



SB 18 Implementation Training



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**Section 1:
SB 18 Application to TxDOT**

SB 18 An Overview

1. Introduction
 - A. Implementation Team
 - B. Purpose of this training
 - C. GroupWise account for questions and continuing information
 - D. Newsletter
 - E. Online information

2. Why SB 18?
 - A. Eminent Domain legislative reform efforts began in 1995 Legislative Session after Schmidt case
 - B. 2007 session; Governor veto
 - C. 2009 and 2011 session bills
 - D. What was not included in SB 18, but was included in other drafts

3. SB 18: Highlights of the Bill as it applies to TxDOT
 - A. Access Damages
 - B. Eminent Domain Authority and Procedure
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4. Implementation of SB 18
 - A. Coordination with Office of Attorney General, Right of Way Division and Office of General Counsel
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 - D. Changes to various forms
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Section 2: Procedural Changes in Eminent Domain

SENATE BILL 18 NEGOTIATION AND EMINENT DOMAIN PROCEDURES CHECKLIST

DISCLOSURE OF APPRAISAL REPORTS BY CONDEMNING AUTHORITIES

At the time of the initial offer, must disclose by certified mail ALL appraisal reports of the owner's property produced or acquired by the condemning entity which were prepared within 10 years prior to the offer.

No longer just those "used in determining the final offer".

DISCLOSURE OF APPRAISAL REPORTS BY PROPERTY OWNER

Limited to appraisal(s) "used in determining the owner's opinion of value" (existing law);

Disclosure time shortened: not later than the earlier of 10 days after report's receipt or the third business day before the special commissioner's hearing (the latter is shortened from 10 to 3 days before hearing).

PROHIBITION OF CONFIDENTIALITY OF ACQUISITION OFFER OR AGREEMENT

Cannot include a confidentiality provision in any offer or purchase agreement.

Requirement to inform the owner of the right to: discuss with others any offer, agreement or acquisition or keep the offer or agreement confidential (subject to TxDOT obligations under the public records act). Revised offer letter forms address this.

BONA FIDE OFFER REQUIRED

MUST make a "bona fide offer" to acquire the property voluntarily.

An entity makes a bona fide offer if complies with ALL of the following requirements:

1. written initial offer
2. written final offer made 30+ days after initial offer based on (equal or greater than the amount of) a written appraisal from a certified appraiser;

Caveat: to be a BFO, cannot make a FINAL offer based on an in-house value finding by a non-certified TxDOT employee, though an INITIAL offer can based on one.

3. provide with final offer or earlier: a) copy of written appraisal on which final offer is based;

b) copy of the deed, easement or other instrument by which the property or property right is proposed to be conveyed; sought to be acquired; and c) Landowner's Bill of Rights.

Notes: TxDOT initial and final offer letter revisions provide the proposed conveyance instrument with the final offer letter and continue the recommended practice of providing the LOBR with the initial offer letter. The appraisal on which the final offer is based must be provided by certified mail RRR if that offer is based on a different appraisal than was the basis of the initial offer.

4. provides property owner at least 14 days to respond to final offer before filing E.D. petition (final offer letter revision).

CONSEQUENCE OF FAILING TO MAKE A BONA FIDE OFFER

If the court hearing the E.D. case determines the condemnor did not make a BFO to acquire the property from the owner voluntarily "as required by Section 21.0113", the court shall: abate (not dismiss) the E.D. proceeding; order the condemnor to make a bona fide offer; and order the condemnor to pay any reasonable attorney's fees and other professional fees incurred by the property owner that are directly related to the violation.

CONDEMNATION PETITION

Must state "with specificity" the public use (vs. the "purpose") for which the entity intends to acquire the property.

Must state that the entity made a bona fide offer to acquire the property from the owner voluntarily "as provided by Section 21.0113".

Must provide a copy of the filed condemnation petition to the "property owner" by certified mail RRR.

Recommend, at minimum, providing copy of filed petition to fee owner(s) with the filed notice of lis pendens. However, since notice of filing of lis pendens has to be served on all parties anyhow (recommended by certified mail RRR), the safest approach is to serve all parties to the E.D. proceeding.

Example of petition/lis pendens transmittal letter

We enclose a copy of the notice of lis pendens the State of Texas has filed in the County's official records, related to an eminent domain proceeding filed by the State to acquire certain property for highway purposes (see enclosed copy of the filed petition for additional information). This required statutory notice of the filing of the petition and lis pendens requires no specific action by you at this time. In the future you will receive advance notice of the date of the scheduled special commissioners' hearing.

SPECIAL COMMISSIONERS' HEARING

The judge shall provide each party a reasonable period to strike one of the three commissioners appointed by the judge.

The special commissioners may not schedule a hearing...before the **20th** day after the date the special commissioners' were appointed.

Must wait 20 days before the commissioners can even sign an order setting the hearing date (presumably to accommodate a motion to strike a special commissioner).

Notice of hearing must be served on a party not later than the 20th (formerly the 11th) day before the day set for the hearing.

DISCLOSURE OF POTENTIAL RIGHT TO REPURCHASE PROPERTY (CITY, COUNTY, STATE ROW NO LONGER EXEMPTED)

An entity with eminent domain authority shall disclose in writing to the property owner, at the time of acquisition of the property through eminent domain, that the owners or his heirs, successors or assigns may be entitled to (a) repurchase the property under certain circumstances; (b) request from the entity certain information relating to the use of the property and any "actual progress" made toward that use; and (c) that the repurchase price is the price paid to the owner at the time the entity acquired the property through eminent domain.

Note: this will be handled in, or via an attachment to, the eminent domain judgment.

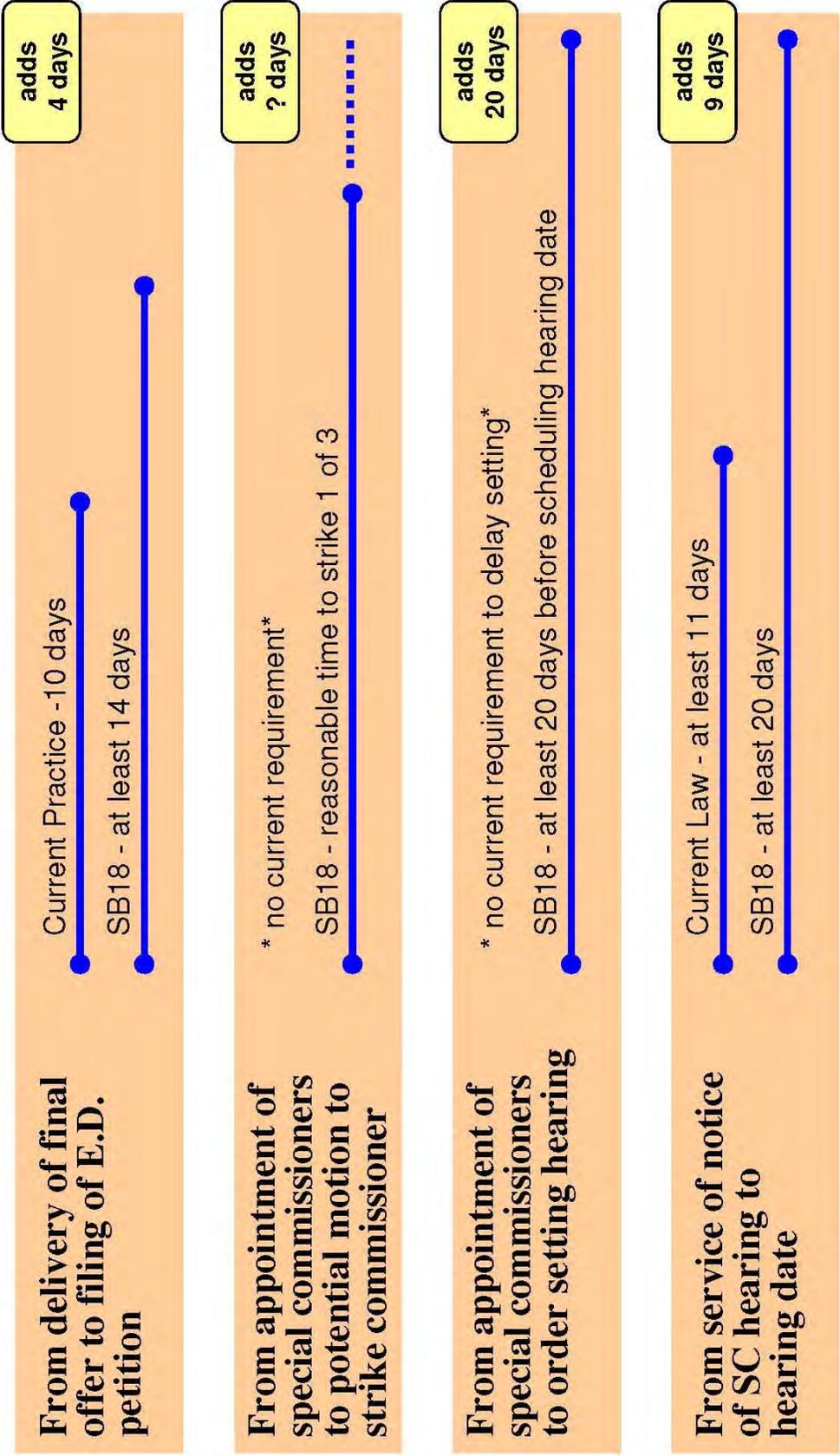
CHANGE OF ACCESS IMPAIRMENT COMPENSABILITY STANDARD

Current law: "material and substantial" impairment; compensability threshold a question of law for the court.

SB 18: "a material impairment of direct access on or off the remaining property that affects the market value of the remaining property." "Direct access" is defined as "ingress and egress on or off a public road, street, or highway at a location where the remaining property adjoins that road, street or highway" (circuitry of travel and diversion of traffic excluded).

Comparison of Elapsed Times

(Current Law or TxDOT Practice vs. SB18 Requirements)



REVISED NIOLPT (PARTIAL TAKING)

Date:

County:
Federal Project No.:
ROW CSJ:

Parcel:
Highway:
From:
To:

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED NO. _____

Dear _____,

In acquiring property for the highway system of Texas, the Texas Department of Transportation (the "Department") follows a definite procedure for appraising the land needed and for handling personal negotiations with each owner. As has been or will be explained by the State's negotiator, _____, a portion of your property located _____, as described in the enclosed property description, is to be acquired for the construction or improvement of the above-referenced highway project.

We believe at this stage of the purchase process it is mutually beneficial to confirm that, based on an appraisal, the State is authorized to offer you \$ _____ for your property, which includes \$ _____ for the property to be purchased and \$ _____ for damages to your remaining property. This amount is the total amount of just compensation for all interests in the portion of your property to be acquired, as determined in accordance with State law, less oil, gas and sulphur, subject to clear title being conveyed to the State. In accordance with State law, it is the policy of the Department to negotiate with the fee owner(s) of the real property with the understanding that you will, in turn, negotiate with any lessee or other party who may own any interest in the land or improvements, with the exception of public utility easements, which will be handled separately by the Department.

This offer to purchase includes the contributory values of the improvement(s) listed below, which are considered to be part of the real property. Since the improvement(s) must be removed, it is the policy of the Department to permit owners who convey voluntarily to the Department to thereafter retain the improvement(s), if they wish to do so. The retention values shown below are the estimated amounts the improvement(s) would bring if sold on public bids. If you wish to retain title to any of the following improvement(s) and remove it (them) from the right of way, the amount of the above offer must be reduced by the appropriate retention amount(s). This option to retain the improvement(s) does NOT apply should it become necessary for the Department to acquire the real property by eminent domain.

<u>Improvement</u>	<u>Amount to be Subtracted if Retained</u>
	\$
	\$
	\$
	\$
	\$
	\$

If you wish to accept the offer based upon this appraisal, please contact _____ as soon as possible, at (____) ____-____, so that the process of issuing your payment may be started. If you are not willing to accept this offer, you may submit a written request for administrative settlement/counteroffer, setting forth a counteroffer amount and the basis for such amount, provided such settlement request is received in writing within 30 days from the date of this letter. Please note that your opportunity to submit an administrative settlement shall be forfeited if such a settlement request is not received by the Department within the 30 day time deadline.

In the event the condition of the property changes for any reason, the State shall have the right to withdraw or modify this offer.

After the date of payment of the purchase price, or the date of deposit in court of funds to satisfy the award of compensation as determined through eminent domain proceedings to acquire real property, you will be reimbursed for any fair and reasonable incidental expenses necessarily incurred in transferring title to the property for use by the Texas Department of Transportation. Expenses eligible for reimbursement may include (1) recording fees, transfer taxes and similar expenses incidental to conveying the real property to the Department and (2) penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property. Voluntary unnecessary expenses or expenses incurred in clearing questionable title will not be eligible for reimbursement. Eligible incidental expenses will be reimbursed upon submission of a claim supported by receipted bills or other evidence of actual expenses incurred. You may file a written request for review if you believe that the Department failed to properly determine the eligibility for, or the amount of, incidental expenses to be reimbursed. There is no standard form on which to request a review of a claim; however, the claim must be filed with this office within six months after you are notified of the Department's determination on any claim for reimbursement.

You may be entitled to additional payments and services under the State's Relocation Assistance Program. It is emphasized, however, that any benefits to which you may be entitled under this program will be handled entirely separate from and in addition to this transaction. You will receive a brochure entitled "Relocation Assistance" which will inform you of eligibility requirements, payments and services which are available.

You have the right to discuss with others any offer or agreement regarding the Department's acquisition of the subject property, or you may (but are not required to) keep the offer or agreement confidential from others, subject to the provisions of Chapter 552, Government Code (the Public Records Act) as it may apply to the Department.

Attached is a copy of the Texas Department of Transportation brochure entitled "Right of Way Purchase" which we trust will give you a better understanding of the procedures followed by the Department in purchasing property. We respectfully request the opportunity to meet with you or to otherwise discuss and answer any questions you may have regarding the details of the type of facility to be built, or concerning the Department's offer or proposed purchase transaction. Also, please do not hesitate to contact _____ at the telephone number provided above regarding any question you may have.

Please see the enclosed copy of the Texas Landowner Bill of Rights.

Finally, we enclose copies of all appraisal reports relating to your property being acquired which were prepared in the ten (10) years preceding the date of this offer and produced or acquired by the Department, including the appraisal on which this offer is based.

Sincerely,

Right of Way Manager or other signatory

ENCLOSURES:
Appraisal Report(s)
Landowner Bill of Rights
Brochure ("Right of Way Purchase")

REVISED NIOLWT (WHOLE TAKING)

Date:

County:
Federal Project No.:
ROW CSJ:

Parcel:
Highway:
From:
To:

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED NO. _____

Dear _____,

In acquiring property for the highway system of Texas, the Texas Department of Transportation (the "Department") follows a definite procedure for appraising the land needed and for handling personal negotiations with each owner. As has been or will be explained by the State's negotiator, _____, a portion of your property located _____, as described in the enclosed property description, is to be acquired for the construction or improvement of the above-referenced highway project.

We believe at this stage of the purchase process it is mutually beneficial to confirm that, based on an appraisal, the State is authorized to offer you \$ _____ for your property. This amount is the total amount of just compensation for all interests in the portion of your property to be acquired, as determined in accordance with State law, less oil, gas and sulphur, subject to clear title being conveyed to the State. In accordance with State law, it is the policy of the Department to negotiate with the fee owner(s) of the real property with the understanding that you will, in turn, negotiate with any lessee or other party who may own any interest in the land or improvements, with the exception of public utility easements, which will be handled separately by the Department.

This offer to purchase includes the contributory values of the improvement(s) listed below, which are considered to be part of the real property. Since the improvement(s) must be removed, it is the policy of the Department to permit owners who convey voluntarily to the Department to thereafter retain the improvement(s), if they wish to do so. The retention values shown below are the estimated amounts the improvement(s) would bring if sold on public bids. If you wish to retain title to any of the following improvement(s) and remove it (them) from the right of way, the amount of the above offer must be reduced by the appropriate retention amount(s). This option to retain the improvement(s) does NOT apply should it become necessary for the Department to acquire the real property by eminent domain.

<u>Improvement</u>	<u>Amount to be Subtracted if Retained</u>
	\$
	\$
	\$
	\$
	\$
	\$

If you wish to accept the offer based upon this appraisal, please contact _____ as soon as possible, at (____) ____-____, so that the process of issuing your payment may be started. If you are not willing to accept this offer, you may submit a written request for administrative settlement/counteroffer, setting forth a counteroffer amount and the basis for such amount, provided such settlement request is received in writing within 30 days from the date of this letter. Please note that your opportunity to submit an administrative settlement shall be forfeited if such a settlement request is not received by the Department within the 30 day time deadline.

In the event the condition of the property changes for any reason, the State shall have the right to withdraw or modify this offer.

After the date of payment of the purchase price, or the date of deposit in court of funds to satisfy the award of compensation as determined through eminent domain proceedings to acquire real property, you will be reimbursed for any fair and reasonable incidental expenses necessarily incurred in transferring title to the property for use by the Texas Department of Transportation. Expenses eligible for reimbursement may include (1) recording fees, transfer taxes and similar expenses incidental to conveying the real property to the Department and (2) penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property. Voluntary unnecessary expenses or expenses incurred in clearing questionable title will not be eligible for reimbursement. Eligible incidental expenses will be reimbursed upon submission of a claim supported by receipted bills or other evidence of actual expenses incurred. You may file a written request for review if you believe that the Department failed to properly determine the eligibility for, or the amount of, incidental expenses to be reimbursed. There is no standard form on which to request a review of a claim; however, the claim must be filed with this office within six months after you are notified of the Department's determination on any claim for reimbursement.

You may be entitled to additional payments and services under the State's Relocation Assistance Program. It is emphasized, however, that any benefits to which you may be entitled under this program will be handled entirely separate from and in addition to this transaction. You will receive a brochure entitled "Relocation Assistance" which will inform you of eligibility requirements, payments and services which are available.

You have the right to discuss with others any offer or agreement regarding the Department's acquisition of the subject property, or you may (but are not required to) keep the offer or agreement confidential from others, subject to the provisions of Chapter 552, Government Code (the Public Records Act) as it may apply to the Department.

