Master Development Plan for the TxDOT North Tarrant Express Project Segments 2-4

Chapter 8: Right-of-Way

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8. Right-of-Way

8.1. ROW Acquisition Approach

TxDOT shall hold title to all Project Right-of-Way (ROW). The Concessionaire and other third parties may obtain leasehold or other real property rights (such as easements) for Project ROW or portions thereof acquired for a Facility as set forth in an approved Facility Implementation Plan or Facility Financial Plan.

The ROW acquisition process shall be subject to the requirements of the Facility Agreement and State and federal law including the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the Uniform Act or URA), and all current amendments to the Uniform Act.

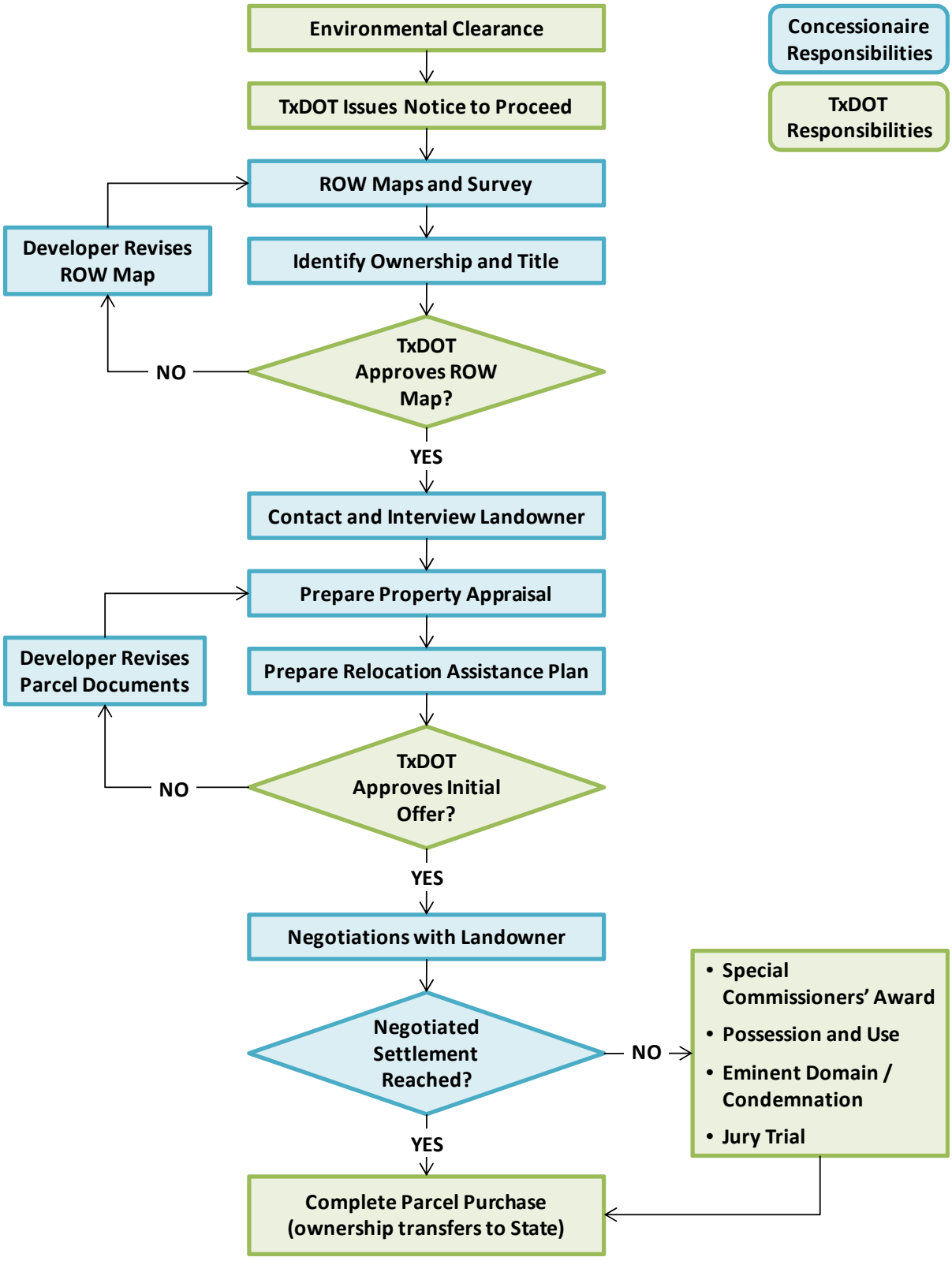
Current TxDOT regulations, policies and procedures as set forth in its *Right of Way Manual*, *Access Management Manual*, *Survey Manual*, *GPS Manual* and *Appraisal and Review Manual*, will also apply.

