



TEXAS TECH UNIVERSITY®

Operating Policy and Procedure

**OP 01.02: Land Development**

**DATE:** October 2, 2018

**PURPOSE:** The purpose of this Operating Policy/Procedure (OP) is to guide private and future development of Texas Tech University System (TTUS) lands.

**REVIEW:** This OP will be reviewed in September of every fourth year by the Vice Chancellor for Facilities Planning and Construction (VCFP&C).

**POLICY/PROCEDURE**

**1. Board of Regents' Policy**

*Section 09.07.1, Regents' Rules*

- a. The regents wish to ensure that the lands designated for development are reserved for uses that (1) contribute to overall campus development, (2) are consistent with Texas Tech academic goals and policies, and (3) cannot be accommodated on Texas Tech property without special arrangement.
- b. Such development activities will normally be funded from non-state sources.
- c. When lands are designated as available for development, the TTUS will seek to increase the value of the lands, generate revenue for Texas Tech, and provide direct support for Texas Tech programs.
- d. TTUS lands shall be developed following a competitive process (request for proposal or similar process) offering the lease of land for the specific use desired by Texas Tech. Texas Tech will not directly respond to unsolicited proposals for land development.
- e. Texas Tech may require, if it deems appropriate, that a market analysis be performed by an independent firm to determine the demand for the desired facility and/or service prior to Texas Tech soliciting proposals from interested providers.

**2. Conformity with Texas Statutes**

- a. Any Texas Tech-related development shall be consistent with all applicable Texas statutes, including, but not limited to, Education Code, Title 2, Chapter 109, Texas Tech University System, and Chapter 110, Texas Tech University Health Sciences Center.
- b. Compliance with Texas statutes may require the approval by act of the Texas Legislature.

**3. Uses Permitted**

OP 01.02

- a. Texas Tech-related uses include, but are not limited to, the following:
  - (1) Public uses such as streets, schools, recreation areas, and police and fire stations, in partnership with relevant city, county, state, or federal entities;
  - (2) Non-profit uses such as organized student living groups, international centers, and cultural facilities serving Texas Tech;
  - (3) Non-profit education and health care uses;
  - (4) Office, research, development, prototype manufacturing, or income producing agricultural development related to the interests of Texas Tech faculty and on-campus researchers;
  - (5) Residential uses related to the Texas Tech community, including, but not limited to, housing for students, faculty, staff, alumni, and retirees;
  - (6) Hotels or conference centers serving Texas Tech;
  - (7) Community shopping or retail services that improve the Texas Tech community; and
  - (8) Parking facilities.
- b. Texas Tech-related purposes refer to real property and interests therein held and used by Texas Tech in furtherance of its mission, but excluding real property held for investment purposes.

#### **4. Designated Lands**

- a. Lands designated as available for development for Texas Tech-related uses shall be approved by the Board of Regents and shown on the Campus Master Plan.
- b. Lands identified for Texas Tech-related development uses shall be lands designated by the regents as not needed in the foreseeable future to fulfill the teaching, research, public service, or patient care missions of Texas Tech.

#### **5. Responsibilities**

- a. The Chancellor shall have overall responsibility for managing Texas Tech lands, determining conditions for their use, and recommending the proposed designations to the regents. The Chancellor shall appoint a committee to review each proposed land development concept.
- b. The VCFP&C shall be responsible for coordinating the issuance of all Texas Tech development solicitations and reviewing all proposals received for the appropriateness of intended use. The VCFP&C shall be responsible for the review of land development concepts with the TTUS staff and the relevant component institutions and shall prepare the recommendations to the regents.
- c. The preparation of recommendations will be accomplished in consultation with the Vice Chancellor and Chief Financial Officer for advice and review.

- d. The VCFP&C and the Vice Chancellor and Chief Financial Officer shall have authority for the administration of the leases and the negotiation of all transactions regarding these lands.
- e. Review of the recommendations will be accomplished in consultation with the Vice Chancellor for Facilities Planning and Construction for advice and review. This review will consider the proposal's compatibility with the approved campus long-range development master plan, including land use and conformance to campus architectural and design guidelines, building codes, and environmental requirements.
- f. Review of the recommendation will be accomplished in consultation with the Vice Chancellor and General Counsel. This review will include consideration of any possible deed restrictions on the land, applicable statutes, Board of Regents' Rules, and Texas Tech policies. The Vice Chancellor and General Counsel shall be the custodian of all contracts of purchase and sale, gift agreements, leases, licenses, easements and rights-of-way, ground leases, mortgages, deeds of trust, insurance policies, and other documents relating to real property transactions for lands described herein, custody for which is not established elsewhere in the *Regents' Rules* and Texas Tech policy.
- g. Leases shall be prepared by the Vice Chancellor and General Counsel, the VCFP&C, and the Vice Chancellor and Chief Financial Officer. All leases must protect Texas Tech's interests, even if the original lessor defaults or ceases to exist as a viable business entity.