Attached is a copy of the Texas Department of Transportation brochure entitled "Right of Way Purchase" which we trust will give you a better understanding of the procedures followed by the Department in purchasing property. We respectfully request the opportunity to meet with you or to otherwise discuss and answer any questions you may have regarding the details of the type of facility to be built, or concerning the Department's offer or proposed purchase transaction. Also, please do not hesitate to contact _____ at the telephone number provided above regarding any question you may have.

Please see the enclosed copy of the Texas Landowner Bill of Rights.

Finally, we enclose copies of all appraisal reports relating to your property being acquired which were prepared in the ten (10) years preceding the date of this offer and produced or acquired by the Department, including the appraisal on which this offer is based.

Sincerely,

Right of Way Manager or other signatory

ENCLOSURES:
Appraisal Report(s)
Landowner Bill of Rights
Brochure ("Right of Way Purchase")

REVISED NFOL

Date:

County: Parcel:
Federal Project No.: Highway:
ROW CSJ:
Limits From:
Limits To:

Dear _____,

As you know, it is necessary for the State of Texas, acting through the Texas Department of Transportation, to construct a highway which requires the purchase of the property referred to above. Inasmuch as negotiations to purchase this property have not been successful to date, a final offer is hereby submitted to you. According to authorization by the Texas Transportation Commission, a total sum of \$ _____ is offered for the required property rights, save and except oil, gas and sulphur rights with no right of exploration on the above described property, subject to clear title being secured. Any compensation that may be due to you from this Department's Relocation Assistance Program is not included in this offer because such funds are paid to eligible persons separately.

If you desire to accept this offer, please contact _____ at (____) ____ - ____ as soon as possible. If this offer is not accepted within **fourteen (14) days from the date of delivery of this letter**, it will be considered as having been rejected. We enclose herein a copy of the proposed instrument by which the property or property interest would be conveyed to the State.

If you elect to reject this offer, eminent domain proceedings will be initiated by the State. Thereafter, the Court will appoint three disinterested real property owners who reside in the County to serve as Special Commissioners, a date will be set for a hearing and you will be notified of the time and place set for the hearing at which the Special Commissioners will hear the evidence presented and arrive at an award which will be filed with the Court. The State may then deposit the amount of the award with the Court, at which time the State will be entitled to take possession of the property involved. After the deposit is made, you may withdraw your share of the award. If the award exceeds the amount of any subsequent judgment, you are required to repay the State the excess amount and any excess amount not repaid to the State may be deducted from eligible payments, if any, due to you as the property owner under the Department's Relocation Assistance Program. If either you or the State is dissatisfied with the amount of the Special Commissioners' award, objections may be filed within the time prescribed by law and the case subsequently tried before the Court as are other civil cases.

Sincerely,

Right of Way Manager or other signatory

Enclosure: Draft proposed conveyance instrument

THE STATE OF TEXAS LANDOWNER'S BILL OF RIGHTS

Prepared by the Office of the Attorney General of Texas

This Landowner's Bill of Rights applies to any attempt by the government or a private entity to take your property. The contents of this Bill of Rights are prescribed by the Texas Legislature in Texas Government Code Sec. 402.03 and Chapter 21 of the Texas Property Code.

1. You are entitled to receive adequate compensation if your property is taken for a public use.
2. Your property can only be taken for a public use.
3. Your property can only be taken by a governmental entity or private entity authorized by law to do so.
4. The entity that wants to take your property must notify you about its interest in taking your property.
5. The entity proposing to take your property must provide you with an assessment of the adequate compensation for your property.
6. The entity proposing to take your property must make a good faith offer to buy the property before it files a lawsuit to condemn the property.
7. You may hire an appraiser or other professional to determine the value of your property or to assist you in any condemnation proceeding.

8. You may hire an attorney to negotiate with the condemning entity and to represent you in any legal proceedings involving the condemnation.

9. Before your property is condemned, you are entitled to a hearing before a court appointed panel that includes three special commissioners. The special commissioners must determine the amount of compensation the condemning entity owes for the taking of your property. The commissioners must also determine what compensation, if any, you are entitled to receive for any reduction in value of your remaining property.

10. If you are unsatisfied with the compensation awarded by the special commissioners, or if you question whether the taking of your property was proper, you have the right to a trial by a judge or jury. If you are dissatisfied with the trial court's judgment, you may appeal that decision.

Draft

CONDEMNATION PROCEDURE

Eminent Domain is the ability of certain entities to take private property for a public use.

Private property can include land and certain improvements that are on that property.

Private property may only be taken by a governmental entity or private entity authorized by law to do so. Your property may be taken only for a public use. That means it can only be taken for a purpose or use that serves the general public. However, Texas law prohibits condemnation authorities from taking your property to enhance tax revenues or foster

economic development.

Your property cannot be taken without adequate compensation. Adequate compensation includes the market value of the property being taken. It may also include certain damages, if any, to your remaining property caused by the acquisition itself or by the way the condemning entity will use the property.

HOW THE TAKING PROCESS BEGINS

The taking of private property by eminent domain must follow certain procedures. First, the entity that wants to condemn your property must provide you a copy of this Landowner's Bill of Rights before or at the same time the entity first represents in any manner to you that it possesses eminent domain authority.

Second, if it has not been previously provided, the condemning entity must send this Landowner's Bill of Rights to the last known address of the person in whose name the property is listed on the most recent tax roll at least seven days before the entity makes a final offer to acquire your property.

Third, the condemning entity must make a good faith offer to purchase the property. The condemning entity's offer must be based on an investigation and an assessment of adequate compensation for the property. At the time the offer is made, the governmental condemning

entity must disclose any appraisal reports it ~~used to determine the value of its offer to acquire the property produced or acquired relating specifically to the property and prepared in the ten years preceding the date of the offer.~~ **[See Section 7 of Senate Bill 18 amending Section 21.011(a) of the Texas Property Code]** You have the right to either accept or reject the offer made by the condemning entity.

CONDEMNATION PROCEEDINGS

If you and the condemning entity do not agree on the value of the property being taken, the entity may begin condemnation proceedings. Condemnation is the legal process for the taking of private property. It begins with a condemning entity filing a claim for your property in court. If you live in a county where part of the property being condemned is located, the claim must be filed in that county. Otherwise, the claim can be filed in any county where at least part of the property being condemned is located. The claim must describe the property being condemned, ~~state with specificity the intended~~ public use, ~~state~~ the name of the landowner, ~~a statement~~~~state~~ that the landowner and the condemning entity were unable to agree on the value of the property, ~~and~~~~state~~ that the condemning entity provided the landowner with the Landowner's Bill of Rights statement, ~~and state that the condemning entity made a bona fide offer to acquire the property from the property owner voluntarily.~~ **[See Section 9 of Senate Bill 18 amending Section 21.012(b) of the Texas Property Code]**

SPECIAL COMMISSIONERS' HEARING

After the condemning entity files a claim in court, the judge will appoint three landowners to serve as special commissioners. **The judge will give you a reasonable period to strike one of the special commissioners. If a commissioner is struck, the judge will appoint a replacement. [See Section 10 of Senate Bill 18 amending Section 21.014(a) of the Texas Property Code]** These special commissioners must live in the county where the condemnation proceeding is filed, and they must take an oath to assess the amount of adequate compensation fairly, impartially, and according to the law. The special commissioners are not authorized to decide whether the condemnation is necessary or if the public use is proper. After being appointed, the special commissioners must schedule a hearing at the earliest practical time and place and provide you written notice of that hearing.

You are required to disclose to the governmental condemning entity, ~~at least ten days before the special commissioners' hearing,~~ any appraisal reports used to determine your opinion about adequate compensation for the property. **Such disclosure must take place no later than the earlier of ten days after receipt of the report or three business days before the special commissioners' hearing. [See Section 7 of Senate Bill 18 amending Section 21.0111(b) of the Texas Property Code]** You may hire an appraiser or real estate professional to help you determine the value of your private property. You may also hire an attorney regarding

these proceedings.

At the hearing, the special commissioners will consider evidence on the value of the property, the damages to remaining property, any value added to the remaining property as a result of the project, and the uses to be made of the property being taken.

SPECIAL COMMISSIONERS' AWARD

After hearing evidence from all interested parties, the special commissioners will determine the amount of money to be awarded as adequate compensation. You may be responsible for the costs if the Award is less than or equal to the amount the condemning entity offered before the condemnation proceeding began. Otherwise, the condemning entity will be responsible for the costs. The special commissioners will give a written decision to the court that appointed them. That decision is called the "Award." The Award must be filed with the court and the court must send written notice of the Award to all parties. After the Award is filed, the condemning entity may take possession of the property being condemned, even if either party appeals the Award of the special commissioners. To take possession of the property, the condemning entity must either pay you the amount of the Award or deposit the amount of the Award into the registry of the court. You have the right to withdraw the deposited funds from the registry of the court.

OBJECTION TO THE SPECIAL COMMISSIONERS' AWARD

If either you or the condemning entity is dissatisfied with the amount of the Award, either party can object to the Award by filing a written statement of objection with the court. If neither party timely objects to the Award, the court will adopt the Award as the final judgment of the court. If a party timely objects to the special commissioners' Award, the court will hear the case in the same manner as other civil cases.

If you object to the Award and ask the court to hear the matter, you have the right to a trial by judge or jury. The allocation of costs is handled in the same manner as with the special commissioners' Award. After that trial, either party may appeal any judgment entered by the court.

DISMISSAL OF THE CONDEMNATION ACTION

A condemning entity may file a motion to dismiss the condemnation proceeding if it decides it no longer needs your property. If the court grants the motion to dismiss, the case is over and you are entitled to recover reasonable and necessary fees for attorneys, appraisers, photographers, and for other expenses incurred to the date of the hearing on the motion to dismiss.

You may also file a motion to dismiss the condemnation proceeding on the ground that the condemning entity did not have the right to condemn the property, including a challenge as to whether the property is being taken for a public use. If the court grants your motion, the court may award you reasonable and necessary fees for attorneys, appraisers, photographers, and for other expenses incurred to the date of the hearing or judgment.

RELOCATION COSTS

If you are displaced from a residence or place of business, you may be entitled to reimbursement for reasonable expenses incurred while moving personal property from the residence or relocating the business to a new site. You are not entitled to these relocation costs if they are recoverable under another law. If you are entitled to these costs, they cannot exceed the market value of the property being moved and can only be reimbursed for moving distances within 50 miles.

RECLAMATION OPTIONS

If private property was condemned by a governmental entity, and the purpose for which the property was acquired is canceled, **or no actual progress is made toward the public use of the property becomes unnecessary for public use** before the 10th anniversary of the date of the acquisition, you may have the right to seek to repurchase the property for the fair market value of the property at the time the public use was canceled. ~~This provision does not apply~~

~~to property acquired by a county, a municipality, or the Texas Department of Transportation.~~

~~[See Section 19 of Senate Bill 18 amending Section 21.101 of the Texas Property Code]~~

DISCLAIMER

The information in this statement is intended to be a summary of the applicable portions of Texas state law as required by HB 1495, enacted by the 80th Texas Legislature, Regular Session. This statement is not legal advice and is not a substitute for legal counsel.

ADDITIONAL RESOURCES

Further information regarding the procedures, timelines and requirements outlined in this document can be found in Chapter 21 of the Texas Property Code.

CSJ: CSJ #
PARCEL: Parcel #

NO. _____

THE STATE OF TEXAS § CONDEMNATION PROCEEDING FILED
 §
V. § IN THE _____ COURT
 §
 §
Def. Style § OF _____ COUNTY, TEXAS

PETITION FOR CONDEMNATION

TO SAID HONORABLE JUDGE:

Now comes the State of Texas, herein called Plaintiff, acting by and through the Texas Transportation Commission, represented herein by the Attorney General of Texas who, at the request of the Texas Transportation Commission, brings this action and files this its [original](#) Petition for the condemnation of the real property and interests or rights pertaining thereto as hereinafter-described, and shows that the owners of said land and their address for service are as follows: **Defendants, Title, Addresses**, hereinafter called Defendant (whether one or more) or called owner (whether one or more) and shows as follows:

1.

It is intended that discovery, if any, will be conducted under Level 2.

2.

That Defendant is the owner of the real property situated in _____ County, Texas, as described in Exhibit "A" attached hereto and incorporated herein for all purposes.

3.

The Texas Transportation Commission has found that in order to promote the public safety, to facilitate the safety and movement of traffic, and to preserve the financial investment of the public in its highways, public necessity requires the laying out, opening, constructing, reconstructing, maintaining, widening, straightening, extending, and operating of controlled access highways in the State of Texas as a part of the State highway system at such locations as are necessary to complete the national system of interstate and defense highways throughout the State of Texas; that the Texas Transportation Commission has found and determined that the tract(s) of land and improvements, if any, described in Exhibit "A" is/are suitable for public use of such purposes on the State highway designated as [insert highway], and is intended to use said land for such purposes, and it is necessary to acquire the fee simple title to said land and improvements, if any, as provided by law, for use on said State highway designated on Exhibit "A", as a part of the State highway system to be constructed, reconstructed, maintained, widened, straightened, extended, and operated thereon. Plaintiff, in the exercise of the police power for the preservation of human life and safety, and under existing laws, has designated said highway as a controlled access highway pursuant to Title 6 of the Tex. Transp. Code Ann. (Vernon 1995), in accordance with Texas Transportation Code Section 203.031; and where there is adjoining real property remaining after acquisition of a parcel, the roads are to be constructed, reconstructed or improved as a part of the highway facility with the right of ingress and egress to or from the remaining real property adjoining the highway facility to be permitted unless specifically denied, as designated and set forth on the attached Exhibit A. Plaintiff is entitled to condemn the fee title in such land and improvements, if any, for said purposes aforesaid and asks that the same be

condemned for such purposes aforesaid; provided, however, there is excluded from said estate to be condemned all the oil, gas and sulphur which can be removed from beneath said land aforesaid without any right whatever remaining to the owner of such oil, gas and sulphur of ingress or egress to or from the surface of said land and improvements, if any, for the purpose of exploring, developing, drilling, or mining of the same.

4.

The Landowner's Bill of Rights was provided to the property owner in accordance with Texas Property Code Section 21.0112.

5.

That Plaintiff made a bona fide offer to acquire the property described in Exhibit "A" from the property owner voluntarily in accordance with Texas Property Code Section 21.0113.

6.

That Plaintiff and Defendant have been unable to agree upon the value of said real estate and interest therein to be condemned or the damages occasioned by the acquisition of such land and improvements, if any, and asks that Special Commissioners be appointed as provided by law to assess the damages of the owner.

Respectfully submitted,

GREG ABBOTT
ATTORNEY GENERAL OF TEXAS

DANIEL T. HODGE
FIRST ASSISTANT ATTORNEY GENERAL

BILL COBB
DEPUTY ATTORNEY GENERAL FOR
CIVIL LITIGATION

DAVID C. MATTAX
DIRECTOR OF DEFENSE LITIGATION

KRISTINA W. SILCOCKS
ASSISTANT ATTORNEY GENERAL
CHIEF, TRANSPORTATION DIVISION

Assistant Attorney General
State Bar No.
Transportation Division
P. O. Box 12548
Austin, Texas 78711-2548
(512) 463-2004
(512) 472-3855 - Facsimile

ATTORNEYS FOR PLAINTIFF,
THE STATE OF TEXAS

DON'T FORGET FIELD NOTES

NO. _____

THE STATE OF TEXAS	§	CONDEMNATION PROCEEDING FILED
V.	§	IN THE _____ COURT
	§	
	§	
Def. Style	§	OF _____ COUNTY, TEXAS

J U D G M E N T

BE IT REMEMBERED, that on this day, came on to be heard the above-entitled and numbered cause and came the State of Texas (hereinafter "Plaintiff"), and announced ready for trial and came Defendants (hereinafter "Defendants") and announced ready for trial.

I.

Prior to the commencement of the trial of this cause said Defendants admitted and stipulated in open Court that the Plaintiff, the State of Texas, has the right to recover and condemn the property described herein; that all prior steps and due processes of law were duly, legally and timely performed; that all legal prerequisites for the trial of this cause by this Court had been duly complied with; that the only issue remaining in this cause to be tried by this Court is the amount of compensation due to the Defendants as a result of the condemnation of the property described in Exhibit "A" attached hereto (hereinafter "the property"); and that this Court has jurisdiction of such issue and this cause of action.

II.

From the papers heretofore filed in this cause, the evidence introduced upon the trial of this cause, and the agreements and stipulations made by the parties upon the trial of

this cause, the Court finds:

(1) That under and by its *Petition for Condemnation* filed with the clerk of this Court on [date], Plaintiff sought and prayed for the acquisition, for highway purposes, from the Defendants, through condemnation of the property located in _____ County, Texas; Plaintiff, in the exercise of the police power for the preservation of human life and safety, and under existing laws, has designated said highway as a controlled access highway pursuant to Title 6 of the Tex. Transp. Code Ann. (Vernon 1995), in accordance with Texas Transportation Code Section 203.031; and where there is adjoining real property remaining after acquisition of a parcel, the roads are to be constructed, reconstructed or improved as a part of the highway facility with the right of ingress and egress to or from the remaining real property adjoining the highway facility to be permitted unless specifically denied, as designated and set forth on the attached Exhibit "A", save and except the oil, gas and sulphur which can be removed from beneath said property without any right whatever of ingress or egress to or from the surface of said tract of land for the purpose of exploring, developing, drilling or mining of the same;

(2) That pursuant to said *Petition for Condemnation*, the Judge appointed three disinterested real property owners of _____ County, Texas, as Special Commissioners, who subsequently met, took their oaths of office, set a date of hearing before such Special Commissioners, and caused notice thereof to be duly served as prescribed by law, and that said Special Commissioners duly held said hearing;

(3) That upon said hearing all parties appeared, either in person or by their attorneys, and that after such hearing, the Special Commissioners made and rendered their decision

and Award in writing, and filed said Award with the Judge of this Court on [Award date];

(4) That by said written Award, said Special Commissioners awarded to Defendants the sum of **[Award amount]**;

(5) That said _____ duly and timely filed an objection and exception to the Award of Special Commissioners and caused the parties to be cited accordingly.

