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**2019-2020
EDUCATIONAL
SERIES**

EMINENT DOMAIN

OVERVIEW

For decades, the Texas Department of Transportation (TxDOT) has been acquiring real property to establish a modern state highway system. The state's efforts have been successful. Texas has an approximately 195,000 lane-mile state network that is larger than any other system in the country. However, with the state's population increasing, demand for transportation continues to exceed the capacity of the current system, and TxDOT must continue to expand and improve the transportation network. When land is needed for new transportation projects, TxDOT works with the property owner to acquire it.

Most land for transportation projects is obtained by negotiating with property owners. If TxDOT and a property owner cannot reach an agreement for the sale of their property to the state for fair market value, the state may use its power of eminent domain to acquire the property needed for the transportation project. TxDOT is committed to working fairly with property owners, whether through negotiation or condemnation; however, TxDOT understands that eminent domain elicits questions about balancing the rights of private property owners and the needs of the public.



EMINENT DOMAIN

Eminent domain is the legal authority for authorized entities to acquire private property for a public use. A landowner's private property, which can include land and certain improvements that are on that property, cannot be acquired without adequate compensation.

Because TxDOT is entrusted by the people of Texas with the power of eminent domain, TxDOT uses that authority judiciously. TxDOT only exercises its eminent domain authority when efforts at reaching an agreement for the sale to the state have been exhausted. Historically, on average, about four out of five parcels acquired by TxDOT are attained through the negotiation process.



LAND ACQUISITION

The right-of-way acquisition process does not routinely begin until after the environmental process has been completed and environmental approvals have been obtained. Environmental review can take months and sometimes years to complete. Environmental review studies include a broad range of factors that may be affected by the proposed project. Throughout the review, multiple meetings with the public are held to discuss alternative project routes, alignments and designs. After a final alignment that best meets the need for the proposed transportation project as well as the needs of the public and the environment is determined, property acquisition may begin.



LAND VALUATION PROCESS

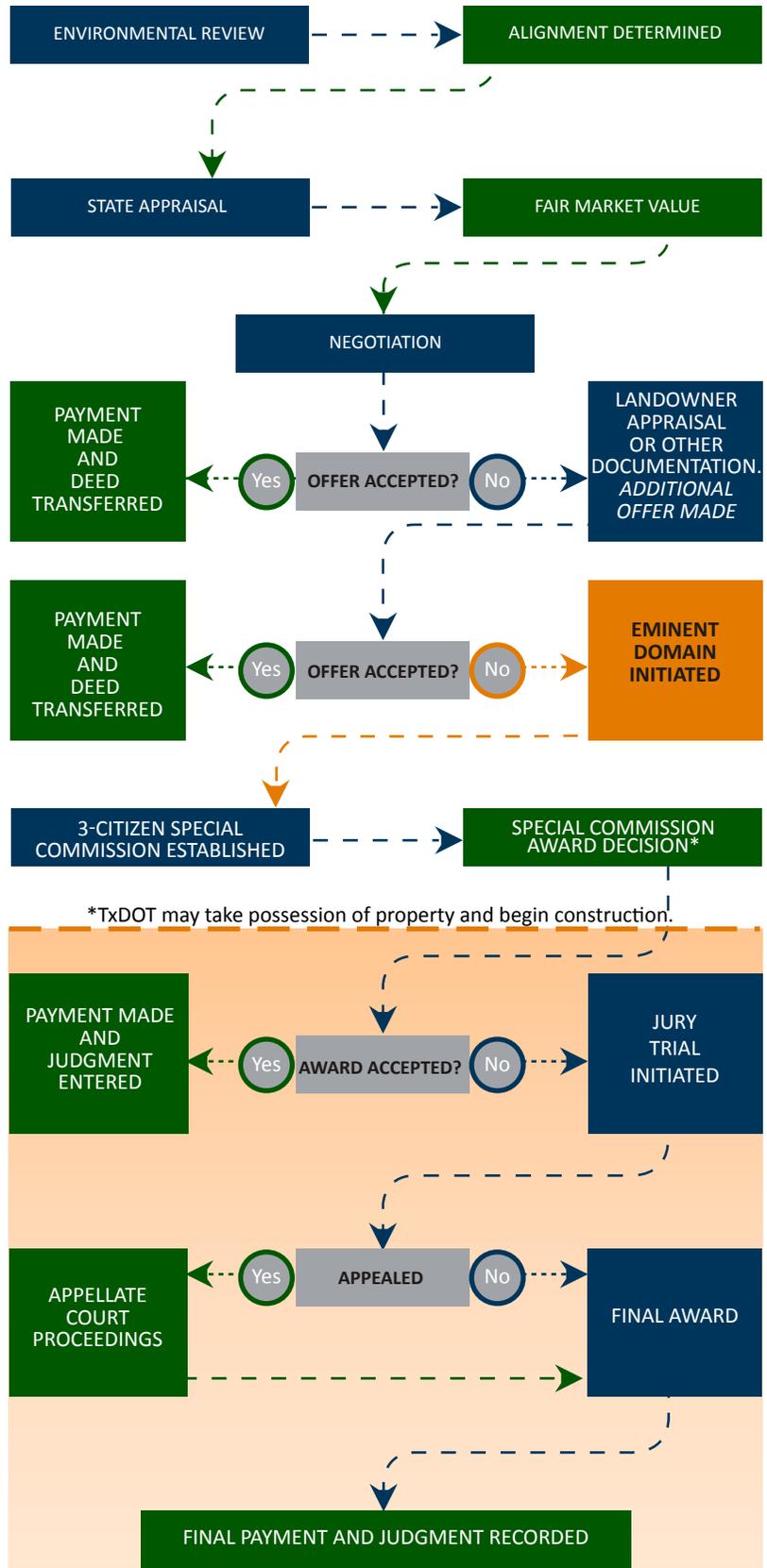
When TxDOT determines that property is needed for a transportation project, it must acquire an appraisal to determine the fair market value of the property. Article I, § 17, Texas Constitution, requires that a state agency pay adequate compensation when acquiring property. Texas courts have defined adequate compensation to mean fair market value. Similarly, the interest of taxpayers requires that compensation should not be greater than the fair market value.