The Concessionaire will acquire ROW parcels for the Project on behalf of the State, subject to TxDOT's rights of review, approval, and audit. The State of Texas will be the record titleholder (owner) to all ROW acquired for a Facility. The Concessionaire will maintain a complete parcel file for each parcel and prepare packages of documentation related to each acquisition for TxDOT review and approval.

ROW for NTE Facilities will be acquired in the same way it is acquired for other TxDOT projects. There will be an independent appraisal, an offer and opportunity for negotiation, and the same due process rights to a jury trial if the property owner is not satisfied with the TxDOT offer. A typical Right of Way Acquisition Process Flowchart is shown in Figure 8-1.

To initiate ROW acquisition, the Facility must have received environmental clearance and TxDOT must issue a formal Notice to Proceed (NTP).

Figure 8-1: Typical ROW Acquisition Process



8.1.1. ROW Mapping and Title Services

The acquisition process begins with the ROW mapping phase of the actual Facility development. The current ownership is then identified or verified by a land title insurance company.

The Concessionaire's surveyor will carry out a boundary survey of each parcel of land and prepare a metes and bounds description (field note description) in accordance with TxDOT *Right of Way Manual*, *Survey Manual* and *GPS Manual* standards; the *Manual of Practice* by the Texas Society of Professional Land Surveyors; the USGS *National Map and Accuracy Standards* and other applicable regulations or legislation.

The Acquisition Survey Document Package will include:

- ROW map for separate constructible segments of the Facility, established by the logical termini of the Project.
- Parcel legal (metes and bounds) descriptions.
- Parcel plat showing the whole property.
- An identified control of access or access denial line on a ROW map.
- The permanent monumentation.
- Other items as specified in Facility Agreement.
- A title commitment is obtained on each proposed parcel of land from a TxDOT-approved land title insurance company.

8.1.2. Appraisal and Appraisal Review

Pre-appraisal Contact: Prior to having an appraisal performed, the Concessionaire shall prepare and send out letters of introduction for property owners and displacees to be signed by TxDOT's ROW Administrator or designee on TxDOT letterhead. These letters will include a description of the Project, a summary of TxDOT's need for the owner's property, and the name and phone number of the Concessionaire's ROW Acquisition Manager.

This initial contact will be followed by an in-person meeting, in which the property owner will be provided more detailed information on the overall timing of the ROW acquisition, the general type of Facility to be constructed, and the appraisal procedure that will be followed. If necessary, the Concessionaire will try to secure a Right of Entry Agreement between the property owner and Concessionaire, granting TxDOT, Concessionaire and assignees permission to enter the parcel.

Appraisal: The evaluation of all properties to be acquired must be estimated by TxDOT-approved certified independent fee appraiser(s). The property owner will be provided an opportunity to accompany the appraiser during inspection of the property. Formal negotiations with landowners cannot begin until TxDOT has approved the

appraised value of each parcel. The amount of just compensation will not be less than the approved appraisal, taking into account the value of allowable damages or enhancements to any remaining property.

Phase I Environmental Site Assessments (ESAs) will be performed for all properties to document the environmental condition of each parcel. The environmental process will proceed to Phase II and III investigations if justified. The ESA report will accompany the appraisal report in the ROW Acquisition Package.