III.

Thereupon, came a jury composed of six good and lawful men and women, who, being duly tested, qualified, empaneled and sworn, heard the pleadings, the stipulations of the parties, the evidence and the argument of counsel. After hearing the pleadings, the evidence and argument of counsel, and the stipulations of the parties, and after due deliberation, said jury reached a verdict in answer to the special issues submitted to them by the Court as follows:

INSERT THE QUESTION(S) THAT WERE SUBMITTED TO THE JURY AND THE JURY'S VERDICT(S).

/s/ _____
PRESIDING JUROR

Said verdict was received and filed in the papers of the case and such finding was duly received by the Court and was filed and entered of record on the minutes of said Court, and the Court is of the opinion that judgment should be rendered thereon.

IV.

It appearing to the Court and the Court finds from the record, the evidence and the findings of the jury:

(I) That all proceedings necessary to vest this Court with jurisdiction of the subject

matter and the parties of this cause have been instituted, maintained and complied with as required by law, and that, therefore, this Court has jurisdiction of the parties hereto and of the subject matter set forth in this case;

(2) That [Fee Owners only] are the owners in fee simple of the property and that the State of Texas, as condemnor, is condemning and acquiring, under and by virtue of these condemnation proceedings, the fee simple title in and to the property, and that the State of Texas is authorized to condemn the property;

(3) That from the pleadings and evidence and verdict of the jury, the Defendants should have and recover of and from Plaintiff the sum and amount of **[Judgment amount]** which represents, as determined by the Court, the reasonable market value of the property and improvements thereon as of [Date of take], and the damages, if any, to Defendants' remaining lands;

(4) That the State of Texas in turn should have and recover from Defendants as more specifically set forth in Plaintiff's *Petition for Condemnation*, a fee simple title in and to the property;

(5) That Plaintiff did on [Date of take], deposit into the Registry of this Court the sum of **[Award amount]** for the use and benefit of Defendants, which amount remains in the Registry of the Court and may be withdrawn at any time by the Defendants upon proper order entered by the Court;

(6) That all costs of Court incurred herein should be taxed against the Plaintiff, the State of Texas, which costs shall be paid only to the [County/District] Clerk of _____ County, Texas.

V.

It is therefore ORDERED, ADJUDGED and DECREED that the State of Texas do have and recover of and from the Defendants fee simple title in and to the property, situated in _____ County Texas, and that Defendants have and are entitled to a judgment from the State of Texas in the sum of **[Judgment amount]** for the interests in said properties herein condemned, and for damages, if any, to Defendants' remaining property; which amounts have been paid into the Registry of the Court by Plaintiff and that Plaintiff is hereby released and discharged from its constitutional obligation to pay such compensation for the taking of the property for public use.

VI.

It is further ORDERED, ADJUDGED and DECREED that the fee simple title to the property is hereby decreed to and vested in Plaintiff, the State of Texas, and where there is adjoining real property remaining after acquisition of a parcel, the roads are to be constructed, reconstructed or improved as a part of the highway facility with the right of ingress and egress to or from the remaining real property adjoining the highway facility to be permitted unless specifically denied, as designated and set forth on the attached Exhibit "A"; however, there is excluded from said estate vested in Plaintiff all the oil, gas and sulphur which can be removed from the property aforesaid without any right whatsoever remaining to the owner of such oil, gas and sulphur of ingress or egress to or from the surface of the property for the purpose of exploring, drilling, developing or mining the same.

VII.

The Defendants are hereby notified that under the provisions of Subchapter E,

Chapter 21 of the Property Code, the owner or the owner's heirs, successors, or assigns may, under certain circumstances, be entitled to repurchase the property or, after ten years from the date of this judgment, request certain information from the State, by and through the Texas Department of Transportation, relating to the use of the property and any actual progress made toward that use. The repurchase price, if applicable, is the price paid to the owner by the State for the property in accordance with the terms of this judgment.

VIII.

It is further ORDERED, ADJUDGED and DECREED that all costs of Court be and the same are hereby adjudged against the Plaintiff, which costs shall be paid to the [County/District] Clerk of _____ County, Texas.

SIGNED this the _____ day of _____, 201____.

JUDGE, Court
_____ County, Texas

APPROVED AS TO FORM:

GREG ABBOTT
Attorney General of Texas

AAG
Assistant Attorney General
State Bar Number
Transportation Division
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JUDGMENT
PAGE 6

ATTORNEYS FOR PLAINTIFF, THE STATE OF TEXAS

Opp. Atty
State Bar Number _____
Address
Telephone:
Facsimile:

ATTORNEY FOR DEFENDANTS,

Section 3:
Access: The Brave New World

The Brave New World of Access (Yin and Yang)

1. Valuation of Access Damages
 - a. Elements of New Law
 - (1) Direct Access to Highway
 - (2) Material Impairment
 - (3) Affects Market Value of Remainder
 - b. Comparison to Existing Law (Material and Substantial and Impairment)
 - c. Method of Appraisal and Guidance to Appraisers
 - d. Need to Separately Value and Identify Access
 - (1) In Appraisal
 - (2) In Deeds and Judgments
 - (3) In Tracking and Record Keeping
2. New Access Management Policy
 - a. Policy Concepts (Limited Use of Access Denial)
 - b. Application to Schematics and Deeds
3. Sale of Access Rights
 - a. Elements of New Law (Same Valuation for Purchase and Sale)
 - b. Practical Application
 - (1) State Ownership of Access
 - (2) Valuation of Access Rights Granted (Material Benefit)

APPRAISAL GUIDANCE MEMO
DAMAGES FOR IMPAIRMENT TO ACCESS

Material Impairment of Direct Access Standard - Effective September 1, 2011, the Texas Property Code, Section 21.042, establishes a new access standard for determining whether a property owner is entitled to damages for impairment to access resulting from the acquisition of property for a highway improvement project. The statute provides that:

"(d) In estimating injury or benefit under Subsection (c), the special commissioners shall consider an injury or benefit that is peculiar to the property owner and that relates to the property owner's ownership, use, or enjoyment of the particular parcel of real property, *including a material impairment of direct access on or off the remaining property that affects the market value of the remaining property*, but they may not consider an injury or benefit that the property owner experiences in common with the general community, including *circuity of travel and diversion of traffic* (italics added for emphasis). In this subsection, 'direct access' means ingress and egress on or off a public road, street, or highway at a location where the remaining property adjoins that road, street, or highway."

Meaning of "Material Impairment" - Although the courts have clearly defined the prior standard of "material and substantial impairment of access," there is very little in the way of legal authority to assist with a definition of "material impairment of direct access." The prior standard focused on access to the entire remainder and asked whether there was still "reasonable access" to the remainder after the state's restriction of access. The new standard, however, focuses on direct access to the property from the state highway. The operative factors are whether the impairment to "direct access" (ingress and egress on and off the remaining property) is "material" and, if so, whether it "affects the market value of the remaining property."

Appraisal Instruction:

a. A "material impairment" is one that is significant or important in the context of how the property is or may be used. Although the change must be significant or important, it no longer must be "substantial" (meaning considerable or large).

b. The appraiser should look at both the physical changes to ingress and egress on and off the remaining property and the anticipated impact on the use of the property to determine if the restriction is significant. Some of the factors to consider in the before and after scenario are:

- (i) the number, location, and width of existing, permissible, or permitted driveways;
- (ii) extent of difficulty for large trucks or other unique vehicles to enter the property (if that is the normal use of the property at the time of impairment);

- (iii) the manner in which the access impairment affects the functionality of existing improvements;
- (iv) whether the remaining property has access to another public road(s) (this is now just one factor; it does not automatically prevent a finding of material impairment of ingress and egress on and off the remaining property from the state highway); and
- (v) whether it changes the highest and best use of the remainder (again, this is not determinative of "materiality," but is just one factor to be considered in making that determination).

c. "Circuitry of travel" and "diversion of traffic" are specifically excluded from the concept of material impairment of ingress and egress on and off the remaining property.

CONTROL OF ACCESS ON THE STATE HIGHWAY SYSTEM

POLICY STATEMENT

A. LEGAL CONCEPTS.

It is well established case law in the State of Texas that an implied easement of ingress and egress exists for the benefit of real property that adjoins a public road, including a state highway. This right of access to and from the adjoining state highway facility is not absolute, but is subject to:

- (1) a valid exercise of regulatory authority by the Department;
- (2) purchase by the Department; and
- (3) statutory denial by Transportation Code, §203.034 for a new controlled access highway location.

(1) Regulatory Authority - Transportation Code, §§203.002 and 203.003 specifically authorize the Texas Transportation Commission to "...lay out, construct, maintain, and operate a designated state highway, with control of access as necessary to facilitate the flow of traffic and promote the public safety and welfare...." In addition to the Department's general ability to control access at specific locations on any state highway, Transportation Code, §203.031 authorizes the Commission to designate entire segments of a state highway as a controlled access highway with access from or to adjoining real property to be denied except as otherwise designated. The exercise of this police power is a legitimate and necessary authority of the State.

Title 43 Texas Administrative Code Chapter 11, Subchapter C, as recently amended, sets out the Department's access management policy and driveway regulations. According to §11.50, access management "... is an engineering and planning method of balancing the needs of mobility and safety on a highway system with the needs of access to adjacent land uses ..." and "... can promote a more coordinated intergovernmental, long term approach to land use and transportation decisions in the context of quality of life, economic development ...and public safety." Section 11.52 incorporates into the rules the Access Management Manual that governs the location, design, construction, and maintenance of all access connections.

If TxDOT limits an adjoining property owner's pre-existing access rights to a state highway **prior to September 1, 2011**, there is no compensation to be paid to the owner for TxDOT's exercise of access control provided that the property is left with reasonable access. If, however, there is a complete denial of access (the property is landlocked) or the control of access results in a material and substantial impairment of access to the property (no reasonable access remains), the owner is entitled to damages. **Effective September 1, 2011, this compensation standard will change.** After that date, Property Code, Section 21.042, provides that an abutting property owner will be entitled to compensation for a "material impairment of direct access on or off the remaining

property that affects the market value of the remaining property." "Direct access" for state highways means ingress and egress on or off a highway at a location where the remaining property adjoins that highway, but does not include increased circuitry of travel or diversion of traffic." This new compensation standard has not yet been tested or interpreted by the courts and its true meaning will be developed over time. It is clear, however, that the standard for assessing damages related to access denial will be lowered and result in increased costs to the State for acquisition of right of way. The Department is developing its interpretation and will begin appraising right of way parcels using the new impairment of access standard for acquisitions occurring after September 1, 2011.

(2) Purchase - The right of access to a state highway (either complete denial, or a material impairment of direct access) can be valued by an appraiser as a real property interest and purchased by the Department.

(3) Statutory Denial - Transportation Code, §203.034 specifically states that "...An owner of real property adjoining a new controlled access highway location is not entitled to access to the new highway location as a matter of right ..." and provides further that the initial denial of access is not a ground for damages. Section 203.034, however, does not mandate that all access will be denied. The Commission has the same authority under Transportation Code, §§203.03 and 203.031 to designate permitted locations of access. Section 203.034 merely prevents a claim of damages if access to a specific property adjoining the new controlled access highway location is denied. There is no claim to compensation for the denial of access because no prior right of implied access to a public road existed before the new highway was built. If, however, the practical result of the new location highway is to landlock a property that previously had access to another public road, the Department may be liable for damages.

B. POLICY FOR ACCESS TO NEW LOCATION HIGHWAYS.

1. Prior Policy for New Location Highways.

Minute Order 108544, dated June 28, 2001, established the Department's most recent policy for granting or denying access on new location highways (copy attached). Specific orders in the minute order provide that "...all new location relief routes on the state highway system shall be full controlled access..." and that "...the executive director will minimize the construction of any frontage roads along newly designated controlled access highways ... consistent with the criteria outlined in 43 TAC §15.54..." A copy of §15.54 is also attached. Following adoption of the minute order, the Department generally complied with a strict philosophy to control access whenever possible through both design schematic and right of way acquisition, to include all new location highways as well as the widening of existing highways (regardless of whether the highways were relief routes or freeways with only main lanes).

2. New Policy for New Location Controlled Access Highways.

a. Highways With Full Control of Access. The Department will continue the policy described in the specific provisions of Minute Order 108544 that apply the requirement of full controlled access to all new location relief routes and minimize the construction of frontage roads along newly designated controlled access highways in accordance with the requirements of 43 TAC §15.54. The policy requiring full control of access (no direct access from adjoining property to the main lanes) should also be applied to other state highway facilities designed for through traffic on main lanes, such as interstates and freeways.

b. Highways With Less Than Full Control of Access. The policy of full controlled access should not, however, be automatically applied to all new location highways. Within the broad legal concepts of access management, TxDOT has a great deal of flexibility. Consideration should be given to the type and purpose of the particular highway facility, including whether it is a relief route, an interstate, freeway, U.S. highway, other major arterial, or a frontage road. Except for the highway facilities described above in Paragraph 2. a., all other new location controlled access highways, including extensions and realignments of an existing facility, should be designed with access to be restricted only as determined by the District Engineer or designee working in conjunction with Design Division and Administration. Access should be permitted or denied in accordance with the Roadway Design and Access Management Manuals and sound engineering judgment. The same concepts should be applied to the widening of existing controlled access highways that are not subject to full control.

c. Frontage Roads. The Department will continue the policy described in the specific provisions of Minute Order 108544 that limit the construction of frontage roads along newly designated controlled access highways in accordance with the requirements of 43 TAC §15.54.

(1) Continuous frontage roads between logical termini. If frontage roads are constructed between logical termini, access should be permitted except where denied for safety or mobility reasons in accordance with the Roadway Design and Access Management Manuals and sound engineering judgment, and in locations where TxDOT already owns access rights.

(2) Short segments to relieve landlocked properties. If short segments of frontage roads are constructed to relieve landlocked properties, access will be negotiated between the Department and affected property owners as part of the right of way acquisition process. Permitted access will still be subject to safety concerns in accordance with the Roadway Design and Access Management Manuals and sound engineering judgment.

d. Public Road or Street Access to Highway. When requests are received for a new public road or street seeking permission to access an existing controlled access facility on the state highway system, or other location where access at

the proposed location is currently denied, such requests require Commission approval. As this is an intersection of two public roads, there is no sale or purchase of access rights involved, but only the designation to show a new access point for the public road.

e. Temporary Access. In the case of a new location highway that will be constructed in phases, temporary access may be permitted to the main lanes when a property would otherwise be landlocked. The terms and conditions of temporary use will be clearly stated in the access permit as provided in the Access Management Manual.

f. Change in Condition. When a change in condition of either the highway facility or the adjoining property occurs after construction of the new location highway and the change materially impacts access to the property, the District or Region should coordinate a response with Design Division and Administration.

3. Policy for New Location Non-Controlled Access Highway. New location non-controlled access highways, including state highways and farm to market road, should be designed with access permitted except where denied for safety and mobility reasons in accordance with the Roadway Design and Access Management Manuals and sound engineering judgment.

C. POLICIES FOR THE APPLICATION OF ACCESS CONTROL ON SCHEMATICS.

1. Prior Policy. Following the 2001 Minute Order, an informal policy was adopted to show on schematics a denial of access along the right of way line in all locations except where existing driveways were located or negotiated. This policy was applied to all types of highways. Within the last couple of years, the policy has been altered to provide fewer denials of access.

2. New Policy. The extent of TxDOT's access control along the right of way line will continue to be shown on design schematics. Except for highways with full control of access, such as interstate or freeway, access along the right of way line should not be shown as denied in advance on design schematics (whether new location or a widening of the highway facility) unless the denial of access at a particular location is necessary for safety or mobility reasons. A denial, however, will continue for locations where TxDOT already owns access rights. In locations where access is to be controlled for safety or mobility reasons, the denial should be annotated as "access denied." For all other areas, the annotation should normally be "Access may be permitted in accordance with Access Management Manual guidelines."

In addition to the designation of denied access along the right of way line, a "no crossing line" may also be inserted between the frontage road and main lanes in those locations where it is appropriate to specifically identify a prohibition of direct access to the main lanes. This no crossing line will be identified with a "NC" to distinguish it from the standard access denial line along the right of way.

D. POLICIES FOR THE ACQUISITION OF ACCESS RIGHTS ON HIGHWAY FACILITIES.

1. Prior Policy. Following the 2001 Minute Order, an informal policy was adopted to indicate on the legal description and survey plats of right of way deeds a denial of access in all locations except where existing driveways were located or negotiated. This policy was applied to all types of highways. Within the last couple of years, the policy has been altered to provide fewer denials of access.

2. New Policy. Legal descriptions and survey plats for the acquisition of right of way parcels needed for a highway improvement project will continue to be based on design schematics. Those schematics will comply with the new policy for limited denial of access along the right of way line described above in Section C.

a. Legal descriptions and survey plats for right of way deeds should identify locations where access is to be denied for safety or mobility reasons, and such denial should be described by reference to a denial or prohibition across a described line of access denial coincident with the proposed right of way line. For all other areas along the right of way line that are not designated as "access denied," there should not be any identification or annotation of access control. Language in the right of way deed or court judgment should indicate that in the areas where access is not denied, access may be permitted in accordance with Access Management Manual guidelines.

b. Right of way parcels may also be created for acquiring access only (AC parcels) when access needs to be controlled at that location, but no land from that adjoining property is needed for the highway improvement project.

E. DESIGN AND RIGHT OF WAY MANUALS - DISTRICT TRAINING.

The Design Division and the Right of Way Division will each revise its manuals to reflect the new policy and training will be conducted throughout the State for all affected Department employees including both management and staff.

TEXAS TRANSPORTATION COMMISSION

MINUTE ORDER

VARIOUS Counties

Districts VARIOUS

The Texas Department of Transportation (department) is committed to following its frontage road rules in Title 43 Texas Administrative Code (TAC) §15.54; however, further clarification would aid their full implementation for new controlled access highways.

It is the policy of the department to design new location relief routes to function as conduits through populated areas without adversely impacting the through traffic or local traffic.

Since access points lead to congestion on the main lanes of controlled access highways, sound engineering practices dictate that a controlled access highway, such as a relief route on the Texas Trunk System, should be designed with as few access points as feasible.