TxDOT hires an independent appraiser to determine the fair market value of the property to be acquired and any compensable damages to the value of the remaining property. A survey of the property provides physical staking and measurements of the boundaries so that the parcel can be valued. Usually only a small portion of a landowner's entire property can be viewed and evaluated by the appraiser. Appraisers must contact landowners in advance to provide the landowner the opportunity to be present during the inspection of the property.

These face-to-face meetings afford the landowner an opportunity to point out unique aspects of the property, including improvements such as water wells, septic systems and drainage improvements. The landowner has the opportunity to verify what items of value are contained on the property and provide input regarding whether adjacent properties that are separately owned or acquired by the landowner might be impacted by the possible loss of that tract of land that is being appraised.

TxDOT's priority is to build a transportation facility as efficiently as possible. To this end, it is in TxDOT's interest to obtain an accurate appraisal, make a reasonable offer and successfully negotiate with the affected property owner.

Eminent Domain Process



*TxDOT cannot begin construction on a project until a special commission award decision is final



NEGOTIATION PROCESS & VALUE DETERMINATION

All TxDOT land acquisitions begin with an attempt to acquire property through negotiations with the landowner. TxDOT procedures protect private property rights and comply with both the United States and Texas Constitutions regarding landowner compensation. TxDOT also fully complies with the federal law known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, which establishes uniform and equitable land acquisition policies for federal and federally assisted programs.

After obtaining an independent appraisal of the property value, TxDOT makes an initial offer to the landowner and provides a copy of the appraisal. TxDOT attempts to personally meet with landowners to discuss the appraisal and initial offer. These meetings allow the landowner to ask questions, view right-of-way maps and plans and get an explanation of the appraisal process. State law requires that the appraisal itself be mailed to the landowner. TxDOT's practice is to send both the initial offer and appraisal to the affected landowner in a single mailing.

The landowner may also seek additional counsel from an attorney or an independent appraiser that the landowner hires. After reviewing the appraisal, a landowner may make a counteroffer. That counteroffer should be supported by the landowner's own appraisal or documented conditions that were not considered in the state's appraisal.

If the landowner establishes that significant improvements were overlooked or other discrepancies were discovered in the state's independent appraisal, TxDOT may have the state's appraiser revise and re-submit the appraisal. TxDOT may also seek a new appraisal from a different appraiser.

If negotiations are successful, the landowner deeds the parcel of land to the state and is paid the negotiated value.

If TxDOT and the landowner cannot reach an agreement, a landowner cannot be located or title problems prevent the landowner from conveying a clear title, the state will initiate eminent domain process. Under this process, which can take

several months or longer to complete, the compensation to which the property owner is entitled can be determined by an administrative proceeding before court-appointed special commissioners or possibly by a jury trial if the value determined by the special commissioners is unsatisfactory to either the property owner or the state.



