EMINENT DOMAIN

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TxDOT RESOURCE LINKS
Scan the QR codes with your mobile device or click on the resource link buttons located here and at the bottom of every page of this document to direct you to additional resources and more details on the information provided in this document.

**Texas Department of Transportation**
TxDOT’s public website for agency information and resources focused on meeting the needs of drivers, businesses, government officials, and those who want to learn more about TxDOT.

**TxDOT 2021-2022 Educational Series**
TxDOT’s complete 2021-2022 Educational Series that focuses on a range of transportation issues affecting TxDOT and the state of Texas.

**Visual Dictionary**
TxDOT’s Visual Dictionary is designed to provide better understanding of transportation elements, words, and concepts.

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OVERVIEW
When land is needed for new transportation projects, the Texas Department of Transportation (TxDOT) works with the property owner to acquire the land. TxDOT obtains most land for transportation projects by negotiating the purchase with property owners. However, if TxDOT and a property owner cannot reach an agreement for the sale of the property, TxDOT may condemn the property using its power of eminent domain to acquire the property needed for the transportation project. TxDOT understands that using the power of eminent domain involves balancing the rights of private property owners and the needs of the public, and TxDOT is committed to working fairly with property owners, whether through negotiation or condemnation.

Eminent domain is the legal authority to acquire private property for a public use. Condemnation is the legal process used to acquire private property for a public use. Entities authorized with the power of eminent domain cannot acquire a landowner’s private property, which can include land and certain improvements that are on that property, without adequate compensation (fair market value).

The Texas Constitution and state law entrust TxDOT with the power of eminent domain on behalf of the people of Texas, and TxDOT uses that authority judiciously. TxDOT only exercises its eminent domain authority when it has exhausted all efforts at reaching an agreement for a sale to TxDOT. Historically, on average, TxDOT has acquired about four out of five parcels through the negotiation process.

LAND ACQUISITION AND VALUATION PROCESS
The condemnation process cannot begin until after TxDOT has obtained all environmental approvals for a transportation project. Throughout the environmental review process, which can take years to complete, TxDOT holds multiple meetings with the public to discuss alternative project routes, alignments, and designs. After TxDOT determines a final alignment that best meets the need for the proposed transportation project as well as the needs of the public and the environment, property acquisition may begin.

When TxDOT determines that it needs property for a transportation project, TxDOT must acquire an appraisal to determine the fair market value of the property. The 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.

As required by state law, TxDOT hires an independent appraiser to determine the fair market value of the property and any compensable damages to the value of the remaining property. A survey of the property provides physical staking and measurements of the boundaries for use in determining the value of the parcel. Usually, the appraiser can only view and evaluate a small portion of a landowner’s entire property. 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 the items of value on the property and provide input regarding whether the possible loss of the appraised tract of land might impact any adjacent properties that the landowner owns. TxDOT obtains an independent appraisal, makes an offer matching the appraisal, and attempts to successfully negotiate with the affected property owner.
NEGOTIATION PROCESS AND VALUE DETERMINATION

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 complies with 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 TxDOT mail the appraisal itself 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. The landowner should support any counteroffer with the landowner’s own appraisal or documented conditions that TxDOT may not have considered in the appraisal.

If the landowner establishes that the independent appraisal obtained by TxDOT overlooked significant improvements or if the landowner identifies other discrepancies in the independent appraisal, TxDOT may have the appraiser revise and re-submit the appraisal. TxDOT may also seek a new appraisal from a different independent appraiser. If negotiations are successful, the landowner deeds the parcel of land to TxDOT and TxDOT pays the negotiated value.

If TxDOT and the landowner cannot reach an agreement, TxDOT cannot locate a landowner, or title problems prevent the landowner from conveying a clear title, TxDOT will initiate the condemnation process. Under this process, which can take several months or longer to complete, court-appointed special commissioners will determine the property owner’s compensation for the property. If either the property owner or TxDOT deems that value to be unsatisfactory, either party can file a lawsuit, which may end in a jury trial to determine the final property value.
SPECIAL COMMISSIONERS’ HEARING

The special commissioners’ hearing process begins when TxDOT requests that the Office of the Attorney General of Texas file a condemnation proceeding. 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 damages, if any, in an administrative hearing. Three disinterested property owners who live in the same county as the land subject to the condemnation proceeding are appointed by the judge and make up the special commission for each case. The convening body notifies the landowner of the date and place of the special commissioners’ hearing. At the hearing, the special commissioners evaluate any damages to the owner relating to the property and hear testimony from TxDOT and the landowner on their respective appraisal values. The Office of the Attorney General of Texas represents TxDOT in these proceedings, and landowners may choose to appear by themselves, or with an attorney or an appraiser.