The department plans to develop all relief routes designated in the future as full controlled access facilities, to the extent possible.

Interchanges are to be spaced to preserve the capacity on the main lanes and industrial and local development is to be limited to the adjacent on and off-system roadway network.

New controlled access highways are to be developed without frontage roads whenever feasible.

During and after the planning stage, the need for frontage roads must be fully justified in accordance with TAC §15.54 (d), and when it is the only feasible alternative after all other alternatives have been considered.

IT IS THEREFORE ORDERED by the Texas Transportation Commission (commission) that all new location relief routes on the state highway system shall be full controlled access.

IT IS FURTHER ORDERED by the commission that the executive director will minimize the construction of any frontage roads along newly designated controlled access highways in Texas, consistent with sound engineering judgment and with the criteria outlined in 43 TAC §15.54.

IT IS UNDERSTOOD that this order will apply to projects with Long-Range Project Status and, whenever possible, to projects being developed in Priority 2.

IT IS FURTHER ORDERED that the existing rules in §15.54 (d) be reviewed and modified as necessary to better define this policy.

Submitted and reviewed by:

Cheri R. Kuebche
Director, Transportation Planning
and Programming Division

Recommended by:

Charles W. Seal
Executive Director

108544 JUN 28 01

Minute Number Date Passed

TITLE 43

TRANSPORTATION

PART 1

TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 15

FINANCING AND CONSTRUCTION OF TRANSPORTATION PROJECTS

SUBCHAPTER E

FEDERAL, STATE, AND LOCAL PARTICIPATION

RULE §15.54

Construction

(a) Purpose. This section describes the conditions under which state, federal and local financing of construction costs are to be shared.

(b) Funding. Construction costs may be funded by the commission at the entire expense of the department, with local participation, and/or with federal participation, as described in §15.55 of this title (relating to Construction Cost Participation), and in accordance with criteria set forth by federal and state law and regulations. The local government shall also be responsible for the total cost of any work included which is ineligible for federal or state participation as specified in §15.52 of this title (relating to Agreements).

(c) Sidewalks. The department will also provide for sidewalk construction, accomplished in accordance with the requirements of the Americans with Disabilities Act and other applicable state and federal laws, on designated state highway system routes:

(1) when replacing an existing sidewalk;

(2) where highway construction severs an existing sidewalk system (the state will make connections within highway right of way to restore sidewalk system continuity); or

(3) where pedestrian traffic is causing or is expected to cause a safety conflict.

(d) Control of Access on Freeway Mainlanes.

(1) For facilities with full control of access, such as interstate highways or freeways developed by commission designation pursuant to Transportation Code, Chapter 203, access to the main travel lanes is fully controlled through designation, purchase of access rights, or provision of frontage roads.

(2) The department will include frontage roads in the planning stage of highways with full access control when:

(A) it is necessary to unlandlock the remainder of a parcel of land which has a value equal to or nearly equal to the cost of the frontage road;

(B) the appraised damages, resulting from the absence of frontage roads at the time of planning, would exceed the cost of the frontage roads; or

(C) it is necessary to restore circulation of local traffic due to local roads or streets being severed or seriously impaired by the construction of the controlled access highway, and an economic analysis shows the benefits derived more than offset the costs of constructing and maintaining the frontage roads.

(3) In those instances where requests for additional frontage roads are received during or subsequent to the planning stage or after the freeway has been constructed, they may be considered and placed in order of the priority of highway needs.

(A) When right of way and utility adjustment costs are shared with a local government on a standard participation basis applicable to the highway designation, the department may assume 100% responsibility for additional frontage road construction as follows:

(i) on relatively short sections of frontage roads where through lane traffic is experiencing high accident rates due to local access and where such construction can be expected to substantially improve safety; or

(ii) in heavily traveled urban corridors where gaps occur in the existing frontage road systems, and closing these frontage road gaps will restore system continuity and provide a cost-effective method of enhancing traffic operations in the corridor.

(B) The department may assist a requesting local government in the construction of additional frontage roads as follows:

(i) where a usable section of frontage road that will be of benefit to the traveling public is to be developed (usable section being defined as an addition or extension from a cross road separation to cross road separation or connecting to a public roadway or major traffic generator);

(ii) where such frontage road construction is judged to not adversely impact existing traffic operations or safety;

(iii) where the department is responsible for design and construction of the added frontage roads; and

(iv) except as provided in subparagraph (E) of this paragraph, and as adjusted under §15.55 of this title (relating to Construction Cost Participation), when the requesting local government furnishes 100% of needed right of way and utility adjustment costs and 50% of the cost of construction, including preliminary and construction engineering.

(C) The department may approve additional frontage road construction, which is 100% funded by the requesting local government as follows:

(i) if the frontage road construction primarily provides new or improved access to abutting property and does not necessarily provide a usable section as defined in subparagraph (B)(i) of this paragraph (a type of addition that would provide limited benefits to the general traveling public); and

(ii) except as provided in subparagraph (E) of this paragraph, where the department is responsible for designing and constructing the frontage road and the requesting local government is responsible for 100% of the construction, right of way, and utility adjustment costs including preliminary and construction engineering.

(D) Where right of way costs are 100% the responsibility of the requesting local government, relocation assistance benefits will also be 100% the responsibility of the local government and must be accomplished in compliance with department policies and procedures.

(E) The department may waive any one or more of the cost conditions stated in subparagraphs (B)(iv) and (C)(ii) of this paragraph, provided that the waiver is first approved by written order of the commission. In approving a waiver, the commission will base its decision on consideration of the population level, bonded

indebtedness, tax base, and tax rate of the local government involved, or other conditions the commission deems pertinent.

(4) For additional frontage roads requested subsequent to the planning stage or after the freeway has been constructed, control of access as originally conceived for the facility may be modified to allow access to the proposed frontage road only to the extent as may be permitted by safety considerations and in keeping with department policies and procedures. The sale or disposal of access rights shall be accomplished in accordance with Chapter 21, Subchapter F of this title (relating to Disposal of Real Estate Interests).

(5) Access driveway connections shall be for securing access to abutting property. Costs and provision thereof shall be in accordance with the criteria and responsibilities established in §§11.50-11.55 of this title (relating to Access Connections to State Highways).

(e) Drainage Construction Costs.

(1) In general, it shall be the duty and responsibility of the department to construct, at its expense, a drainage system within state highway right of way, including outfalls, to accommodate the storm water which originates within and reaches state highway right of way from naturally contributing drainage areas.

(2) Where a drainage channel, man-made, natural, or a combination of both, is in existence prior to the acquisition of highway right of way, including right of way for widening the highway, it shall be the duty and responsibility of the state to provide for the construction of the necessary structures and/or channels to adjust or relocate the existing drainage channel in such a manner that the operation of the drainage channel will not be injured. The construction expense required shall be considered a construction item. The acquisition of any land required to accomplish this work shall be considered a right of way item, with cost participation to be in accordance with §15.55 of this subchapter (relating to Construction Cost Participation).

(3) The department, at its expense, shall adjust the structure and/or channels within the existing highway right of way as necessary to accommodate the approved drainage plan:

(A) where an existing highway crosses an existing drainage channel, and a political unit or subdivision with statutory responsibility for drainage develops a drainage channel to improve its operation, both upstream and downstream from the highway;

(B) after the state establishes that the drainage plan is logical and beneficial to the state highway system;

(C) where there is no storm water being diverted to the highway location from an area which, prior to the drainage plan, did not contribute to the channel upstream of the highway; and

(D) after construction on the drainage channel has begun or there is sufficient evidence to insure that the drainage plan will be implemented.

(4) A drainage facility may not be built across state highway right of way unless the person building the facility pays the entire costs of construction and maintenance. The design, construction, operation, and maintenance procedures for the facility within state highway right of way must be acceptable to the department.

(5) A local government may not use a department drainage system unless it pays for the entire cost of collecting and carrying its water to the department system and its proportional share of all costs relating to the system and outfall. The local government's proportional share shall be the ratio of cubic feet of water per

second that it delivers into the department system, divided by total cubic feet of water per section that is carried by the system. The local government requesting the drainage diversion shall indemnify the state against or otherwise acknowledge its responsibility for damages or claims for damages resulting from such diversion.

(f) Highway adjustments for reservoir construction.

(1) Where existing highways and roads provide a satisfactory traffic facility in the opinion of the department and no immediate rehabilitation or reconstruction is contemplated, it shall be the responsibility of the reservoir agency, at its expense, to replace the existing road facility disturbed by reservoir construction in accordance with the current design standards of the department, based upon the road classification and traffic needs.

(2) Where no highway or road facility is in existence but where a route has been designated for construction across a proposed reservoir area, the department will bear the cost of constructing a satisfactory facility across the proposed reservoir, on a line and grade for normal conditions of topography and stream flow, and any additional expense as may be necessary to construct the highway or road facility to line and grade to comply with the requirements of the proposed reservoir shall be borne by the reservoir agency.

(3) In soil conservation and flood control projects involving the construction of flood retarding structures where a highway or road operated by the department will be inundated at less than calculated 50-year frequencies by the construction of a floodwater retarding structure, the soil conservation service or one of its cooperating agencies will provide funds as necessary to raise or relocate the road above the water surface elevation which might be expected at 50-year intervals. In those cases where a highway or road operated by the department will not be inundated by floods of less than 50-year calculated frequency, it will be the responsibility of the department to underwrite this hazard for the general welfare of the state and continue to operate the road at its existing elevation until such time as interruption and inconvenience to highway travel may necessitate raising the grade.

(g) Irrigation crossings.

(1) Where an irrigation facility is in existence prior to the acquisition of highway right of way, including right of way for widening, and the highway project will interfere with such a facility, the following provisions shall govern.

(A) If, at the place of interference, the irrigation facility consists primarily of an irrigation canal which crosses the entire width of the proposed right of way, this shall be considered a crossing and it shall be the duty and responsibility of the department to construct and maintain an adequate structure and to make the necessary adjustments or relocations of minor laterals and pumps, etc., associated with the crossing, in such a manner that the operation of the irrigation facility will not be injured. The construction work at a crossing will be considered a construction item with the expense to be borne by the department. The acquisition of any land required to accomplish the adjustments and/or relocation shall be a right of way item.

(B) Any irrigation facility encountered which does not cross the right of way and consists primarily of a longitudinal canal and/or associated irrigation appurtenances such as pumps, gates, etc., which must be removed and relocated shall be considered a right of way item.

(C) In those cases where both crossing and longitudinal adjustments or relocation of irrigation facilities are encountered, each segment shall be classified in accordance with subparagraph (A) and (B) of this paragraph.

(2) An irrigation facility may not be built across state highway right of way unless the person building the facility pays the entire cost of construction and maintenance. The design, construction, operation, and

maintenance procedures for the facility within highway right of way must be acceptable to the department.

(h) Traffic signals and continuous and safety lighting systems. The installation, maintenance, and operation of traffic signals and continuous and safety lighting systems shall be accomplished in accordance with §25.5 of this title (relating to Installation, Operation, and Maintenance of Traffic Signals) and §25.11 of this title (relating to Continuous and Safety Lighting Systems).

Source Note: The provisions of this §15.54 adopted to be effective September 26, 1996, 21 TexReg 8957; amended to be effective January 1, 1998, 22 TexReg 12090; amended to be effective November 22, 1998, 23 TexReg 11661; amended to be effective February 21, 1999, 24 TexReg 1194; amended to be effective January 9, 2005, 29 TexReg 12241

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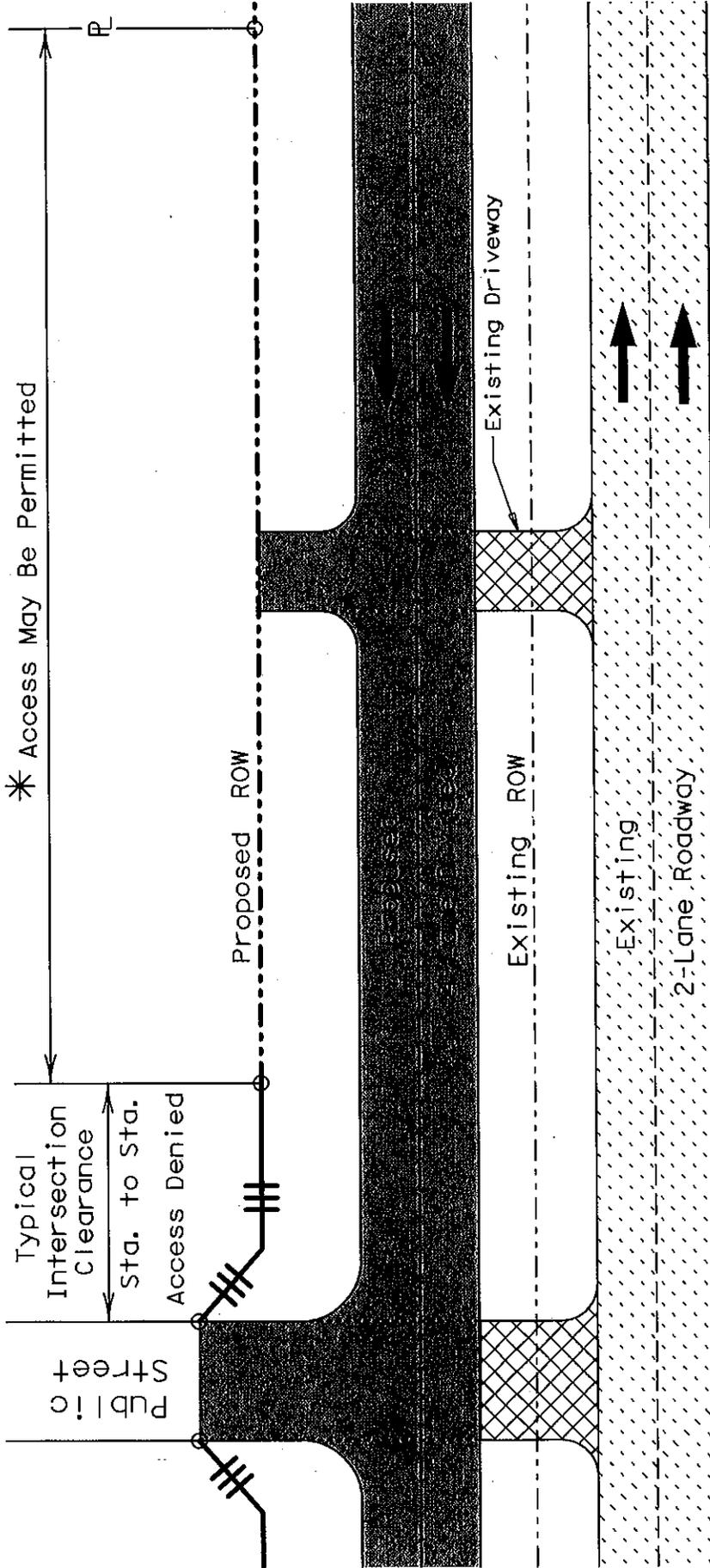
Non-Controlled (Managed) Access Highway

(2-Lane to 4-Lane Divided Expansion)

Factors:

1. Right of way is being acquired for expansion of an existing facility
2. Prior to expansion, property owners may have existing right of access

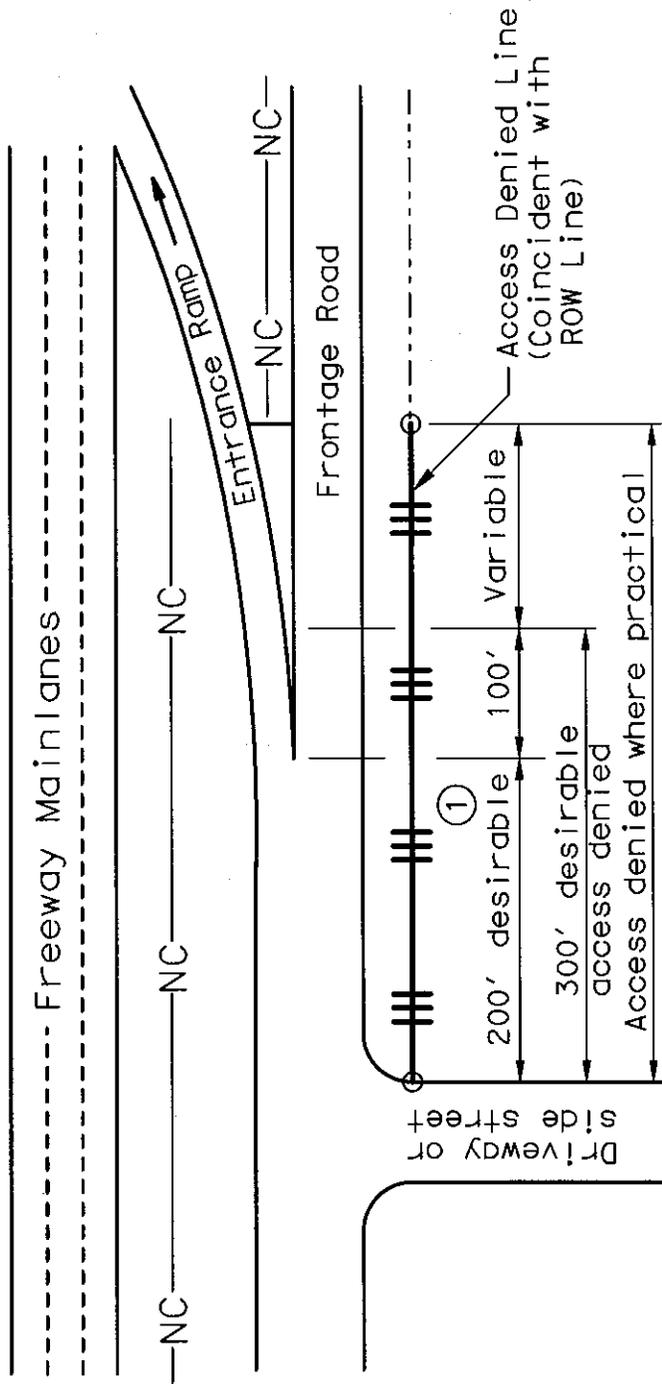
* Access may be permitted in accordance with Access Management Manual guidelines.