SPECIAL COMMISSIONERS' HEARING

The special commissioners' hearing process begins when TxDOT requests that the Office of the Attorney General file an eminent domain proceeding, and at that time, a county court at law judge or a district court judge (depending on the county in which the acquisition takes place) appoints a special commission to determine the property value and any damages, if any, in an administrative hearing. The special commission is comprised of three disinterested property owners who live in the same county as the land subject to the eminent domain proceeding. The landowner is notified of the date and place of the special commissioners' hearing. At the hearing, the special commissioners assess any damages to the owner of the property being acquired by eminent domain and hear testimony from the state and the landowner on their respective appraisal values. TxDOT is represented by the Office of the Attorney General, and landowners may choose to appear with an attorney or appraiser.

The special commissioners determine the amount of adequate compensation based on the testimony presented. The special commissioners can also award additional compensation if evidence supports that the taking of the property damages the market value of the remaining property.

If both the landowner and the state are satisfied with the special commissioners' award, the state deposits the money with the court. The landowner, and others with claims to the land, may apply to the court to withdraw the funds.

Either the state or the landowner can file objections to the special commissioners' award. If there are objections, the amount of the award may still be deposited with the court and remains with the court for the landowner to apply to the court for withdrawal. Upon deposit of the amount of the award by the special commissioners, the state takes possession of the land for construction purposes, pending the outcome of the second phase, a full jury trial.



JURY TRIAL

At trial, witnesses for the state and the landowner testify before a jury, and the jury determines the amount of adequate compensation, the state is required to pay for the land. However, as in most civil trials, many cases are settled without having to go through a full trial, and an agreed judgment for the final amount to be paid is determined. Jury verdicts may be appealed by either party, and proceedings are not final until any appeals are concluded.

If the total amount to be paid for the land is more than the amount of the deposit after the special commissioners' hearing, the state pays the difference to the landowner. If the total amount is less than the special commissioners' award and the landowner has withdrawn the full amount of the award, then the landowner must repay the difference to the state.

In either case, a final judgment for the total amount and complete title to the state is entered.

Your Rights Regarding Eminent Domain: The State of Texas Land Owner's Bill of Rights

The Landowner's Bill of Rights is prescribed by the Texas Legislature in Section 402.031, Texas Government Code, and Chapter 21, Texas Property Code. The Bill of Rights applies to any attempt by the government or a private entity to take your property and includes the following:

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 that it wants to take your property.
5. The entity proposing to take your property must provide you with a written appraisal from a certified appraiser detailing the adequate compensation you are owed for your property.
6. The entity proposing to take your property must make a bona fide offer to buy the property before it files a lawsuit to condemn the property – which means the condemning entity must make a good faith offer that conforms with Chapter 21 of the Texas Property Code.
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.

<https://www.texasattorneygeneral.gov/agency/landowners-bill-of-rights>



RELOCATION ASSISTANCE

In addition to payment for their property, eligible landowners and tenants are also entitled to relocation benefits. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 authorizes benefits to certain persons displaced from real property as a result of acquisition for transportation projects. This Act applies to any project or portion of a project that has received federal funding. State law requires TxDOT to provide relocation assistance that is compatible with Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

There are three types of relocation assistance programs:

1. For individuals.
2. For businesses, farms or non-profit organizations.
3. For those who are not physically displaced by the project but are required to relocate personal property from within the acquired right-of-way.

Individuals

This program offers a replacement housing payment for the owner-occupants of affected property. The replacement payment is the difference between the acquisition amount of the dwelling and the cost of decent, safe and sanitary comparable replacement housing. A displaced owner-occupant may also be eligible for a lump-sum payment for any increased interest required in financing a replacement dwelling, if necessary. Incidental expenses associated with purchasing replacement housing are also reimbursable under this program.

A tenant on an affected property may be eligible for a rental assistance payment. This supplement is the difference in cost between the current rent and utilities and the rent and utilities of decent, safe and sanitary comparable replacement housing for a 42-month period. The tenant may use the rental supplement as a down payment for replacement housing and for related replacement expenses.

In addition to these housing assistance benefits, TxDOT's relocation program also provides reimbursements to move furniture and other personal property from the displacement site. This payment may include the cost of reconnecting utilities.

Business, Farm or Non-Profit Organization (Non-Residential)

This program covers expenses to disconnect, move and reinstall personal property. These moving expense payments cover items that were not purchased as part of the real property such as furniture, inventory and equipment. Also included in moving expense reimbursements are reasonable and necessary modifications to accommodate the personal property at the replacement location. Other moving expenses include the cost to hire professional move consultants, replace letter or card stock, re-letter signs, run utilities to the replacement site, one-time impact or usage fees, storage, loss or replacement of tangible personal property and professional fees associated with the purchase or lease of a replacement site.