Appraisal Review: All appraisals must be reviewed by a TxDOT-approved Appraisal Reviewer and submitted to TxDOT for concurrence on the estimate of value, prior to any offers to purchase being made to landowners. Appraisal reviewers shall follow the guidelines in the most current versions of TxDOT's *Appraisal & Review Manual*, the Uniform Standards and Federal Land Acquisitions and the requirements of the Appraisal Foundation's USPAP.

8.1.3. Negotiations with Landowners and Closing Services

Upon completion of the TxDOT review and approval of a parcel acquisition process, including the property appraisal and supporting documentation, the Concessionaire will meet with the property owner or the owner's designated representative to present the appraisal report and make a formal offer of purchase based on the approved appraised value.

If the landowner accepts the offer, title commitment requirements and exceptions to issuance of a title policy are addressed and a parcel purchase is closed or completed with the exchange of consideration and recorded conveyance of title.

If the landowner rejects the initial offer to purchase, the following may take place:

1. The landowner can make a fact-supported written counteroffer to TxDOT or the Concessionaire. If the counteroffer is accepted, the purchase is closed. This negotiated purchase is called an administrative settlement and approval is required by TxDOT's Administrative Settlement Committee.
2. Notwithstanding unsuccessful completion of the administrative settlement process, the parties may continue to negotiate up until such time as TxDOT authorizes the filing of a condemnation petition.
3. A petition is filed with the court, and the parcel proceeds to condemnation through the formal eminent domain procedures.
4. A mediation process may be utilized, which allows both willing parties to negotiate or settle on an agreed total parcel value to avoid the lengthy legal process. The final agreement must be approved by TxDOT or another designated State agency, such as the Office of the Texas Attorney General.

8.1.4. Relocation Assistance

The Concessionaire will be responsible for providing assistance in relocating occupants from Project ROW. Each displaced person shall be given sufficient time to plan for an orderly, timely and efficient relocation (not less than 90 days).Relocation assistance services include administrating relocation payments, helping displacees locate comparable housing or business sites, inspecting replacement housing, negotiating with moving companies, coordinating moves with displacees, securing vacant properties and assisting the Office of the Attorney General and local authorities with eviction proceedings if occupants have not complied with move dates.

8.1.5. Eminent Domain / Condemnation Support Services

The TxDOT portion of the actual eminent domain process is under the control of the Office of the Attorney General. Legal proceedings are conducted in the county where the parcels are located. A panel of three special commissioners with knowledge of real estate or property values in the county of the Facility area are appointed by the presiding court in that particular county to hear testimony and render a compensation award.

Upon the deposit of the award determined by the special commissioners, the presiding court may grant possession of the property to the State.

The deposit of the award amount into the court registry does not transfer title and ownership, but merely grants possession to the State.

Condemnation proceedings can be a very lengthy and time-consuming process and greatly impact an acquisition schedule. Following termination of negotiations, the process can take between four and 10 months to acquire possession of a single parcel. The Concessionaire shall work with TxDOT to streamline deliverable and review times to the extent prudent and shall carry out certain activities in parallel, within the confines of the law and Facility Agreement, to speed up this process.

8.1.6. Coordination with TxDOT and Other Entities

Effective coordination and exchange of information are vital to the ROW process. The Concessionaire shall coordinate and cooperate with TxDOT and its Authorized Representative to facilitate TxDOT’s oversight activities.

Scheduling of the ROW process must be closely coordinated with the groups responsible for scheduling the design and construction processes as well as with TxDOT. In developing the Project Schedule, it will be necessary to incorporate adequate time for TxDOT review and approval of Acquisition Packages. TxDOT’s written approval of ROW Acquisition Packages is required prior to proceeding with the acquisition of Project ROW or negotiations with landowners.

To make real-time ROW-related information available to TxDOT, the Concessionaire will supply a Web-based parcel-by-parcel database compatible with TxDOT's ROW tracking system, or another type of tracking system as agreed to by the parties. The database shall be fully accessible to Persons authorized by TxDOT.