Existing ROW Line
Proposed ROW Line
Proposed Access Denied Line

To Be Obliterated

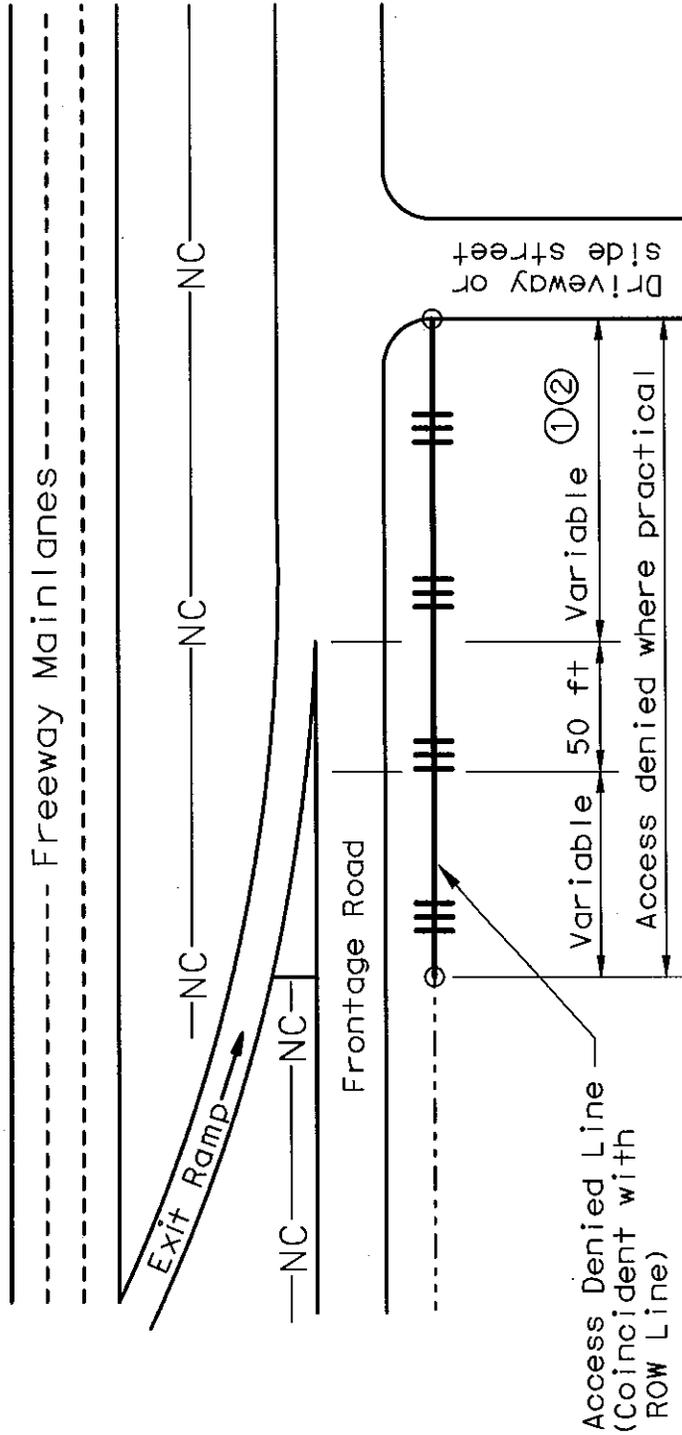
RECOMMENDED ACCESS CONTROL AT ENTRANCE RAMP JUNCTION WITH FRONTAGE ROAD



① When a minimum 100' separation distance cannot be obtained, consideration should be given to channelization methods that would restrict access to driveways within the 100' separation distance.

- Existing ROW Line
- ||— Proposed Access Denied Line
- NC— No Crossing Line

RECOMMENDED ACCESS CONTROL AT EXIT RAMP JUNCTION WITH FRONTAGE ROAD



- ① For exit ramp to driveway, side street, or cross street spacings, see Table 3-16 of the TxDOT Roadway Design Manual.
- ② When a minimum 250 ft separation distance cannot be obtained, consideration should be given to channelization methods that would restrict access to driveways within the 250 ft separation distance.

- - - Existing ROW Line
 —||— Proposed Access Denied Line
 —NC— No Crossing Line

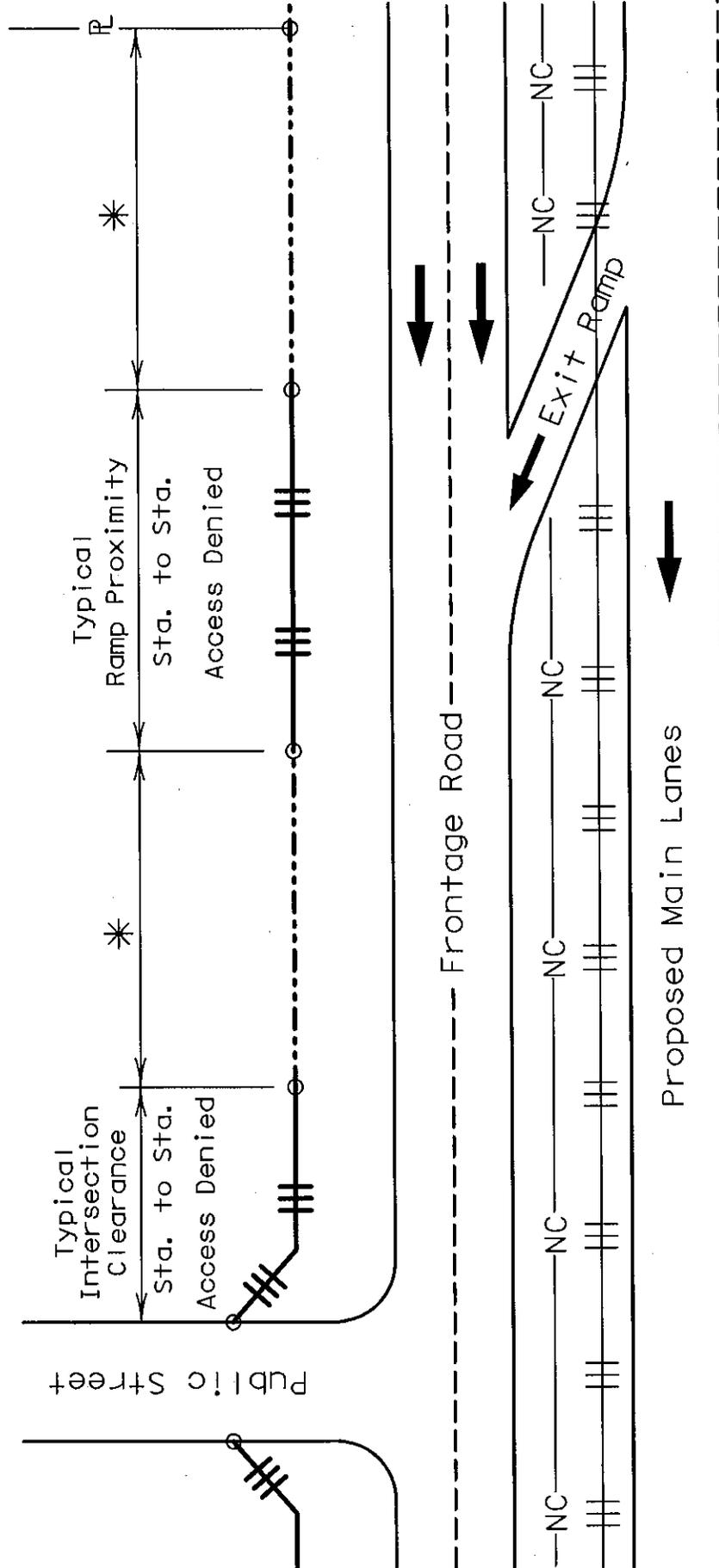
Controlled Access Highway

(Existing Facility)

Factors:

1. Designated, controlled access highway
2. Right of way is being acquired for expansion of an existing facility
3. Prior to expansion, property owners may have existing right of access

* Access may be permitted in accordance with Access Management Manual guidelines.

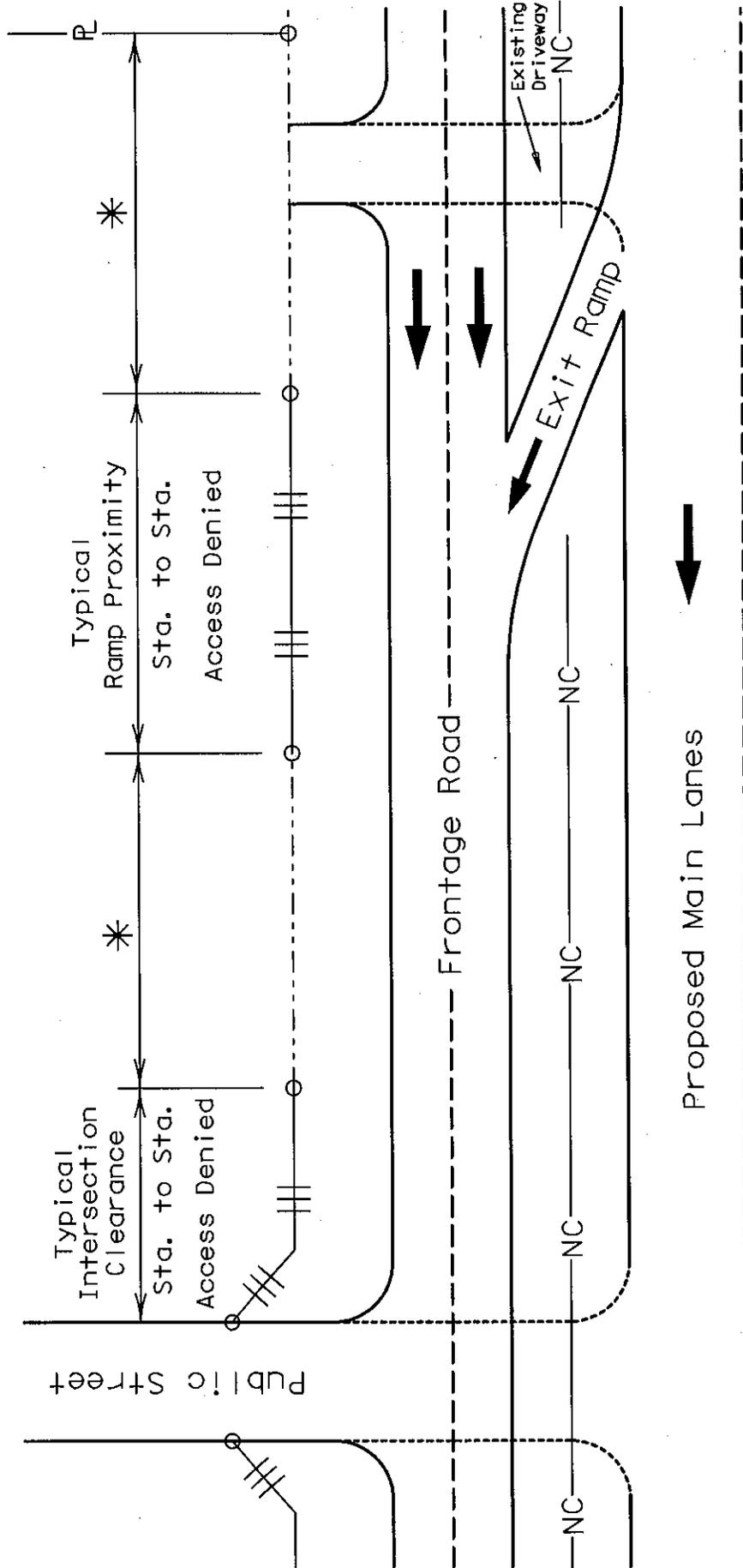


Controlled Access Highway

(Phase Construction)

Factors:

1. Designated, controlled access highway
 2. Right of way has been acquired for expansion of an existing facility
 3. Prior to expansion, property owners may have existing right of access
- * Access may be permitted in accordance with Access Management Manual guidelines.



- Existing ROW Line
- ||| Existing Access Denied Line
- NC— No Crossing Line

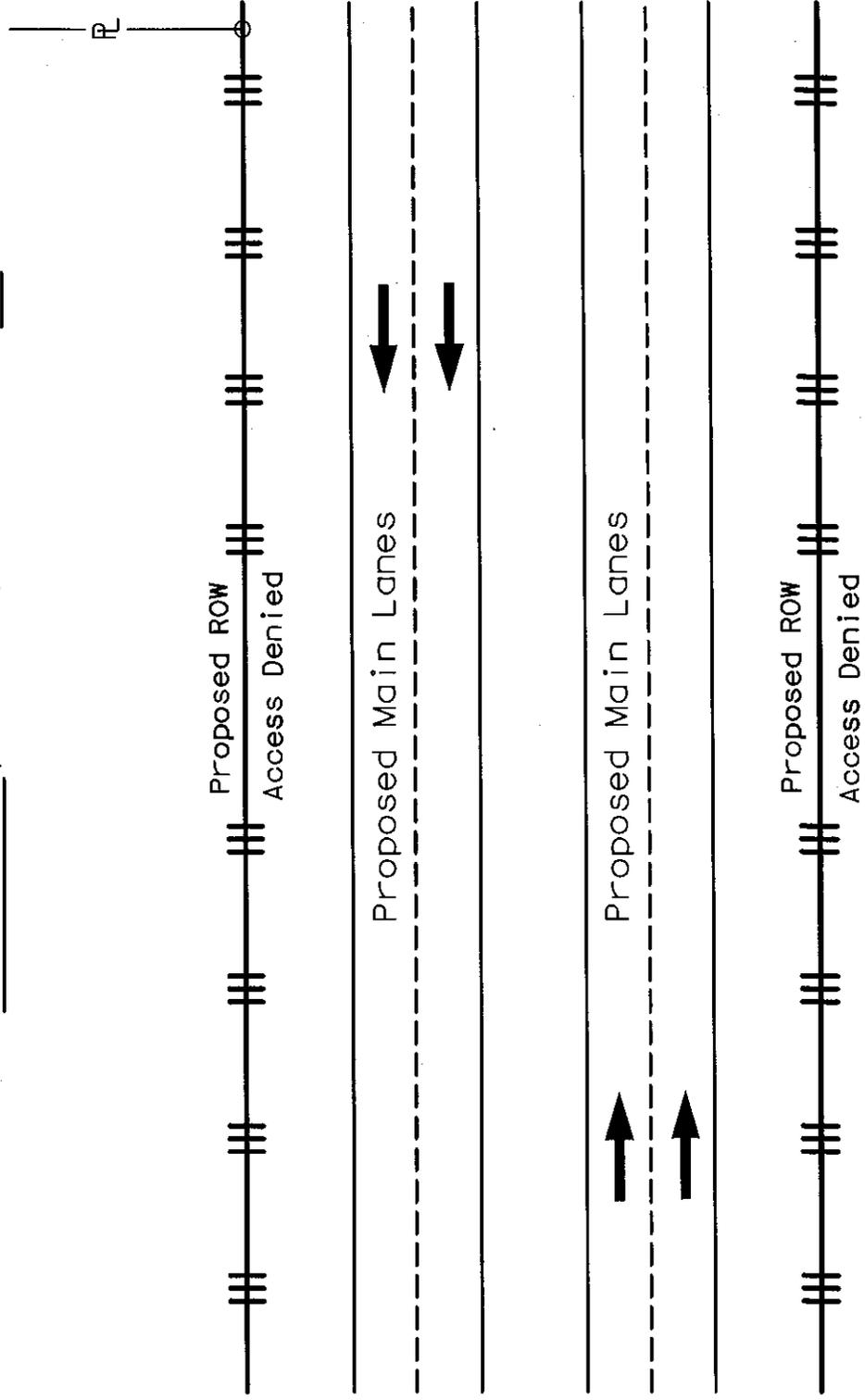
Access Control
Sheet 5 of 6

Full-Controlled Access Highway

(Relief Route)

Factors:

1. Commission designated, full controlled access facility.
2. Right of way is being acquired for new location Relief Route.
3. Prior to new location Relief Route, property owners have NO right of access



—|||— Proposed ROW and Access Denied Line

SALE OF ACCESS RIGHTS

VALUATION STANDARD

TxDOT is required by both Transportation Code, §202.021(j) (Senate Bill 18, 82nd Legislative Session) and Minute Order Number 112523 adopted on December 16, 2010 (copy attached) to use the same standard for the determination of the fair market value of the state's interest in highway access rights when selling access to abutting property owners as it uses when acquiring access rights for its highway projects. Prior to September 1, 2011, that standard is based on whether the owner's use of the property would be materially and substantially benefited by obtaining reasonable access when previously no reasonable access existed. **Effective September 1, 2011, the standard will change.** After that date, the standard for determination of the fair market value of the state's interest in highway access rights when selling access will be based on whether the owner's use of the property would be **materially benefited by the additional grant of access and that benefit increases the market value of the property** (the same concept as the new acquisition standard in Property Code, Section 21.042).

PROCEDURE

When access is requested to be permitted at a location or locations where access is currently denied by an access denial line located on a right of way map or in the legal description/survey plat of a prior deed, relinquishment, or condemnation judgment, the District or Region shall initially decide:

(1) whether the access denial results from the State's ownership of access rights or results from the State's exercise of its police power to control access under Transportation Code, Chapter 203; and,

(2) if the State does own the access rights, whether the owner's use of the property would be materially benefited by the additional grant of access and that benefit increases the market value of the property.

The State is considered to own the access rights if it can be demonstrated that TxDOT paid the owner to acquire those rights or paid access impairment damages at the time the access was acquired or impaired. If the District or Region has any question about how to resolve items (1) or (2), it should consult with attorneys in the Right of Way Division.

SALE

If the State owns the access rights and there will be a material benefit that increases the market value of the property, then the value of the access rights must be appraised, and Right of Way Division will prepare a minute order for the Texas Transportation Commission (Commission) to approve the sale and conveyance of the requested/approved access rights, as well as the appropriate document granting access rights for the Executive Director's or Governor's signature.

