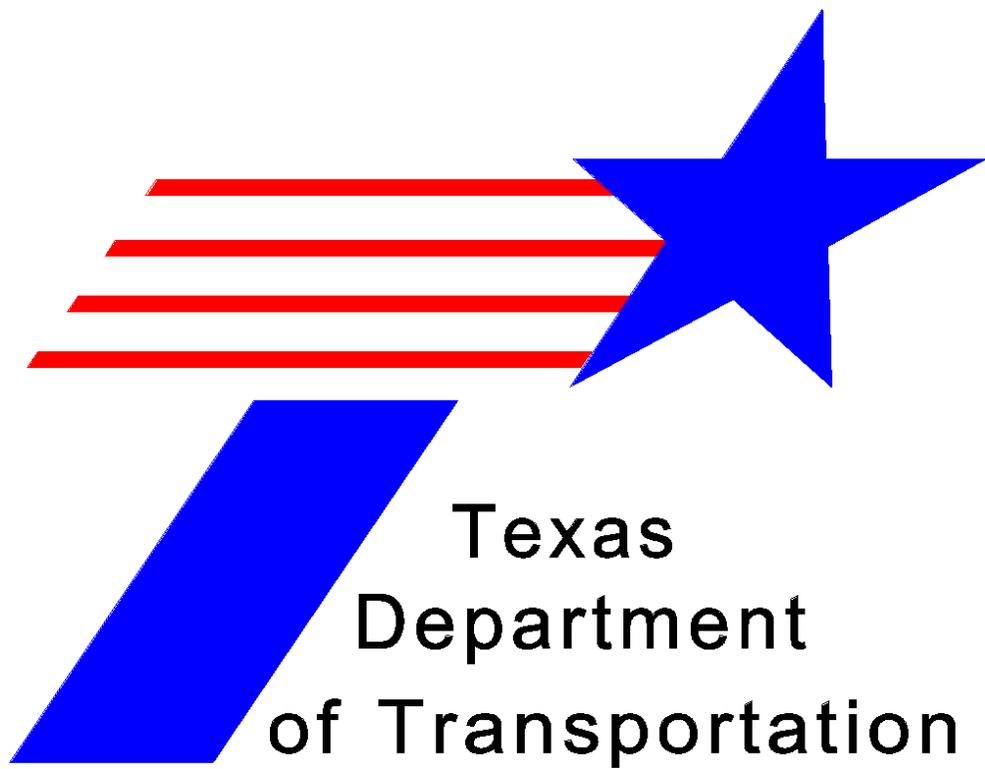


Real Estate Acquisition Guide for Local Public Agencies



Revised August 2011

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Manual Notice 2011-1

From: John P. Campbell, P.E., SR/WA, Right of Way Division Director

Manual: Real Estate Acquisition Guide for Local Public Agencies

Effective Date: August 01, 2011

Purpose

This revision is intended to update the **Real Estate Acquisition Guide for Local Public Agencies**, specifically to include a note to users that recent changes to Chapter 21 of the Texas Property Code and Chapter 2206 of the Texas Government Code, regarding the condemning of property may not be reflected in the manual. These changes will be included in the next revision of the manual estimated to be released by early Fall 2011.

Changes

In the first section of this manual, including the following text: The information contained in this manual is in the process of being updated to reflect recent changes to Chapter 21 of the Texas Property Code and Chapter 2206 of the Texas Government Code, and may not accurately reflect current law or department procedures. Please contact the Right of Way Division at 512-416-2902 for more information.

Contact

Hilda Correa, R/W Staff Services, 512.416.2902.

Archives

Past manual notices are available in a [pdf archive](#).

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Chapter 1 — Introduction

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Section 1 — Overview

Note

The information contained in this manual is in the process of being updated to reflect recent changes to Chapter 21 of the Texas Property Code and Chapter 2206 of the Texas Government Code, and may not accurately reflect current law or department procedures. Please contact the Right of Way Division at 512-416-2902 for more information.