In addition, monthly reports to TxDOT of ROW-related activity shall include:

- status of appraisal, acquisition and relocation activities for all parcels;
- acquisition and disposition of Additional Properties, temporary easements or other property interests;
- subcontractor status and performance;
- Project ROW-specific data required in order to complete the fields in TxDOT's ROW tracking software program

TxDOT will coordinate with the Office of the Attorney General as necessary to implement all legal actions for acquiring and obtaining possession of Project ROW. The Concessionaire will provide TxDOT with information necessary to facilitate this coordination and will assist in TxDOT in responding to requests for information by the Office of the Attorney General.

8.2. Corridor Preservation

A corridor is defined as "the path of a transportation facility that already exists or may be built in the future." The American Association of State Highway and Transportation Officials (AASHTO) defines corridor preservation as "a concept utilizing the coordinated application of various measures to obtain control of or otherwise protect the Right of Way for a planned transportation facility". Corridor preservation options may include implementing a corridor management program, land use regulations and acquiring property rights within a corridor (land acquisition). Specific techniques are briefly described below.

8.2.1. Corridor Management

Corridor preservation starts with effective coordination and communication between TxDOT and local agencies responsible for zoning and development. TxDOT can verify that ROW required for Segments 2-4 are included in comprehensive plans and planning maps for the state and regional authorities. TxDOT can coordinate with municipalities to communicate ROW needs and agree on practices to communicate when development may affect the corridor, including requiring local governments to contact TxDOT. These measures would allow TxDOT to be informed, analyze impacts to the corridor and offer alternatives.

8.2.2. Land Use Management / Access Management

Land use management refers to zoning, development permitting and other land use regulation outside the Project ROW. Authority for land use management resides

principally with local municipalities. Access management is a cooperative effort between state and local authorities to effectively balance opportunities for land development with the need for transportation efficiency and safety along transportation corridors.

Access management can be effectively applied to planned or existing transportation facilities. Access management is especially important in the preservation of capacity on existing transportation facilities. Some key principles of access management include:

- designing roadways according to their functional classifications and limiting direct access to major roadways;
- using intersections to provide appropriate transitions from one classification of roadway to another;
- locating signals to favor through movements;
- preserving the functional area of intersections and interchanges by limiting access connections near the intersection/interchange;
- limiting the number of conflict points and separating conflict areas;
- removing turning vehicles from through traffic lanes;
- using non-traversable medians to manage left-turn movements; and
- providing a supporting street and circulation system.

8.3. Innovative Financing Arrangements

This section identifies innovative financing arrangements, including commercial development concessions, rent to keep vacant and purchase and leaseback agreements.

8.3.1. Commercial Development Concessions

A license or grant for commercial development or concessions must be for a purpose that is reasonably necessary for the more effective use or operation of a Facility. It must also provide services to and directly benefit the users of a Facility. Legislative restrictions apply and limit the competition of services along a Facility with any existing and privately owned similar service.

Types of commercial development concessions include:

- **License for Access:** Provides or grants an access for exclusive or non-exclusive use of a facility. This license may or may not be for a definite term. Example: Public Utility Facility. TxDOT shall own the rights to grant a license for access; therefore any such proposed agreements shall be subject to TxDOT approval.
- **Grant Facility Franchise:** Allows for limited use of ROW for specific purposes or for the traveling public's safety and convenience. Provides

services and directly benefits users. Example: gas station, convenience store, or similar facility. TxDOT shall own the rights to grant a facility franchise; therefore any such proposed agreements shall be subject to TxDOT approval.

8.3.2. Rent to Keep Vacant

A Concessionaire will have the option of leasing a parcel or property from an owner, to keep the improvements or land vacant prior to actual acquisition under the standard Uniform Act process.

8.3.3. Purchase and Leaseback Agreements

A Concessionaire has the option purchase a parcel and then lease the acquired land and improvements back to the original owner after the purchase is complete and until the parcel is needed for actual construction activity.All land shall be acquired on behalf of TxDOT. In cases where TxDOT provides the funding mechanism then TxDOT would receive the rent. If the Concession provides the funding mechanism then TxDOT would not receive the rent. Such agreements shall be considered on a case-by-case basis and shall be subject to TxDOT approval.

8.4. Major Easements

Major easements are detailed by Segment in Tables 8-1 through 10.