DESIGNATION OF PERMITTED ACCESS (NOT A SALE - NO COMPENSATION)

If the State does not own the access rights, it does not matter whether there will be a material benefit that increases the market value of the property. There will not be a sale. Access to an existing access-denied location, if recommended by the District/Region and approved by Design Division and Administration, will be implemented by Commission minute order designating access at the permitted location. Design Division will prepare the minute order. If the access denial line was described in a prior recorded deed or condemnation judgment, Right of Way Division will assist in the preparation of a new document that shows the access change.

Notice of Confidentiality Rights: If you are a natural person, you may remove or strike any of the following information from this instrument before it is filed for record in the public records: your Social Security Number or your Driver's License Number.



Form ROW-N-14
(Proposed Revision 07/11)
Page 1 of 4

DEED

STATE OF TEXAS

§

ROW CSJ:

§

COUNTY OF

§

WHEREAS, the Texas Transportation Commission is authorized under the Texas Transportation Code Chapters 203, 224, and 228 to purchase land and such other property rights (including requesting that counties and municipalities acquire highway right of way) deemed necessary or convenient to a state highway or turnpike project to be constructed, reconstructed, maintained, widened, straightened, or extended, or to accomplish any other purpose related to the location, construction, improvement, maintenance, beautification, preservation, or operation of a state highway or turnpike project, and

WHEREAS, the Texas Transportation Commission is also authorized under Texas Transportation Code, Chapter 203 to acquire or request to be acquired such other property rights deemed necessary or convenient for the purposes of operating a state highway, or turnpike project, with control of access as necessary to facilitate the flow of traffic and promote the public safety and welfare on both non-controlled access facilities, as well as designated controlled access highways and turnpike projects;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That, _____ of the County of _____, State of Texas, hereinafter referred to as Grantors, whether one or more, for and in consideration of the sum of _____ Dollars (\$ _____) to Grantors in hand paid by the State of Texas, acting by and through the Texas Transportation Commission, hereinafter sometimes referred to as Grantee, receipt of which is hereby acknowledged, and for which no lien is retained, either expressed or implied, have this day Sold and by these presents do Grant, Bargain, Sell and Convey unto the State of Texas all that certain tract or parcel of land lying and being situated in the County of _____, State of Texas, more particularly described in Exhibit "A," which is attached hereto and incorporated herein for any and all purposes.

→ [OPTIONAL PARAGRAPH TO BE USED ONLY WHEN ACCESS RIGHTS ARE VALUED AND PURCHASED]

Grantors do also Waive, Release, Relinquish, and Convey unto the State of Texas that portion of Grantors' abutting property rights of ingress and egress and direct access on and off the Highway Facility as described in Exhibit "A" by lines of access denial.

SAVE and EXCEPT, HOWEVER, it is expressly understood and agreed that Grantors are retaining title to the following improvements located on the property described in said Exhibit "A" to wit:
None.

Grantors covenant and agree to remove the above-described improvements from said land by the day of _____, _____, subject, however, to such extensions of time as may be granted by Grantee, its successor and assigns, in writing; and if, for any reason, Grantors fail or refuse to remove same within said period of time



prescribed, then, without any further consideration, the title to all or any part of such improvements not so removed shall pass to and vest in the Grantee, its successors and assigns, forever.

Grantors reserve all of the oil, gas and sulphur in and under the land herein conveyed but waive all rights of ingress and egress to the surface thereof for the purpose of exploring, developing, mining or drilling for same; however, nothing in this reservation shall affect the title and rights of the Grantee, its successors and assigns, to take and use all other minerals and materials thereon, therein and thereunder.

Grantors hereby acknowledge that their use of and access to the state highway facilities and/or turnpike project to be constructed in conjunction with the highway facility of which the land hereby conveyed shall become a part (herein called Highway Facility), shall be and forever remain subject to the same regulation by legally constituted authority as applies to the public's use thereof; and Grantors further acknowledge that the design and operation of such Highway Facility requires that rights of ingress and egress and the right of direct access to and from Grantors' remaining property (if any) to said Highway Facility, shall hereafter be governed by the provisions set out in said Exhibit "A", **SAVE AND EXCEPT** in the event access, or access points may be specifically allowed or permitted in said Exhibit "A", such access shall be subject to such regulation as is determined by the Texas Department of Transportation and/or the Texas Turnpike Authority Division to be necessary in the interest of public safety and in compliance with approved engineering principles and practices and subject to compliance with any applicable local municipal or county zoning, platting and/or permit requirements.

TO HAVE AND TO HOLD the premises herein described and herein conveyed together with all and singular the rights and appurtenances thereto in any wise belonging unto the State of Texas and its assigns forever; and Grantors do hereby bind ourselves, our heirs, executors, administrators, successors and assigns to Warrant and Forever Defend all and singular the said premises herein conveyed unto the State of Texas and its assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof.

IN WITNESS WHEREOF, this instrument is executed on this the _____ day of _____, _____.

Acknowledgement

State of Texas
County of

This instrument was acknowledged before me on _____

by _____

Notary Public's Signature

Corporate Acknowledgment

State of Texas
County of

This instrument was acknowledged before me on _____ by _____

of _____

a _____ corporation, on behalf of said corporation.

Notary Public's Signature

**[ADDITIONAL WORDING FOR AN EXHIBIT "A"
WHERE WHOLE TAKE (NO REMAINDER) INVOLVED—INCLUDE THE FOLLOWING
PARAGRAPH AS AN ADDITIONAL PAGE TO THE EXHIBIT "A" PROPERTY DESCRIPTION
IMMEDIATELY AFTER THE LEGAL DESCRIPTION AND PLAT MAP]**

The property described above relates to a "whole" property acquisition, so that there is no remainder or remaining property owned by the Grantors that was originally out of or a part of the property described above. Therefore, there are no access rights retained or remaining in Grantors, their successors and assigns, out of or relating to the property described above.

Note to Region Personnel: If this page is unnecessary, delete this page.

**Section 4:
SB 18**

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AN ACT

relating to the use of eminent domain authority.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (a), Section 11.155, Education Code, is amended to read as follows:

(a) An independent school district may, by the exercise of the right of eminent domain, acquire the fee simple title to real property ~~[for the purpose of securing sites]~~ on which to construct school buildings or for any other public use ~~[purpose]~~ necessary for the district.

SECTION 2. Chapter 2206, Government Code, is amended to read as follows:

CHAPTER 2206. ~~[LIMITATIONS ON USE OF]~~ EMINENT DOMAIN

SUBCHAPTER A. LIMITATIONS ON PURPOSE AND USE OF PROPERTY ACQUIRED

THROUGH EMINENT DOMAIN

Sec. 2206.001. LIMITATION ON EMINENT DOMAIN FOR PRIVATE PARTIES OR ECONOMIC DEVELOPMENT PURPOSES. (a) This section applies to the use of eminent domain under the laws of this state, including a local or special law, by any governmental or private entity, including:

- (1) a state agency, including an institution of higher education as defined by Section 61.003, Education Code;
- (2) a political subdivision of this state; or
- (3) a corporation created by a governmental entity to act on behalf of the entity.

1 (b) A governmental or private entity may not take private
2 property through the use of eminent domain if the taking:

3 (1) confers a private benefit on a particular private
4 party through the use of the property;

5 (2) is for a public use that is merely a pretext to
6 confer a private benefit on a particular private party; [~~or~~]

7 (3) is for economic development purposes, unless the
8 economic development is a secondary purpose resulting from
9 municipal community development or municipal urban renewal
10 activities to eliminate an existing affirmative harm on society
11 from slum or blighted areas under:

12 (A) Chapter 373 or 374, Local Government Code,
13 other than an activity described by Section 373.002(b)(5), Local
14 Government Code; or

15 (B) Section 311.005(a)(1)(I), Tax Code; or

16 (4) is not for a public use.

17 (c) This section does not affect the authority of an entity
18 authorized by law to take private property through the use of
19 eminent domain for:

20 (1) transportation projects, including, but not
21 limited to, railroads, airports, or public roads or highways;

22 (2) entities authorized under Section 59, Article XVI,
23 Texas Constitution, including:

24 (A) port authorities;

25 (B) navigation districts; and

26 (C) any other conservation or reclamation
27 districts that act as ports;

1 (3) water supply, wastewater, flood control, and
2 drainage projects;

3 (4) public buildings, hospitals, and parks;

4 (5) the provision of utility services;

5 (6) a sports and community venue project approved by
6 voters at an election held on or before December 1, 2005, under
7 Chapter 334 or 335, Local Government Code;

8 (7) the operations of:

9 (A) a common carrier pipeline [~~subject to Chapter
10 111, Natural Resources Code, and Section B(3)(b), Article 2.01,
11 Texas Business Corporation Act~~]; or

12 (B) an energy transporter, as that term is
13 defined by Section 186.051, Utilities Code;

14 (8) a purpose authorized by Chapter 181, Utilities
15 Code;

16 (9) underground storage operations subject to Chapter
17 91, Natural Resources Code;

18 (10) a waste disposal project; or

19 (11) a library, museum, or related facility and any
20 infrastructure related to the facility.

21 (d) This section does not affect the authority of a
22 governmental entity to condemn a leasehold estate on property owned
23 by the governmental entity.

24 (e) The determination by the governmental or private entity
25 proposing to take the property that the taking does not involve an
26 act or circumstance prohibited by Subsection (b) does not create a
27 presumption with respect to whether the taking involves that act or

1 circumstance.

2 Sec. 2206.002. LIMITATIONS ON EASEMENTS. (a) This section
3 applies only to an easement acquired by an entity for the purpose of
4 a pipeline to be used for oil or gas exploration or production
5 activities.

6 (b) A property owner whose property is acquired through the
7 use of eminent domain under Chapter 21, Property Code, for the
8 purpose of creating an easement through that owner's property may
9 construct streets or roads, including gravel, asphalt, or concrete
10 streets or roads, at any locations above the easement that the
11 property owner chooses.

12 (c) The portion of a street or road constructed under this
13 section that is within the area covered by the easement:

14 (1) must cross the easement at or near 90 degrees; and

15 (2) may not:

16 (A) exceed 40 feet in width;

17 (B) cause a violation of any applicable pipeline
18 regulation; or

19 (C) interfere with the operation and maintenance
20 of any pipeline.

21 (d) At least 30 days before the date on which construction
22 of an asphalt or concrete street or road that will be located wholly
23 or partly in an area covered by an easement used for a pipeline is
24 scheduled to begin, the property owner must submit plans for the
25 proposed construction to the owner of the easement.

26 (e) Notwithstanding the provisions of this section, a
27 property owner and the owner of the easement may agree to terms

1 other than those stated in Subsection (c).

2 SUBCHAPTER B. PROCEDURES REQUIRED TO INITIATE

3 EMINENT DOMAIN PROCEEDINGS

4 Sec. 2206.051. SHORT TITLE. This subchapter may be cited as
5 the Truth in Condemnation Procedures Act.

6 Sec. 2206.052. APPLICABILITY. The procedures in this
7 subchapter apply only to the use of eminent domain under the laws of
8 this state by a governmental entity.

9 Sec. 2206.053. VOTE ON USE OF EMINENT DOMAIN. (a) Before a
10 governmental entity initiates a condemnation proceeding by filing a
11 petition under Section 21.012, Property Code, the governmental
12 entity must:

13 (1) authorize the initiation of the condemnation
14 proceeding at a public meeting by a record vote; and

15 (2) include in the notice for the public meeting as
16 required by Subchapter C, Chapter 551, in addition to other
17 information as required by that subchapter, the consideration of
18 the use of eminent domain to condemn property as an agenda item.

19 (b) A single ordinance, resolution, or order may be adopted
20 for all units of property to be condemned if:

21 (1) the motion required by Subsection (e) indicates
22 that the first record vote applies to all units of property to be
23 condemned; and

24 (2) the minutes of the governmental entity reflect
25 that the first vote applies to all of those units.

26 (c) If more than one member of the governing body objects to
27 adopting a single ordinance, resolution, or order by a record vote

1 for all units of property for which condemnation proceedings are to
2 be initiated, a separate record vote must be taken for each unit of
3 property.

4 (d) For the purposes of Subsections (a) and (c), if two or
5 more units of real property are owned by the same person, the
6 governmental entity may treat those units of property as one unit of
7 property.

8 (e) The motion to adopt an ordinance, resolution, or order
9 authorizing the initiation of condemnation proceedings under
10 Chapter 21, Property Code, must be made in a form substantially
11 similar to the following: "I move that the (name of governmental
12 entity) authorize the use of the power of eminent domain to acquire
13 (describe the property) for (describe the public use)." The
14 description of the property required by this subsection is
15 sufficient if the description of the location of and interest in the
16 property that the governmental entity seeks to acquire is
17 substantially similar to the description that is or could properly
18 be used in a petition to condemn the property under Section 21.012,
19 Property Code.

20 (f) If a project for a public use described by Section
21 2206.001(c)(3) will require a governmental entity to acquire
22 multiple tracts or units of property to construct facilities
23 connecting one location to another location, the governing body of
24 the governmental entity may adopt a single ordinance, resolution,
25 or order by a record vote that delegates the authority to initiate
26 condemnation proceedings to the chief administrative official of
27 the governmental entity.

1 (g) An ordinance, resolution, or order adopted under
2 Subsection (f) is not required to identify specific properties that
3 the governmental entity will acquire. The ordinance, resolution,
4 or order must identify the general area to be covered by the project
5 or the general route that will be used by the governmental entity
6 for the project in a way that provides property owners in and around
7 the area or along the route reasonable notice that the owners'
8 properties may be subject to condemnation proceedings during the
9 planning or construction of the project.

10 SUBCHAPTER C. EXPIRATION OF CERTAIN EMINENT DOMAIN AUTHORITY

11 Sec. 2206.101. REPORT OF EMINENT DOMAIN AUTHORITY;
12 EXPIRATION OF AUTHORITY. (a) This section does not apply to an
13 entity that was created or that acquired the power of eminent domain
14 on or after December 31, 2012.

15 (b) Not later than December 31, 2012, an entity, including a
16 private entity, authorized by the state by a general or special law
17 to exercise the power of eminent domain shall submit to the
18 comptroller a letter stating that the entity is authorized by the
19 state to exercise the power of eminent domain and identifying each
20 provision of law that grants the entity that authority. The entity
21 must send the letter by certified mail, return receipt requested.

22 (c) The authority of an entity to exercise the power of
23 eminent domain expires on September 1, 2013, unless the entity
24 submits a letter in accordance with Subsection (b).

25 (d) Not later than March 1, 2013, the comptroller shall
26 submit to the governor, the lieutenant governor, the speaker of the
27 house of representatives, the presiding officers of the appropriate

1 standing committees of the senate and the house of representatives,
2 and the Texas Legislative Council a report that contains:

3 (1) the name of each entity that submitted a letter in
4 accordance with this section; and

5 (2) a corresponding list of the provisions granting
6 eminent domain authority as identified by each entity that
7 submitted a letter.

8 (e) The Texas Legislative Council shall prepare for
9 consideration by the 84th Legislature, Regular Session, a
10 nonsubstantive revision of the statutes of this state as necessary
11 to reflect the state of the law after the expiration of an entity's
12 eminent domain authority effective under Subsection (c).

13 SECTION 3. Subsection (a), Section 251.001, Local
14 Government Code, is amended to read as follows:

15 (a) When the governing body of a municipality considers it
16 necessary, the municipality may exercise the right of eminent
17 domain for a public use [~~purpose~~] to acquire public or private
18 property, whether located inside or outside the municipality, for
19 any of the following uses [~~purposes~~]:

20 (1) the providing, enlarging, or improving of a
21 municipally owned city hall; police station; jail or other law
22 enforcement detention facility; fire station; library; school or
23 other educational facility; academy; auditorium; hospital;
24 sanatorium; market house; slaughterhouse; warehouse; elevator;
25 railroad terminal; airport; ferry; ferry landing; pier; wharf; dock
26 or other shipping facility; loading or unloading facility; alley,
27 street, or other roadway; park, playground, or other recreational

1 facility; square; water works system, including reservoirs, other
2 water supply sources, watersheds, and water storage, drainage,
3 treatment, distribution, transmission, and emptying facilities;
4 sewage system including sewage collection, drainage, treatment,
5 disposal, and emptying facilities; electric or gas power system;
6 cemetery; and crematory;

7 (2) the determining of riparian rights relative to the
8 municipal water works;

9 (3) the straightening or improving of the channel of
10 any stream, branch, or drain;

11 (4) the straightening, widening, or extending of any
12 alley, street, or other roadway; and

13 (5) ~~for~~ any other municipal public use ~~[purpose]~~ the
14 governing body considers advisable.

15 SECTION 4. Subsection (a), Section 261.001, Local
16 Government Code, is amended to read as follows:

17 (a) A county may exercise the right of eminent domain to
18 condemn and acquire land, an easement in land, or a right-of-way if
19 the acquisition is necessary for the construction of a jail,
20 courthouse, hospital, or library, or for another public use
21 ~~[purpose]~~ authorized by law.

22 SECTION 5. Subsection (c), Section 263.201, Local
23 Government Code, is amended to read as follows:

24 (c) The declaration of taking must contain:

25 (1) a declaration that the land or interest in land
26 described in the original petition is taken for a public use
27 ~~[purpose]~~ and for ultimate conveyance to the United States;

- 1 (2) a description of the land sufficient for the
2 identification of the land;
- 3 (3) a statement of the estate or interest in the land
4 being taken;
- 5 (4) a statement of the public use to be made of the
6 land;
- 7 (5) a plan showing the land being taken; and
- 8 (6) a statement of the amount of damages awarded by the
9 special commissioners, or by the jury on appeal, for the taking of
10 the land.

11 SECTION 6. Section 273.002, Local Government Code, is
12 amended to read as follows:

13 Sec. 273.002. CONDEMNATION. Condemnation of property under
14 this chapter shall be in accordance with state law relating to
15 eminent domain, which may be Chapter 21, Property Code, or any other
16 state law governing and relating to the condemnation of land for
17 public use [~~purpose~~] by a municipality.

