e., is it a "Covered Governmental Entity?"

ANSWER: Yes. The County is a governmental entity undertaking the proposed action. Therefore, the County is a “Covered Governmental Entity” pursuant to the Act and TXOAG Guidelines.

QUESTION 2: Is the proposed action to be undertaken by the Covered Governmental Entity an action covered by the Act, i.e., a “Covered Governmental Action?”

ANSWER: No. Pursuant to Chapter 2007 and the Stated Authority, the proposed Regulations are exempt from coverage under or application to the Act. Therefore, the County’s proposed action and enactment of the Regulations do not constitute a Covered Governmental Action pursuant to the Act or TXOAG Guidelines, as hereafter described.

- (a) Items (1) through (9) of this TIA are incorporated by reference.
- (b) Under the Stated Authority, the County, among other things, has obligations in the unincorporated area designated by law as a floodplain to: regulate construction and other development; regulate water safety; prevent waste and subsidence; regulate sewer and on-site sewage/OSSF facilities; protect the rights of owners of interests in groundwater; promote the public health, safety and general welfare; and minimize public and private losses (including death, personal injury, and property damage) due to flood conditions. The proposed Regulations contain provisions to require development compliance with these obligations, including but not limited to: plat and plan disclosure statements and descriptions regarding floodplain locations; compliance with the Stated Authority; efficient drainage and management of storm water runoff; coordination of drainage with the general drainage pattern for the area; reasonable specifications for the adequate drainage of roads; and compliance with minimum state and County standards regarding water, sewer, septic, OSSF, and/or utility facilities, connections, and service.
- (c) Under the Stated Authority, the County, among other things, has obligations in the unincorporated area to ensure reasonable drainage, including but not limited to: the efficient management of storm water runoff; the coordination of drainage with the general drainage pattern for the area; and compliance with minimum state and County standards regarding water, sewer, septic, OSSF, and/or utility facilities, connections, and service in order to avoid pollution and contamination caused through inadequate drainage. The proposed Regulations contain provisions to require development compliance with these obligations.
- (d) Under the Stated Authority, the County, among other things, has obligations in the unincorporated area to regulate water safety, prevent waste and subsidence, and protect groundwater rights, including but not limited to requiring: purchase contract disclosures to describe the extent to which water will be made available to a subdivision, and if so, how and when it will be made available; plat and plan

disclosure statements certifying that adequate groundwater and/or surface water is available to service the proposed development; plat and plan disclosure statements certifying compliance with minimum state and County standards regarding proposed water, sewer, septic, and OSSF facilities, connections, and service; and compliance with applicable state and County sewer, septic, OSSF, and floodplain regulations. The proposed Regulations contain provisions to require development compliance with these obligations.

- (e) Under the Stated Authority, the County, among other things, has obligations in the unincorporated areas to regulate sewer, septic, and OSSF facilities. The proposed Regulations contain provisions to require development compliance with these obligations, including but not limited to: descriptions of the facilities to be constructed or installed; plat and plan disclosure statements certifying compliance with minimum state and County standards; and compliance with the Stated Authority to protect public health, safety, and welfare.
- (f) The approval, adoption, and enactment of the Regulations shall constitute a reasonable, good faith action taken by the County regarding subdivision and MHRC development in the unincorporated area, pursuant to the regulatory powers (express or implied) granted to the County by the Stated Authority to: fulfill mandatory obligations under federal, state, and local law; regulate construction in an area designated under law as a floodplain; regulate water safety, quality, and sufficiency; prevent waste and subsidence; protect rights of owners of interests in groundwater; regulate sewer and on-site sewage/OSSF facilities; prevent a grave and immediate threat to life or property; and provide a response to a real and substantial threat to public health and safety (including the occurrence of colonias or other substandard development), said action being designed to significantly advance the public health, safety, and welfare purposes, and said action not imposing a greater burden than is necessary to achieve that purpose. Therefore, the proposed Regulations are exempt from coverage under or application to Chapter 2007, pursuant to the exceptions authorized by § 2007.003(b) of the Texas Government Code and other authority.

QUESTION 3: Does the Covered Governmental Action result in a burden on “Private Real Property” as that term is defined in the Act?

ANSWER: No. Pursuant to Chapter 2007 and the Stated Authority, the County has determined the following regarding this question.

- (a) The Answer to **QUESTION 2** above is incorporated by reference. Pursuant to Chapter 2007 and the Stated Authority, the proposed Regulations and project are exempt from coverage under or application to the Act. Therefore, the County’s proposed action and enactment of the proposed Regulations do not constitute a

Covered Governmental Action pursuant to Chapter 2007 or the TXOAG Guidelines.