8.4.1. Segment 2E Major Easements

Table 8-1: Segment 2E Major Drainage Easements

Location No.	Chain Name	Station	LT/ RT	Additional ROW Required	Additional Area (SF)	Description
1	EGP	3343+00 – 3345+00	RT	Yes	121,305	Detention Pond
2	WR8451	8460+00.00	LT	Yes	32,147	Existing Drainage Structure Outfall / Slope Protection (SH 360 North)
3	WR8451	847730 – 8479+30	LT	Yes	151,666	Existing Drainage Structure Outfall / Slope Protection
4	WF594	6493+00 – 6495+00	LT	Yes	72,987	Existing Drainage Structure Outfall / Slope Protection
5	EF5514	5530+00 – 5533+00	RT	Yes	210,796	Bear Creek Crossing - Downstream Re-grade / Slope Protection

Table 8-2: Segment 2E Major Utility Easements

Roadway	Utility Owner	Start of Conflict		End of Conflict		Dimensions		TOTAL Square Footage	Comment
						Width, ft	Length, ft		
SH 183	City of Euless	1330+75	LT	1350+35	LT	10 FT	1,765 FT	17,650	
SH 183	City of Euless	1333+20	RT	1347+80	RT	10 FT	1,460 FT	14,600	
SH 183	City of Euless	1427+70	RT	1438+60	RT	20 FT	1,415 FT	28,300	Line crosses under 2 proposed bents
SH 183	Atmos	1342+45	RT	1363+40	RT	10 FT	1,350 FT	13,500	
SH 183	Oncor OH	1310+00	RT	1330+75	RT	10 FT	1,850 FT	18,500	
SH 183	Oncor OH	1528+35	RT	2550+00	RT	15 FT	1,905 FT	28,575	

8.4.2. Segment 3A

Table 8-3: Segment 3A Major Drainage Easements

Location No.	Chain Name	Station	LT/ RT	Additional ROW Required	Additional Area (SF)	Description
1	35W-CL	797+00 – 804+00	RT	Yes	47,690	Detention Pond

Table 8-4: Segment 3A Major Utility Easements

Roadway	Utility Owner	Start of Conflict		End of Conflict		Dimensions		TOTAL Square Footage	Comment
						Width, ft	Length, ft		
IH 35W	City of Fort Worth	674+55	RT	695+00	RT	15 FT	1830 FT	27,450	Conflict measured between manholes shown on drawing.
IH 35W	City of Fort Worth	675+10	RT	675+10	RT	15 FT	1830 FT	27,450	Crossing - Conflict measured between manholes shown on drawing.
IH 35W	City of Fort Worth	873+60	RT	889+70	RT	20 FT	1460 FT	29,200	
IH 35W	AT&T	862+90	RT	888+00	RT	10 FT	2540 FT	25,400	Contained with conflict is an AT&T remote terminal inside an easement
IH35W	Oncor OH	783+00	RT	801+00	RT	50 FT	1830 FT	91,500	Line is located within 50' wide service easement
IH35W	Oncor OH	678+65	RT	696+55	RT	10 FT	1780 FT	17,800	

8.4.3. Segment 3B

Table 8-5: Segment 3B Major Drainage Easements

Location No.	Chain Name	Station	LT/ RT	Additional ROW Required	Additional Area (SF)	Description
1	35CL-P	1430+00	LT	Yes	12,526	Proposed Culvert – Outfall
2	35CL-P	1468+00 – 1471+00	LT	Yes	5,781	Proposed Culvert – Outfall

Table 8-6: Segment 3B Major Utility Easements

Roadway	Utility Owner	Start of Conflict		End of Conflict		Dimensions		TOTAL Square Footage	Comment
						Width, ft	Length, ft		
IH 35W	AT&T	1417+00	LT	1590+00	LT	10 FT	17,300 FT	173,000	
IH 35W	Oncor	1505+35	RT	1527+00	RT	10 FT	2,275 FT	22,750	
IH 35W	Oncor OH	1374+62	LT	1385+95	LT	10 FT	1,133 FT	11,330	
IH 35W	Oncor OH	1425+00	LT	1551+00	LT	10 FT	6,000 FT	60,000	
IH 35W	City of Fort Worth	1541+00	RT	1553+80	RT	15 FT	1,350 FT	20,250	
IH 35W	Atmos Energy	1512+50	RT	1540+00	RT	30 FT	2,815 FT	84,450	