18 SECTION 7. Section 21.0111, Property Code, is amended to
19 read as follows:

20 Sec. 21.0111. DISCLOSURE OF CERTAIN INFORMATION REQUIRED;
21 INITIAL OFFER. (a) An [~~A governmental~~] entity with eminent domain
22 authority that wants to acquire real property for a public use
23 shall, by certified mail, return receipt requested, disclose to the
24 property owner at the time an offer to purchase or lease the
25 property is made any and all [~~existing~~] appraisal reports produced
26 or acquired by the [~~governmental~~] entity relating specifically to
27 the owner's property and prepared in the 10 years preceding the date

1 of the [used in determining the final valuation] offer.

2 (b) A property owner shall disclose to the [~~acquiring~~
3 ~~governmental~~] entity seeking to acquire the property any and all
4 current and existing appraisal reports produced or acquired by the
5 property owner relating specifically to the owner's property and
6 used in determining the owner's opinion of value. Such disclosure
7 shall take place not later than the earlier of:

8 (1) the 10th day after the date [within 10 days] of
9 receipt of an appraisal report; or

10 (2) the third business day before the date of a special
11 commissioner's hearing if an appraisal report is to be used at the
12 [reports but no later than 10 days prior to the special
13 commissioner's] hearing.

14 (c) An entity seeking to acquire property that the entity is
15 authorized to obtain through the use of eminent domain may not
16 include a confidentiality provision in an offer or agreement to
17 acquire the property. The entity shall inform the owner of the
18 property that the owner has the right to:

19 (1) discuss any offer or agreement regarding the
20 entity's acquisition of the property with others; or

21 (2) keep the offer or agreement confidential, unless
22 the offer or agreement is subject to Chapter 552, Government Code.

23 (d) A subsequent bona fide purchaser for value from the
24 acquiring [~~governmental~~] entity may conclusively presume that the
25 requirement of this section has been met. This section does not
26 apply to acquisitions of real property for which an [a
27 governmental] entity does not have eminent domain authority.

1 SECTION 8. Subchapter B, Chapter 21, Property Code, is
2 amended by adding Section 21.0113 to read as follows:

3 Sec. 21.0113. BONA FIDE OFFER REQUIRED. (a) An entity
4 with eminent domain authority that wants to acquire real property
5 for a public use must make a bona fide offer to acquire the property
6 from the property owner voluntarily.

7 (b) An entity with eminent domain authority has made a bona
8 fide offer if:

9 (1) an initial offer is made in writing to a property
10 owner;

11 (2) a final offer is made in writing to the property
12 owner;

13 (3) the final offer is made on or after the 30th day
14 after the date on which the entity makes a written initial offer to
15 the property owner;

16 (4) before making a final offer, the entity obtains a
17 written appraisal from a certified appraiser of the value of the
18 property being acquired and the damages, if any, to any of the
19 property owner's remaining property;

20 (5) the final offer is equal to or greater than the
21 amount of the written appraisal obtained by the entity;

22 (6) the following items are included with the final
23 offer or have been previously provided to the owner by the entity:

24 (A) a copy of the written appraisal;

25 (B) a copy of the deed, easement, or other
26 instrument conveying the property sought to be acquired; and

27 (C) the landowner's bill of rights statement

1 prescribed by Section 21.0112; and

2 (7) the entity provides the property owner with at
3 least 14 days to respond to the final offer and the property owner
4 does not agree to the terms of the final offer within that period.

5 SECTION 9. Section 21.012, Property Code, is amended to
6 read as follows:

7 Sec. 21.012. CONDEMNATION PETITION. (a) If an entity [~~the~~
8 ~~United States, this state, a political subdivision of this state, a~~
9 ~~corporation~~] with eminent domain authority [~~, or an irrigation,~~
10 ~~water improvement, or water power control district created by law~~]
11 wants to acquire real property for public use but is unable to agree
12 with the owner of the property on the amount of damages, the
13 [~~condemning~~] entity may begin a condemnation proceeding by filing a
14 petition in the proper court.

15 (b) The petition must:

16 (1) describe the property to be condemned;

17 (2) state with specificity the public use [~~purpose~~]
18 for which the entity intends to acquire [~~use~~] the property;

19 (3) state the name of the owner of the property if the
20 owner is known;

21 (4) state that the entity and the property owner are
22 unable to agree on the damages; [~~and~~]

23 (5) if applicable, state that the entity provided the
24 property owner with the landowner's bill of rights statement in
25 accordance with Section 21.0112; and

26 (6) state that the entity made a bona fide offer to
27 acquire the property from the property owner voluntarily as

1 provided by Section 21.0113.

2 (c) An entity that files a petition under this section must
3 provide a copy of the petition to the property owner by certified
4 mail, return receipt requested.

5 SECTION 10. Subsection (a), Section 21.014, Property Code,
6 is amended to read as follows:

7 (a) The judge of a court in which a condemnation petition is
8 filed or to which an eminent domain case is assigned shall appoint
9 three disinterested real property owners [~~freeholders~~] who reside
10 in the county as special commissioners to assess the damages of the
11 owner of the property being condemned. The judge appointing the
12 special commissioners shall give preference to persons agreed on by
13 the parties. The judge shall provide each party a reasonable period
14 to strike one of the three commissioners appointed by the judge. If
15 a person fails to serve as a commissioner or is struck by a party to
16 the suit, the judge shall [~~may~~] appoint a replacement.

17 SECTION 11. Subsection (a), Section 21.015, Property Code,
18 is amended to read as follows:

19 (a) The special commissioners in an eminent domain
20 proceeding shall promptly schedule a hearing for the parties at the
21 earliest practical time but may not schedule a hearing to assess
22 damages before the 20th day after the date the special
23 commissioners were appointed. The special commissioners shall
24 schedule a hearing for the parties [~~and~~] at a place that is as near
25 as practical to the property being condemned or at the county seat
26 of the county in which the proceeding is being held.

27 SECTION 12. Subsection (b), Section 21.016, Property Code,

1 is amended to read as follows:

2 (b) Notice of the hearing must be served on a party not later
3 than the 20th [~~11th~~] day before the day set for the hearing. A
4 person competent to testify may serve the notice.

5 SECTION 13. Section 21.023, Property Code, is amended to
6 read as follows:

7 Sec. 21.023. DISCLOSURE OF INFORMATION REQUIRED AT TIME OF
8 ACQUISITION. An [A governmental] entity with eminent domain
9 authority shall disclose in writing to the property owner, at the
10 time of acquisition of the property through eminent domain, that:

11 (1) the owner or the owner's heirs, successors, or
12 assigns may be [are] entitled to:

13 (A) repurchase the property under Subchapter E
14 [if the public use for which the property was acquired through
15 eminent domain is canceled before the 10th anniversary of the date
16 of acquisition]; or

17 (B) request from the entity certain information
18 relating to the use of the property and any actual progress made
19 toward that use; and

20 (2) the repurchase price is the price paid to the owner
21 by the entity at the time the entity acquired the property through
22 eminent domain [fair market value of the property at the time the
23 public use was canceled].

24 SECTION 14. Subchapter B, Chapter 21, Property Code, is
25 amended by adding Section 21.025 to read as follows:

26 Sec. 21.025. PRODUCTION OF INFORMATION BY CERTAIN ENTITIES.

27 (a) Notwithstanding any other law, an entity that is not subject

1 to Chapter 552, Government Code, and is authorized by law to acquire
2 private property through the use of eminent domain is required to
3 produce information as provided by this section if the information
4 is:

5 (1) requested by a person who owns property that is the
6 subject of a proposed or existing eminent domain proceeding; and

7 (2) related to the taking of the person's private
8 property by the entity through the use of eminent domain.

9 (b) An entity described by Subsection (a) is required under
10 this section only to produce information relating to the
11 condemnation of the specific property owned by the requestor as
12 described in the request. A request under this section must contain
13 sufficient details to allow the entity to identify the specific
14 tract of land in relation to which the information is sought.

15 (c) The entity shall respond to a request in accordance with
16 the Texas Rules of Civil Procedure as if the request was made in a
17 matter pending before a state district court.

18 (d) Exceptions to disclosure provided by this chapter and
19 the Texas Rules of Civil Procedure apply to the disclosure of
20 information under this section.

21 (e) Jurisdiction to enforce the provisions of this section
22 resides in:

23 (1) the court in which the condemnation was initiated;

24 or

25 (2) if the condemnation proceeding has not been
26 initiated:

27 (A) a court that would have jurisdiction over a

1 proceeding to condemn the requestor's property; or

2 (B) a court with eminent domain jurisdiction in
3 the county in which the entity has its principal place of business.

4 (f) If the entity refuses to produce information requested
5 in accordance with this section and the court determines that the
6 refusal violates this section, the court may award the requestor's
7 reasonable attorney's fees incurred to compel the production of the
8 information.

9 SECTION 15. Subsection (d), Section 21.042, Property Code,
10 is amended to read as follows:

11 (d) In estimating injury or benefit under Subsection (c),
12 the special commissioners shall consider an injury or benefit that
13 is peculiar to the property owner and that relates to the property
14 owner's ownership, use, or enjoyment of the particular parcel of
15 real property, including a material impairment of direct access on
16 or off the remaining property that affects the market value of the
17 remaining property, but they may not consider an injury or benefit
18 that the property owner experiences in common with the general
19 community, including circuitry of travel and diversion of traffic.
20 In this subsection, "direct access" means ingress and egress on or
21 off a public road, street, or highway at a location where the
22 remaining property adjoins that road, street, or highway.

23 SECTION 16. Subsections (a) and (b), Section 21.046,
24 Property Code, are amended to read as follows:

25 (a) A department, agency, instrumentality, or political
26 subdivision of this state shall ~~may~~ provide a relocation advisory
27 service for an individual, a family, a business concern, a farming

1 or ranching operation, or a nonprofit organization that [~~if the~~
2 ~~service~~] is compatible with the Federal Uniform Relocation
3 Assistance and Real Property Acquisition Policies Act of 1970
4 [~~Advisory Program~~], 42 U.S.C.A. 4601 [~~23 U.S.C.A. 501~~], et seq.

5 (b) This state or a political subdivision of this state
6 shall [~~may~~], as a cost of acquiring real property, pay moving
7 expenses and rental supplements, make relocation payments, provide
8 financial assistance to acquire replacement housing, and
9 compensate for expenses incidental to the transfer of the property
10 if an individual, a family, the personal property of a business, a
11 farming or ranching operation, or a nonprofit organization is
12 displaced in connection with the acquisition.

13 SECTION 17. The heading to Section 21.047, Property Code,
14 is amended to read as follows:

15 Sec. 21.047. ASSESSMENT OF COSTS AND FEES.

16 SECTION 18. Section 21.047, Property Code, is amended by
17 adding Subsection (d) to read as follows:

18 (d) If a court hearing a suit under this chapter determines
19 that a condemnor did not make a bona fide offer to acquire the
20 property from the property owner voluntarily as required by Section
21 21.0113, the court shall abate the suit, order the condemnor to make
22 a bona fide offer, and order the condemnor to pay:

23 (1) all costs as provided by Subsection (a); and

24 (2) any reasonable attorney's fees and other
25 professional fees incurred by the property owner that are directly
26 related to the violation.

27 SECTION 19. Subchapter E, Chapter 21, Property Code, is

1 amended to read as follows:

2 SUBCHAPTER E. REPURCHASE OF REAL PROPERTY FROM CONDEMNING

3 [GOVERNMENTAL] ENTITY

4 Sec. 21.101. RIGHT OF REPURCHASE [APPLICABILITY]. (a) A
5 person from whom [~~Except as provided in Subsection (b), this~~
6 ~~subchapter applies only to~~] a real property interest is acquired by
7 an [a governmental] entity through eminent domain for a public use,
8 or that person's heirs, successors, or assigns, is entitled to
9 repurchase the property as provided by this subchapter if:

10 (1) the public use for which the property was acquired
11 through eminent domain is [that was] canceled before the property
12 is used for that public use;

13 (2) no actual progress is made toward the public use
14 for which the property was acquired between the date of acquisition
15 and the 10th anniversary of that date; or

16 (3) the property becomes unnecessary for the public
17 use for which the property was acquired, or a substantially similar
18 public use, before the 10th anniversary of the date of acquisition.

19 (b) In this section, "actual progress" means the completion
20 of two or more of the following actions:

21 (1) the performance of a significant amount of labor
22 to develop the property or other property acquired for the same
23 public use project for which the property owner's property was
24 acquired;

25 (2) the provision of a significant amount of materials
26 to develop the property or other property acquired for the same
27 public use project for which the property owner's property was

1 acquired;

2 (3) the hiring of and performance of a significant
3 amount of work by an architect, engineer, or surveyor to prepare a
4 plan or plat that includes the property or other property acquired
5 for the same public use project for which the property owner's
6 property was acquired;

7 (4) application for state or federal funds to develop
8 the property or other property acquired for the same public use
9 project for which the property owner's property was acquired;

10 (5) application for a state or federal permit to
11 develop the property or other property acquired for the same public
12 use project for which the property owner's property was acquired;

13 (6) the acquisition of a tract or parcel of real
14 property adjacent to the property for the same public use project
15 for which the owner's property was acquired; or

16 (7) for a governmental entity, the adoption by a
17 majority of the entity's governing body at a public hearing of a
18 development plan for a public use project that indicates that the
19 entity will not complete more than one action described by
20 Subdivisions (1)-(6) before the 10th anniversary of the date of
21 acquisition of the property [~~This subchapter does not apply to a~~
22 ~~right-of-way under the jurisdiction of:~~

23 [~~(1) a county,~~

24 [~~(2) a municipality, or~~

25 [~~(3) the Texas Department of Transportation].~~

26 (c) A district court may determine all issues in any suit
27 regarding the repurchase of a real property interest acquired

1 through eminent domain by the former property owner or the owner's
2 heirs, successors, or assigns.

3 Sec. 21.102. NOTICE TO PREVIOUS PROPERTY OWNER REQUIRED [~~AT~~
4 ~~TIME OF CANCELLATION OF PUBLIC USE~~]. Not later than the 180th day
5 after the date an entity that acquired a real property interest
6 through eminent domain determines that the former property owner is
7 entitled to repurchase the property under Section 21.101 [~~of the~~
8 ~~cancellation of the public use for which real property was acquired~~
9 ~~through eminent domain from a property owner under Subchapter B~~],
10 the [~~governmental~~] entity shall send by certified mail, return
11 receipt requested, to the property owner or the owner's heirs,
12 successors, or assigns a notice containing:

13 (1) an identification, which is not required to be a
14 legal description, of the property that was acquired;

15 (2) an identification of the public use for which the
16 property had been acquired and a statement that:

17 (A) the public use was [has been] canceled before
18 the property was used for the public use;

19 (B) no actual progress was made toward the public
20 use; or

21 (C) the property became unnecessary for the
22 public use, or a substantially similar public use, before the 10th
23 anniversary of the date of acquisition; and

24 (3) a description of the person's right under this
25 subchapter to repurchase the property.

26 Sec. 21.1021. REQUESTS FOR INFORMATION REGARDING CONDEMNED
27 PROPERTY. (a) On or after the 10th anniversary of the date on

1 which real property was acquired by an entity through eminent
2 domain, a property owner or the owner's heirs, successors, or
3 assigns may request that the condemning entity make a determination
4 and provide a statement and other relevant information regarding:

5 (1) whether the public use for which the property was
6 acquired was canceled before the property was used for the public
7 use;

8 (2) whether any actual progress was made toward the
9 public use between the date of acquisition and the 10th anniversary
10 of that date, including an itemized description of the progress
11 made, if applicable; and

12 (3) whether the property became unnecessary for the
13 public use, or a substantially similar public use, before the 10th
14 anniversary of the date of acquisition.

15 (b) A request under this section must contain sufficient
16 detail to allow the entity to identify the specific tract of land in
17 relation to which the information is sought.

18 (c) Not later than the 90th day following the date of
19 receipt of the request for information, the entity shall send a
20 written response by certified mail, return receipt requested, to
21 the requestor.

22 Sec. 21.1022. LIMITATIONS PERIOD FOR REPURCHASE RIGHT.
23 Notwithstanding Section 21.103, the right to repurchase provided by
24 this subchapter is extinguished on the first anniversary of the
25 expiration of the period for an entity to provide notice under
26 Section 21.102 if the entity:

27 (1) is required to provide notice under Section

1 21.102;

2 (2) makes a good faith effort to locate and provide
3 notice to each person entitled to notice before the expiration of
4 the deadline for providing notice under that section; and

5 (3) does not receive a response to any notice provided
6 under that section in the period for response prescribed by Section
7 21.103.

8 Sec. 21.103. RESALE OF PROPERTY; PRICE. (a) Not later
9 than the 180th day after the date of the postmark on a [the] notice
10 sent under Section 21.102 or a response to a request made under
11 Section 21.1021 that indicates that the property owner, or the
12 owner's heirs, successors, or assigns, is entitled to repurchase
13 the property interest in accordance with Section 21.101, the
14 property owner or the owner's heirs, successors, or assigns must
15 notify the [governmental] entity of the person's intent to
16 repurchase the property interest under this subchapter.

17 (b) As soon as practicable after receipt of a notice of
18 intent to repurchase [the notification] under Subsection (a), the
19 [governmental] entity shall offer to sell the property interest to
20 the person for the price paid to the owner by the entity at the time
21 the entity acquired the property through eminent domain [fair
22 market value of the property at the time the public use was
23 cancelled]. The person's right to repurchase the property expires
24 on the 90th day after the date on which the [governmental] entity
25 makes the offer.

26 SECTION 20. Section 202.021, Transportation Code, is
27 amended by adding Subsection (j) to read as follows:

1 (j) The standard for determination of the fair value of the
2 state's interest in access rights to a highway right-of-way is the
3 same legal standard that is applied by the commission in the:

4 (1) acquisition of access rights under Subchapter D,
5 Chapter 203; and

6 (2) payment of damages in the exercise of the
7 authority, under Subchapter C, Chapter 203, for impairment of
8 highway access to or from real property where the real property
9 adjoins the highway.

10 SECTION 21. Section 54.209, Water Code, is amended to read
11 as follows:

12 Sec. 54.209. LIMITATION ON USE OF EMINENT DOMAIN. A
13 district may not exercise the power of eminent domain outside the
14 district boundaries to acquire:

15 (1) a site for a water treatment plant, water storage
16 facility, wastewater treatment plant, or wastewater disposal
17 plant;

18 (2) a site for a park, swimming pool, or other
19 recreational facility, as defined by Section 49.462 ~~[except a~~
20 ~~trail]~~;

21 (3) ~~[a site for a trail on real property designated as~~
22 ~~a homestead as defined by Section 41.002, Property Code, or~~

23 ~~[(4)]~~ an exclusive easement through a county regional
24 park; or

25 (4) a site or easement for a road project.