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

If both the landowner and TxDOT are satisfied with the special commissioners’ award, the award becomes final and the court will issue a judgment that transfers the property to TxDOT. Either TxDOT or the landowner can file objections to the special commissioners’ award. If there are objections, the administrative process converts into a lawsuit, which can lead to a jury trial.

At any time after the special commissioners issue their award, TxDOT may deposit the amount of the special commissioners’ award with the court. When TxDOT makes this deposit, TxDOT takes legal possession of the land for construction purposes. The landowner, and others with claims to the land, may apply to the court to withdraw the funds, without forfeiting the right to appeal the court’s award amount.

JURY TRIAL

At a jury trial, witnesses for TxDOT and the landowner testify before a jury, and the jury determines the amount of adequate compensation that TxDOT must pay for the land. However, as in most civil trials, the parties settle many cases without having to go through a full trial by agreeing on the final payment amount. Either party may appeal a jury verdict, and proceedings are not final until the conclusion of any appeals.

If the final agreement or jury verdict payment amount is more than the amount of the deposit after the special commissioners’ hearing, TxDOT 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 TxDOT. In either case, the court enters a final judgment for the total amount and transfers the complete title to TxDOT.

RELOCATION ASSISTANCE

In addition to payment for their property, eligible landowners and tenants may also be entitled to relocation benefits. The federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 authorizes benefits to certain persons (or businesses) that authorized entities have displaced from real property due to 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 the 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; and
3. For those whom the property acquisition has not physically displaced but who must relocate personal property from within the acquired right of way.
YOUR RIGHTS REGARDING EMINENT DOMAIN: THE STATE OF TEXAS LANDOWNER’S BILL OF RIGHTS

Section 402.031, Texas Government Code, and Chapter 21, Texas Property Code, contain the Texas Landowner’s Bill of Rights. State law requires TxDOT to provide a copy of the Landowner’s Bill of Rights statement to a landowner before or at the same time TxDOT represents in any manner to the landowner that TxDOT possesses eminent domain authority. The Landowner’s Bill of Rights applies to any attempt by the government or a private entity to take private property and includes the following:

1. Landowners are entitled to receive adequate compensation if the government takes property for a public use;

2. The government or a private entity can only take landowners’ property for a public use;

3. A governmental entity or private entity must have legal authorization to take a landowner’s property;

4. The entity that wants to take the property must notify the landowner that it wants to take the property;

5. The entity proposing to take a landowner’s property must provide the landowner with a written appraisal from a certified appraiser detailing the adequate compensation that the entity will pay for the property;

6. The entity proposing to take a landowner’s 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, Texas Property Code;

7. A landowner may hire an appraiser or other professional to determine the value of the property or to assist in any condemnation proceeding;

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

9. Before the condemning entity may condemn the property, the landowner is 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 the property. The commissioners must also determine what compensation, if any, the landowner is entitled to receive for any reduction in the value of any remaining property; and

10. If a landowner is unsatisfied with the special commissioners’ compensation award, or if the landowner questions whether the taking of the property was proper, the landowner has the right to a trial by a judge or jury. If a landowner is dissatisfied with the trial court’s judgment, the landowner may appeal that decision.
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.

**SECTION 203.052, TEXAS TRANSPORTATION CODE**

State law authorizes the Texas Transportation Commission to purchase property to achieve the goal of laying out, constructing, maintaining, and operating a modern state highway system. Chapter 21, Texas Property Code, codifies the power of eminent domain and the condemnation process. The following provisions of the Texas Transportation Code layout the purposes for which the state may purchase property for state highways.

**SECTION 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.

The Texas Transportation Code also authorizes TxDOT to acquire property by eminent domain for the Intracoastal Waterway (Section 51.005), Rail Facilities (Section 91.091), Interstate Highways (Sections 224.001 and 224.004), Highway Beautification (Section 391.033), and Scenic Enhancement or Public Accommodation (Section 391.181).
CONNECTING YOU WITH TEXAS

TEXAS DEPARTMENT OF TRANSPORTATION

Project Tracker

Project Tracker is the gateway to up-to-date information about TxDOT highway improvement projects, providing 24/7-access to the public, employees, and elected officials.

TxDOT is committed to your safety and to the reliability of the information contained on this site. While road conditions can change rapidly, DriveTexas.org is an industry leader in providing some of the most accurate and up-to-date travel-related information currently available to drivers in Texas. Information presented here is as close to real time as possible. For those who use our roads, please do not use this site while operating a motor vehicle.

Be Safe. Drive Smart. Thank you!

TEXAS DEPARTMENT OF TRANSPORTATION

Government Affairs

TxDOT’s Government Affairs Division works closely with government on both the state and federal levels though the State Legislative Affairs and Federal Affairs sections.

TEXAS DEPARTMENT OF TRANSPORTATION

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