8.4.4. Segment 3C

Table 8-7: Segment 3C Major Drainage Easements

Location No.	Chain Name	Station	LT/ RT	Additional ROW Required	Additional Area (SF)	Description
1	35CL-P	1139+25.00	LT	Yes	7,545	Extension of Culvert – Outfall and Slope Protection
2	35CL-P	1139+25.00	RT	Yes	5,055	Extension of Culvert – Outfall and Slope Protection
3	35CL-P	1175+00.00	RT	Yes	7,160	Extension of Culvert – Outfall and Slope Protection
4	35CL-P	1185+00	LT	Yes	16,090	Extension of Culvert – Outfall and Slope Protection
5	35CL-P	1239+35	LT	Yes	2,720	Proposed Box Culvert – Outfall
6	35CL-P	1239+35	RT	Yes	2,070	Proposed Box Culvert
7	35CL-P	1274+00	LT	Yes	75,220	Proposed Box Culvert – Outfall
8	35CL-P	1274+00	RT	Yes	115,635	Proposed Box Culvert

Table 8-8: Segment 3C Major Utility Easements

Roadway	Utility Owner	Start of Conflict		End of Conflict		Dimensions		TOTAL Square Footage	Comment
						Width, ft	Length, ft		
IH 35W	City of Ft. Worth	1254+00	RT	1281+30	RT	10 FT	2,770 FT	27,700	
IH 35W	City of Ft. Worth	1258+10	LT	1275+00	LT	10 FT	1,730 FT	17,300	
IH 35W	Sunoco Pipeline	1187+75	RT	1195+20	LT	50 FT	75 FT	3,750	Crossing
IH 35W	City of Ft. Worth	1123+00	LT	1132+60	LT	10 FT	660 FT	6,600	
IH 35W	City of Ft. Worth	1243+00	LT	1264+30	LT	10 FT	2,065 FT	20,650	
IH 35W	City of Ft. Worth	1245+00	RT	1277+35	RT	10 FT	3,290 FT	32,900	
IH 35W	City of Ft. Worth	1360+00	RT	1374+62	RT	10 FT	1,462 FT	14,620	

8.4.5. Segment 4

Table 8-9: Segment 4 Major Drainage Easements

Location No.	Chain Name	Station	LT/ RT	Additional ROW Required	Additional Area (SF)	Description
1	TBCL	28+25.00	RT	Yes	1,200	Proposed Culvert
2	TBCL	28+25.00	LT	Yes	1,200	Proposed Culvert
3	121FRW	346+30	LT	Yes	420	Proposed Culvert

Table 8-10: Segment 4 Major Utility Easements

Roadway	Utility Owner	Start of Conflict		End of Conflict		Dimensions		TOTAL Square Footage	Comment
						Width, ft	Length, ft		
SH 121	City of Richland Hills	342+00	LT	361+50	LT	20 FT	1,950 FT	39,000	
IH 820	City of Richland Hills	687+15	RT	776+30	RT	50 FT	2,700 FT	135,000	
IH 820	City of Richland Hills	807+45	RT	837+60	RT	50 FT	3,026 FT	151,300	
SH 121	City of Richland Hills	346+60	RT	369+00	RT	10 FT	2,255 FT	22,550	
IH 820	City of Fort Worth	680+00	RT	689+00	RT	20 FT	2,110 FT	42,200	
IH 820	City of Fort Worth	789+00	RT	801+50	RT	20 FT	1,225 FT	24,500	
IH 820	AT&T	784+60	RT	797+20	RT	20 FT	1,260 FT	25,200	
IH 820	Oncor OH	727+00	RT	744+10	RT	10 FT	1,700 FT	17,000	
IH 820	Oncor OH	744+25	RT	761+10	RT	10 FT	2,140 FT	21,400	