In addition to moving expenses, these entities are eligible for a "re-establishment" payment for modifications to the replacement location to accommodate the business cost associated with advertising the replacement location and expenses associated with searching for a replacement location.

Personal Property

There may be occasions when an individual or business is not displaced, but personal property must be relocated from within the acquired right of way. In these instances, the owner of such property is entitled to reimbursement for the reasonable cost of moving these items.



Texas Transportation Code § 203.052

The Texas Transportation Commission is charged with laying out, constructing, maintaining and operating a modern state highway system. It is authorized to purchase property to achieve this goal. Chapter 21, Texas Property Code, applies to such acquisitions by eminent domain. The following provisions of the Texas Transportation Code lay out the purposes for which property may be purchased for state highways.

§ 203.052. COMMISSION DETERMINATION REQUIRED.

(a) The commission may acquire an interest in real property, a property right, or a material under Section 203.051 only if the commission determines that the acquisition is necessary or convenient to a state highway to be constructed, reconstructed, maintained, widened, straightened, or extended.

(b) Property necessary or convenient to a state highway for purposes of Subsection (a) includes an interest in real property, a property right, or a material that the commission determines is necessary or convenient to:

1. Protect a state highway;
2. Drain a state highway;
3. Divert a stream, river, or other watercourse from the right-of-way of a state highway;
4. Store materials or equipment for use or used in the construction or maintenance of a state highway;
5. Construct or operate a warehouse or other facility used in connection with the construction, maintenance, or operation of a state highway;
6. Lay out, construct, or maintain a roadside park;
7. Lay out, construct, or maintain a parking lot that will contribute to maximum use of a state highway with the least possible congestion;

8. Mitigate an adverse environmental effect that directly results from construction or maintenance of a state highway;
9. Subject to Subsection (c), provide a location for an ancillary facility that is anticipated to generate revenue for use in the design, development, financing, construction, maintenance, or operation of a toll project, including a gas station, garage, store, hotel, restaurant or other commercial facility;
10. Construct or operate a toll booth, toll plaza, service center, or other facility used in connection with the construction, maintenance, or operation of a toll project; or
11. Accomplish any other purpose related to the location, construction, improvement, maintenance, beautification, preservation, or operation of a state highway.

(c) The commission may not acquire property for an ancillary facility through the exercise of eminent domain, unless the acquisition of the property is for one of multiple ancillary facilities included in a comprehensive development plan approved by the county commissioners' court of each county in which the property is located.

TxDOT is also authorized by the Texas Transportation Code to acquire property by eminent domain for a Central Texas Airport (§ 21.069), the Intracoastal Waterway (§ 51.005), Rail Facilities (§ 91.091), Interstate Highways (§§ 224.001 and 224.004), and Highway Beautification (§§ 391.033 and 391.181).



TEXAS DEPARTMENT OF TRANSPORTATION



VALUES:

People

People are the Department's most important customer, asset, and resource. The well-being, safety, and quality of life for Texans and the traveling public are of the utmost concern to the Department. We focus on relationship building, customer service, and partnerships.

Accountability

We accept responsibility for our actions and promote open communication and transparency at all times.

Trust

We strive to earn and maintain confidence through reliable and ethical decision-making.

Honesty

We conduct ourselves with the highest degree of integrity, respect, and truthfulness.

VISION:

A forward-thinking leader delivering mobility, enabling economic opportunity, and enhancing quality of life for all Texans.

MISSION:

Through collaboration and leadership, we deliver a safe, reliable, and integrated transportation system that enables the movement of people and goods.

GOALS AND OBJECTIVES:

- **Deliver the Right Projects** – Implement effective planning and forecasting processes that deliver the right projects on-time and on-budget.
- **Focus on the Customer** – People are at the center of everything we do.
- **Foster Stewardship** – Ensure efficient use of state resources.
- **Optimize System Performance** – Develop and operate an integrated transportation system that provides reliable and accessible mobility, and enables economic growth.
- **Preserve our Assets** – Deliver preventive maintenance for TxDOT's system and capital assets to protect our investments.
- **Promote Safety** – Champion a culture of safety.
- **Value our Employees** – Respect and care for the well-being and development of our employees.



This document is part of an educational series on transportation issues produced by the Texas Department of Transportation. This document, the full Educational Series and other helpful resources can be found online at www.txdot.gov keyword search "State Legislative Affairs".