- (b) The Texas Legislature and TCEQ (through the Stated Authority) have determined that the unrestricted subdivision or other development of land in the unincorporated area may be detrimental to the public health, safety, and welfare due to nonexistent, inadequate, or dangerous utility facilities, water and wastewater facilities, drainage facilities, and transportation infrastructure or facilities. The Commissioners Court concurs with that position and has determined that the enactment, implementation, and enforcement of the proposed Regulations are necessary and advisable to protect the public health, safety, and welfare in the unincorporated area of the county.
- (c) Pursuant to the Stated Authority, the public purposes of the proposed Regulations include, among other things, the following matters: the Regulations shall govern plats, subdivisions of land, and manufactured home rental communities within the unincorporated area in order to promote the health, safety, morals, and general welfare, and the safe, orderly, and healthful development of the unincorporated area; and the Regulations shall ensure that adequate plats, plans, design and planning procedures, water, sewer, septic, and OSSF facilities, connections, and service (and related utility and transportation infrastructure) are provided in the unincorporated area to prevent colonias or other substandard development. The enactment, implementation, and enforcement of the proposed Regulation are authorized pursuant to the Stated Authority and shall accomplish or substantially achieve all public purposes described in this TIA and the Regulations by requiring developer compliance and accountability with proposed subdivision and MHRC development projects to protect the public health, safety, and welfare in the unincorporated area of the county.
- (d) The benefits to the public from the enactment, implementation, and enforcement of the proposed Regulations in the unincorporated area cannot be overstated due to the: (i) prevention of colonias or other substandard development in order to protect the public health, safety, and welfare; (ii) protection against diminishing property values; and (iii) all other benefits to the public health, safety, and welfare described in this TIA or the Regulations.
- (e) Moreover, a critical need exists in the county for the enactment of the Regulations, in the public interest, because unrestricted development in the unincorporated area, among other things, will: (i) be detrimental to the conservation, preservation, and protection of groundwater and surface water resources; (ii) reduce protection regarding pollution and unsanitary conditions resulting from the development of substandard and inadequate sewer or septic/OSSF facilities; (iii) reduce protection regarding inadequate and unsafe drainage plans and facilities (including stormwater diversion and runoff); and (iv) be detrimental to public health, safety, and welfare

by contributing to the decline of residential neighborhoods, the development of colonias or other substandard development, and the corresponding reduction of property values in the area of proposed development.

- (f) The Regulations require subdivision and MHRC development in the unincorporated area to occur in compliance with the Stated Authority. Given the requirements of the Stated Authority, no new (or alternatively minimal) burdens or restrictions will be imposed or created by the Regulations with respect to private real property, as discussed below.
 - (i) The Regulations present a substantial benefit to public health, safety, and welfare as shown in this TIA and the Regulations.
 - (ii) Existing development which may be affected by the enactment of the proposed Regulations may continue to operate, provided they are not enlarged or expanded.
 - (iii) The enactment of the Regulations will not result in or require a physical or regulatory taking of private real property pursuant to any constitutional or statutory takings theory described in Chapter 2007.
 - (iv) The enactment of the Regulations will not deprive the owner of affected real property of all economically viable uses of the property.
 - (v) It does not appear that the enactment of the Regulations will reduce the market value of the real property, or have a significant impact on the owner's economic interest.
 - (vi) The enactment of the proposed Regulations will not deny the real property owner the fundamental rights of ownership -- including without limitation the rights of title, possession, enjoyment, exclusion of unwanted persons from the property, and the conveyance or transfer of property interests.
 - (vii) The enactment of the proposed Regulations will not: (1) result in new public interests regarding the real property that are required to be created, established, or transferred to or for the benefit of the County; and (2) require a physical invasion, occupation, or dedication of the real property to the County.
- (g) As potential alternative actions, the County could:
 - (i) choose to modify the Regulations to reduce or diminish mandatory developer or owner compliance with the minimum development standards

and requirements described in the answers to **QUESTIONS 2 and 3** in this instrument, and

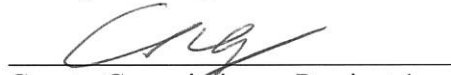
- (ii) request developers or owners of real property to self-regulate (by consent) their development projects in the public interest in the form, scope, and manner described in the Regulations.
- (h) These potential alternative actions, however, are not viable given the attendant circumstances existing in Gillespie County, Texas because:
 - (i) the proposed Regulations are authorized for enactment and enforcement by the County pursuant to the Stated Authority in order to protect the public health, safety, and welfare;
 - (ii) the alternative actions would not adequately promote and protect the public health, safety, and welfare, and the safe, orderly, and healthful development, of the unincorporated area, by requiring the provision of adequate plats, plans, design and planning procedures (including drainage), and water, sewer, septic, and OSSF facilities, connections, and service (including compliance with minimum state and County standards) -- given the present risk for colonias or other substandard development existing in the county due to increased financial opportunities for land development in this region of Texas regarding the sale or lease of land (or lots or other divided parts of land) in the unincorporated area to the public for residential, recreational, or business development purposes; and
 - (iii) the Regulations shall accomplish or substantially achieve all public purposes described in this TIA and the Regulations -- therefore, it is apparent that no viable alternative action exists to obtain the important development safeguards and protections to the public which will occur through the enactment of the Regulations.
- (i) No taking of private real property or rights in private real property, as defined by the Chapter 2007, will occur as a result of the County's proposed action and enactment of the Regulations.
- (j) It is determined therefore that: (i) the proposed action of the County (i.e., enactment of the Regulations) has been fully assessed for its potential impact on private real property rights; (ii) the proposed action of the County is exempt from coverage under or application to Chapter 2007; (iii) a "**No Private Real Property Impact Determination**" is hereby made by the County regarding its proposed action and enactment of the Regulations; and (iv) no further compliance with or analysis under Chapter 2007 is required by the TXOAG Guidelines.

ORDERED, APPROVED, AND ADOPTED on the 14th day of November, 2022.


**THE COMMISSIONERS COURT OF
GILLESPIE COUNTY, TEXAS**



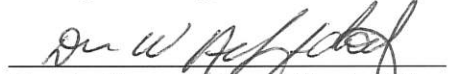
County Judge
Gillespie County, Texas



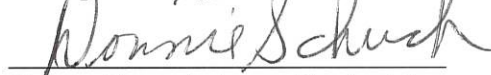
County Commissioner, Precinct 1
Gillespie County, Texas



County Commissioner, Precinct 2
Gillespie County, Texas




County Commissioner, Precinct 3
Gillespie County, Texas



County Commissioner, Precinct 4
Gillespie County, Texas

ATTEST:


County Clerk or Deputy County Clerk
Gillespie County, Texas