26 SECTION 22. Section 1, Chapter 178 (S.B. 289), Acts of the
27 56th Legislature, Regular Session, 1959 (Article 3183b-1, Vernon's

1 Texas Civil Statutes), is amended to read as follows:

2 Sec. 1. Except as provided by this section, and
3 notwithstanding any other law, any [Any] nonprofit corporation
4 incorporated under the laws of this state for purely charitable
5 purposes and which is directly affiliated or associated with a
6 medical center having a medical school recognized by the Council on
7 Medical Education and Hospitals of the American Medical Association
8 as an integral part of its establishment, and which has for a
9 purpose of its incorporation the provision or support of medical
10 facilities or services for the use and benefit of the public, and
11 which is situated in any county of this state having a population in
12 excess of six hundred thousand (600,000) inhabitants according to
13 the most recent Federal Census shall have the power of eminent
14 domain and condemnation for the purposes set forth in Section 2 and
15 Section 3 of this Act. A charitable corporation described by this
16 section may not exercise the power of eminent domain and
17 condemnation to acquire a detached, single-family residential
18 property or a multifamily residential property that contains eight
19 or fewer dwelling units.

20 SECTION 23. (a) Section 552.0037, Government Code, is
21 repealed.

22 (b) Section 21.024, Property Code, is repealed.

23 SECTION 24. Section 11.155, Education Code, Chapter 2206,
24 Government Code, Sections 251.001, 261.001, 263.201, and 273.002,
25 Local Government Code, Chapter 21, Property Code, and Section 1,
26 Chapter 178 (S.B. 289), Acts of the 56th Legislature, Regular
27 Session, 1959 (Article 3183b-1, Vernon's Texas Civil Statutes), as

1 amended by this Act, apply only to a condemnation proceeding in
2 which the petition is filed on or after the effective date of this
3 Act and to any property condemned through the proceeding. A
4 condemnation proceeding in which the petition is filed before the
5 effective date of this Act and any property condemned through the
6 proceeding are governed by the law in effect immediately before
7 that date, and that law is continued in effect for that purpose.

8 SECTION 25. The change in law made by this Act to Section
9 202.021, Transportation Code, applies only to a sale or transfer
10 under that section that occurs on or after the effective date of
11 this Act. A sale or transfer that occurs before the effective date
12 of this Act is governed by the law applicable to the sale or
13 transfer immediately before the effective date of this Act, and
14 that law is continued in effect for that purpose.

15 SECTION 26. The changes in law made by this Act to Section
16 54.209, Water Code, apply only to a condemnation proceeding in
17 which the petition is filed on or after the effective date of this
18 Act. A condemnation proceeding in which the petition is filed
19 before the effective date of this Act is governed by the law in
20 effect on the date the petition was filed, and that law is continued
21 in effect for that purpose.

22 SECTION 27. This Act takes effect September 1, 2011.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 18 passed the Senate on February 9, 2011, by the following vote: Yeas 31, Nays 0; April 19, 2011, Senate refused to concur in House amendments and requested appointment of Conference Committee; April 28, 2011, House granted request of the Senate; May 6, 2011, Senate adopted Conference Committee Report by the following vote: Yeas 30, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 18 passed the House, with amendments, on April 14, 2011, by the following vote: Yeas 144, Nays 0, one present not voting; April 28, 2011, House granted request of the Senate for appointment of Conference Committee; May 5, 2011, House adopted Conference Committee Report by the following vote: Yeas 145, Nays 0, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor

Section 5: 43 TAC Chapter 21 Changes

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes
3 amendments to §21.10, Negotiations, §21.13, Highway Right-of-Way
4 Values, §21.14, Qualifications of Real Estate Appraisers and
5 Other Technical Experts or Estimators, §21.111, Definitions, and
6 §21.118, Relocation Review Committee, all concerning department
7 land acquisition procedures.

8

9 EXPLANATION OF PROPOSED AMENDMENTS

10 Title 43, Texas Administrative Code (TAC), Chapter 21,
11 Subchapter A, Land Acquisition Procedures, was adopted to
12 prescribe requirements for the acquisition of real property by
13 the department in accordance with Property Code, Chapter 21,
14 Subchapter B, Procedure. Senate Bill 18 (SB 18), 82nd
15 Legislature, Regular Session, 2011, amended Property Code,
16 §21.0111 and added Property Code, §21.0113 to require certain
17 procedures be followed in connection with offers for real
18 property made by entities with eminent domain authority, such as
19 the department. The proposed amendments are necessary to comply
20 with the provisions of SB 18 and to clarify existing language.

21

22 Amendments to §21.10 include multiple changes. The first change
23 in §21.10(a) deletes the provision that a property owner will be
24 provided with a copy of existing appraisal reports that were
25 used in determining the final valuation offer, as the provision

1 conflicts with the procedures required by SB 18. Second, new
2 §21.10 adds negotiation procedures required by SB 18.
3 Specifically, new subsection (b) requires the department to make
4 a bona fide offer to acquire real property voluntarily and
5 requires the offers be in writing and advise owners of their
6 disclosure rights.

7

8 New subsection (c) requires that an initial offer include copies
9 of all related appraisal reports prepared in the previous ten
10 years that were produced or acquired by the department and be
11 sent to the property owner by certified mail, return receipt
12 requested.

13

14 New subsection (d) requires that the final offer be equal to or
15 greater than the amount of an appraisal by a certified appraiser
16 of the value of the property being acquired and any damages to
17 any of the owner's remaining property. It also requires that
18 the final offer include a copy of the appraisal the final offer
19 is based on, the conveyance document to be signed by the
20 property owner, and a copy of the statutorily required
21 landowners' bill of rights statement, unless such items have
22 been previously provided. Finally, it provides that the
23 department will not make a final offer before the 30th day after
24 the date of delivery of the initial offer.

25

1 New subsection (e) requires the department to give the property
2 owner 14 days after the date of the final offer to respond to
3 the offer before filing a petition of condemnation.

4

5 The last sentence of current §21.10(a) and paragraphs
6 §21.10(a)(1), (2), and (3) are redesignated as new subsection
7 (f) and current §21.10(b) is redesignated as new subsection (g).

8

9 New subsection (h) of §21.10 provides that for the purposes of
10 §21.10 a document is considered delivered on the earlier of the
11 delivery date on the certified mail receipt or the fifth day
12 after the date the document, properly addressed with postage
13 paid, is deposited with the United States Postal Service. This
14 provision allows for certainty in determining when the
15 department can make a final offer or begin a condemnation
16 proceeding.

17

18 Amendments to §21.13 delete the original heading "Highway Right-
19 of-Way Values" and add new heading "Valuation for Real Property
20 to be Acquired", and delete the phrase "right-of-way" and
21 replace it with "real property", to clarify that the section
22 applies to all acquisitions of real property by the department.
23 A new provision is added providing that the approved values used
24 for the final offer will be determined based on a written
25 appraisal by a certified appraiser, as required by SB 18.

1

2 Amendments to §21.14 delete the phrase "In the acquisition of
3 highway right-of-way" and add the language "used in the
4 acquisition of real property for highway purposes" to clarify
5 that the section applies to all acquisitions of real property
6 for highway purposes, not just right-of-way. The word "are" is
7 deleted and replaced with "must be" to clarify that the
8 department must approve qualifications of real estate appraisers
9 and other technical experts or estimators. Finally, the
10 amendments add a requirement that the qualifications of a real
11 estate appraiser must include a requirement that the appraiser
12 be certified, as required by SB 18.

13

14 Amendments to §21.111 clarify the definition of "Relocation
15 Review Committee" by removing provisions regarding the
16 appointment and composition of the committee and moving those
17 provisions to §21.118.

18

19 Amendments to §21.118 add new subsection (a) to set forth the
20 process for the appointment of members of the Relocation Review
21 Committee. The amendments require the executive director to
22 appoint at least three persons as members of the Relocation
23 Review Committee. The amendments also establish that in order
24 to be eligible for appointment to or service on the committee, a
25 person may not be below the level of department division

1 director, office director, or district engineer, and may not be
2 directly involved with the relocation assistance program. The
3 amendments designate the existing provisions of §21.118 as new
4 subsection (b).

5

6 FISCAL NOTE

7 James Bass, Chief Financial Officer, has determined that for
8 each of the first five years the amendments as proposed are in
9 effect, there will be no fiscal implications for state or local
10 governments as a result of enforcing or administering the
11 amendments. There are no anticipated economic costs for persons
12 required to comply with the sections as proposed.

13

14 Bob Jackson, General Counsel, has certified that there will be
15 no significant impact on local economies or overall employment
16 as a result of enforcing or administering the sections.

17

18 PUBLIC BENEFIT

19 Mr. Jackson has also determined that for each year of the first
20 five years in which the sections are in effect, the public
21 benefit anticipated as a result of enforcing or administering
22 the amendments will be consolidation of applicable regulations
23 into 43 TAC Chapter 21 and improved efficiency and consistency
24 in the handling of acquisitions of real property by the
25 department. There are no anticipated economic costs for persons

1 required to comply with the sections as proposed. There will be
2 no adverse economic effect on small businesses.

3

4 SUBMITTAL OF COMMENTS

5 Written comments on the amendments to §21.10, §21.13, §21.14,
6 §21.111, and §21.118 may be submitted to Suzanne Mann, Office of
7 General Counsel, Texas Department of Transportation, 125 East
8 11th Street, Austin, Texas 78701-2483. The deadline for receipt
9 of comments is 5:00 p.m. on August 15, 2011.

10

11 STATUTORY AUTHORITY

12 The amendments are proposed under Transportation Code, §201.101,
13 which provides the commission with the authority to establish
14 rules for the conduct of the work of the department, and more
15 specifically, Transportation Code, §203.051, which provides the
16 commission with the authority to acquire real property on behalf
17 of the department.

18

19 CROSS REFERENCE TO STATUTE

20 Transportation Code, Chapter 203.

SUBCHAPTER A. LAND ACQUISITION PROCEDURES

§21.10. Negotiations.

(a) Every reasonable effort will be made to acquire real property by negotiation and the full amount established as just compensation will be offered for the property. ~~[At the time an offer to purchase is made, an owner of real property will be provided with a copy of all existing appraisal reports that were used in determining the final valuation offer in accordance with Property Code, Section 21.0111.]~~ Where appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated. ~~[No owner shall be required to surrender possession of real property before.]~~

~~[(1) payment of the agreed purchase price;]~~

~~[(2) in the case of condemnation, the amount of compensation stated in the final judgment is paid to the owner or deposited with a court for the benefit of the owner; or]~~

~~[(3) in the case of condemnation when possession is required by the department prior to a final judgment being entered, the department has deposited with the court, for the benefit of the owner, the amount of a special commissioners' award or the amount of the department's approved appraisal of the property, whichever is greater.]~~

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Exhibit B

1 (b) The department will make a bona fide offer to acquire
2 the real property from the property owner voluntarily, as
3 provided by Property Code, §21.0113. All offers will be in
4 writing, and will inform the owner of the owner's right to
5 discuss the offer with others or to keep the offer confidential,
6 as provided by Property Code, §21.0111. [~~In the case of~~
7 ~~condemnation where the department does not take possession until~~
8 ~~after a final judgment of the court has been entered, the amount~~
9 ~~of compensation paid to the owner of the property or deposited~~
10 ~~with a court for the benefit of the owner shall be the amount of~~
11 ~~compensation stated in the final judgment in the condemnation~~
12 ~~proceeding for the property. To the greatest extent~~
13 ~~practicable, no person lawfully occupying real property shall be~~
14 ~~required to move without at least 90 days written notice of the~~
15 ~~date by which the move is required.]~~

16 (c) An initial offer to purchase or lease will include
17 copies of all appraisal reports that relate to the real
18 property, that were prepared during the ten-year period
19 preceding the date that the offer was sent to the owner, and
20 that were produced or acquired by the department. The initial
21 offer will be sent to the owner of the real property by
22 certified mail, return receipt requested.

23 (d) The final offer must be equal to or greater than the

1 amount of an appraisal obtained by the department from a
2 certified appraiser of the value of the property being acquired
3 and the damages, if any, to any of the property owner's
4 remaining property. The department will include with the final
5 offer a copy of the appraisal on which the final offer is based,
6 the conveyance document that is to be signed by the property
7 owner, and a copy of the landowners' bill of rights statement
8 required by Property Code, §21.0112, unless the department has
9 provided a copy of the document to the owner before the final
10 offer is made. The department will not make the final offer
11 before the 30th day after the date that the initial offer was
12 delivered to the owner.

13 (e) Before filing a petition of condemnation, the
14 department will give the property owner at least 14 days after
15 the date that the final offer was delivered to the owner to
16 respond to that offer.

17 (f) No owner shall be required to surrender possession of
18 real property before:

19 (1) payment of the agreed purchase price;

20 (2) in the case of condemnation, the amount of
21 compensation stated in the final judgment is paid to the owner
22 or deposited with a court for the benefit of the owner; or

23 (3) in the case of condemnation when possession is

NOTE: Additions underlined
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Exhibit B

1 required by the department prior to a final judgment being
2 entered, the department has deposited with the court, for the
3 benefit of the owner, the amount of a special commissioners'
4 award or the amount of the department's approved appraisal of
5 the property, whichever is greater.

6 (g) In the case of condemnation where the department does
7 not take possession until after a final judgment of the court
8 has been entered, the amount of compensation paid to the owner
9 of the property or deposited with a court for the benefit of the
10 owner shall be the amount of compensation stated in the final
11 judgment in the condemnation proceeding for the property. To
12 the greatest extent practicable, no person lawfully occupying
13 real property shall be required to move without at least 90 days
14 written notice of the date by which the move is required.

15 (h) For the purposes of this section, a document is
16 considered to be delivered on the earlier of the delivery date
17 indicated on the certified mail receipt or the fifth day after
18 the date that the document, properly addressed with postage
19 prepaid, is deposited with the United States Postal Service.

20
21 \$21.13. Valuation for Real Property to be Acquired [~~Highway~~
22 ~~Right-of-Way Values~~]. Prior to the making of an offer [~~offers~~]
23 to purchase real property [~~right-of-way~~] for highway purposes by

NOTE: Additions underlined
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Exhibit B

1 the department, approved values are determined based upon
2 appraisals (including short form appraisals, memorandums of
3 value, or opinions of value) of the real property to be
4 acquired. The approved values used for the final offer are
5 determined based upon a written appraisal by a certified
6 appraiser. The owner or the owner's designated representative
7 is given the opportunity to accompany the appraiser during the
8 inspection of the property being appraised.

9
10 §21.14. Qualifications of Real Estate Appraisers and Other
11 Technical Experts or Estimators. The [~~In the acquisition of~~
12 ~~highway right-of-way, the~~] qualifications of real estate
13 appraisers, and other technical experts or estimators used in
14 the acquisition of real property for highway purposes must be
15 [are] approved by the department. The qualifications of a real
16 estate appraiser must include a requirement that the appraiser
17 be certified.

1 SUBCHAPTER G. RELOCATION ASSISTANCE AND BENEFITS

2 §21.111. Definitions. The following words and terms, when used
3 in this subchapter, shall have the following meanings, unless
4 the context clearly indicates otherwise.

5 (1) Commission--The Texas Transportation Commission.

6 (2) Department--The Texas Department of Transportation.

7 (3) Displacee--A person lawfully present in the United
8 States who, as a result of the acquisition of property for
9 highway right of way purposes, is required to move from a
10 dwelling, business, or farm.

11 (4) District engineer--The chief administrative officer
12 in charge of a district of the department, or the designee.

13 (5) Executive director--The chief executive officer of
14 the Texas Department of Transportation.

15 (6) Relocation Review Committee--A [~~An administrative~~]
16 committee whose members are appointed under §21.118 of this
17 subchapter (relating to Relocation Review Committee) [~~by the~~
18 ~~executive director and include the deputy executive director~~
19 ~~(chair) and at least two other department employees who are not~~
20 ~~directly involved with the relocation assistance program].~~

21
22 §21.118. Relocation Review Committee.

23 (a) The executive director will appoint at least three

1 persons as members of the Relocation Review Committee. To be
2 eligible for appointment to or service on the committee, a
3 person may not be:

4 (1) below the level of department division director,
5 office director, or district engineer; and

6 (2) directly involved with the relocation assistance
7 program.

8 (b) A displacee who is dissatisfied with the department's
9 determination of eligibility or relocation payments and services
10 may request a review by the Relocation Review Committee. The
11 review procedures are as follows.

12 (1) Applications must be filed with the appropriate
13 district office within 90 days after the displacee receives
14 notice of relocation entitlements.

15 (2) The district engineer will promptly and carefully
16 review the facts and attempt to resolve the matter at the
17 district level. The displacee will be promptly notified in
18 writing of the results of the district engineer's review.

19 (3) A displacee who is still dissatisfied after the first
20 review may request that the district engineer's decision be
21 reviewed by the department's Relocation Review Committee.

22 (4) The district shall promptly forward the application
23 together with all the information the district has relating to

1 the displacee's application and the district engineer's personal
2 recommendation to the department's Right of Way Division. The
3 division will review the materials, make a determination on the
4 application, and prepare a written statement as to the issues
5 involved for the relocation assistance appeal file. If the
6 division does not find in favor of the displacee's claim, the
7 division will promptly forward the file to the Relocation Review
8 Committee.

9 (5) The Relocation Review Committee shall give each
10 displacee a full opportunity to be heard, carefully review all
11 facts presented, and render a prompt decision. The decision
12 will be supported by the necessary rationale and will be
13 documented in the parcel file.

14 (6) The committee may discuss an application with the
15 executive director. The executive director shall make the final
16 ruling or may counsel with the commission if necessary.

Section 6: Contact Information

Section 7: Newsletters

Section 8: Notes

**SB 18 Implementation Training
TxDOT
FY 2012**