## **6. Lease versus Sale**

Texas statutes prohibits sale of Texas Tech land without legislative approval.

## **7. Pricing of Leases**

- a. The property value forming the basis for the lease shall be the fair market value of the land. The fair market value of the land shall be determined by two appraisals for the uses permitted by the lease. The appraisals shall be made by appraisers, selected by Texas Tech, with current state certification as well as meeting the current requirements of the Texas Higher Education Coordinating Board.
- b. Recommendations concerning the lease value, the annual payment(s), and the annual escalation rate shall be included in the request to the regents for approval of a lease. The annual payment(s) may be a cash payment and/or other in-kind payments that can be estimated in dollars.

## **8. Subordination**

The Board of Regents of the Texas Tech University System will not subordinate the fee interest that it owns in any real property.

## **9. Use of Proceeds**

Proceeds from development shall go first to repay Texas Tech for its costs, which includes, but is not limited to, land acquisition, planning, utilities, and operation. With the concurrence of the regents, the Chancellor shall be responsible for determining the appropriate use of the remaining development proceeds. Recommendations for use of the remaining proceeds shall be submitted to the regents on a case-by-case basis.

## **10. Land Planning**

Planning shall include both normal physical planning for the area and fiscal planning for financing necessary improvements. The Chancellor, at his sole discretion, may consult with appropriate and involved public and private agencies in the development of the plans.

## **11. Access**

Lands described herein ordinarily shall have or shall have developed frontage on at least one public (i.e., city, county, or state) street.

## **12. Zoning and Building Codes**

- a. While Texas Tech is legally exempt from local zoning and building codes, Texas Tech will require, as a matter of policy, that the developer follow local development codes (including, but not limited to, building and construction permits, required inspections, and related forms of code compliance and enforcement).
- b. As a default provision, the development code requirements that apply to Texas Tech, shall apply to the lessee. Texas Tech will establish the planning and building review process and procedures.

## **13. Conditions for Approval of Texas Tech-related Land Uses**

- a. The lessee shall normally be selected following a competitive process (request for proposal or similar process) offering the lease of land for the specific use desired by Texas Tech, as identified in Section 3.
- b. The lessee shall demonstrate the financial resources to complete and sustain the project.
- c. Texas Tech shall have design and site development review and approval over the land and any improvements.
- d. Texas Tech shall approve all sub-leases pertaining to any subject project.
- e. The lessee shall pay for or reimburse Texas Tech for any and all fees and costs associated with studies, plans, appraisals, approvals, and construction, operation, and maintenance of improvements on the premises.
- f. The lessee shall pay any and all temporary and permanent utility and operating expenses.
- g. The lessee shall pay any and all taxes, assessments, and possessory interest payments levied with respect to the occupation of the premises, regardless of whether they are incurred by the

lessee or by Texas Tech. (A taxable possessory interest may exist whenever there is a private, beneficial use of publicly-owned, non-taxable real property. Such interests are found when private individuals, companies, or corporations lease, rent, or use state-owned facilities and/or land for their own beneficial use.)

- h. Texas Tech shall not be responsible for the physical security, public safety, fire suppression, or emergency services of any improvements on the land for projects subject to this policy. The lessee shall indemnify and hold harmless Texas Tech for any loss in any manner arising from the use of the leased property.
- i. The lessee shall be responsible for and assure Texas Tech that all necessary road and utility infrastructure and all public services required by the project, including, but not limited to, physical security, public safety, fire suppression, and emergency services are available to the project.
- j. The lessee shall not use the name Texas Tech or other names or descriptions that would imply or suggest endorsement by or affiliation with the Texas Tech University System without prior express written permission from Texas Tech.
- k. The lessee shall maintain all buildings, grounds, and improvements in a condition acceptable to Texas Tech. All leases of land subject to this policy shall contain language that the lessee shall set aside a negotiated annual percentage contribution to a reserve account for replacement of buildings, grounds, and other improvements. This amount will be determined by Texas Tech. The reserve account shall be held by a fiduciary selected by Texas Tech. Texas Tech shall have the right to audit the reserve account records annually.
- l. The lease shall provide for the reversion of the property to Texas Tech in the event the specific use is changed without the approval of Texas Tech.
- m. Upon termination of the lease or upon reversion of the premises to Texas Tech, the lessee must remove, at its own expense, such improvements as Texas Tech, at that time, may direct, and must transfer ownership of improvements remaining on the premises, along with any remaining reserve accounts, without cost to Texas Tech. With the exception of improvements that are transferred to Texas Tech ownership, the lessee or purchaser must restore the premises and land to the original condition without cost to Texas Tech.
- n. All leases of land subject to this policy shall require the lessee to develop the land for the agreed uses within a period specified in the lease or the land shall revert to Texas Tech and all payments to Texas Tech forfeited.