Expanded Guide

This Real Estate Acquisition Guide for Local Public Agencies (LPA) was originally created to provide a brief guide for LPAs on real estate acquisition and, thereby, to enhance cooperation between the LPAs and the Texas Department of Transportation (TxDOT) in the right of way (ROW) acquisition process. Due to new State and Federal laws/regulations and the recent increase in State cost participation with LPAs, it has been necessary to completely revise and substantially expand its contents.

Purpose

The purpose of this Guide is to:

- ◆ provide a basic understanding of the right of way acquisition process;
- ◆ provide a reference for persons involved in the acquisition of private property for public purposes;
- ◆ identify various State regulations that must be followed in the acquisition process; and
- ◆ identify various Federal laws and regulations governing projects where Federal-aid is involved.

Right of Way Form Templates

Throughout this Guide, sample and actual template forms are accessible for saving, opening, and or downloading.

Section 2 — Authority

Federal Law

The [Code of Federal Regulations](#) (CFR) is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. [49CFR24](#), The Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended, commonly called the *Uniform Act*, is the primary law for acquisition and relocation activities on Federal or federally-assisted projects and programs. This law was passed by Congress for making public acquisition of private property as fair and equitable as possible. Several provisions of the law were amended in 1987 as part of Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA).

The [Uniform Act](#) is divided into three sections or “titles”:

- ◆ Title I, “General Provisions,” primarily covers definitions.
- ◆ Title II, “Uniform Relocation Assistance”, contains provisions relating to the displacement of persons or businesses by Federal or federally-assisted programs or projects. If you do not have staff qualified to administer a relocation program, you should seek assistance from the Texas Department of Transportation (TxDOT) to insure that displaced persons are provided all appropriate assistance and payments. Qualified relocation consultants also may provide these services.
- ◆ Title III, “Uniform Real Property Acquisition Policy”, pertains to the acquisition of real property for Federal and federally-assisted programs or projects. One of the purposes of Title III is to encourage and expedite the acquisition of real property through negotiation with property owners. This negotiation process helps avoid litigation and relieves congestion in the courts.

Failure to comply with the provisions of the Uniform Act will result in a denial of Federal participation in project costs.

Information in this guide will primarily deal with Title III of the Act.

In addition, the 4th and 5th Amendments to the Constitution of the United States provide rights for all persons, that they **shall not “be deprived of ... property, without due process of law; nor shall private property be taken for public use, without just compensation.”**

State Law

[Transportation Code](#), Title 6, Chapters 201-250 and [Property Code](#), Chapter 21, are the primary sources of State law for acquisition and relocation activities related to the State Highway System.

These statutes are supplemented with administrative rules provided in [43 TAC, Part 1](#), Chapters 1, 2, 5, 6, 15, and 21.

In addition, *Article 1, Section 17*, of the Texas Constitution provides that **“No person's property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person;”**

Section 3 — ROW Acquisition Overview

Process

The acquisition process can be divided into five general phases:

Planning. This phase involves environmental studies and public involvement as well as location and design studies. A new highway may require extensive environmental studies while a minor improvement on an existing road may only require a relatively brief assessment.

Appraisal. This phase deals with appraiser qualifications, appraisal requirements, property evaluations, report formats, review responsibilities, etc.

Negotiation. This phase deals with the LPAs offer to acquire the required property, prompt payment for such property, notices to vacate, retention of improvements, etc. Should negotiations fail, the process moves into [eminent domain](#) via [condemnation](#) proceedings.

Property Management. This phase deals with disposition of improvements acquired in the purchase of right of way and methods for accomplishing the clearing of right of way.

Relocation. This phase deals with making provisions for the fair and equitable treatment of persons displaced as a result of Federal or Federally-assisted and State programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.

Procedure

1. Pre-Appraisal Contact - deliver “Informational Notice” to owner. A [sample notice](#) is available. During the pre-appraisal contact:
 - Explain agency's interest in acquiring right of way, the protection provided owner by law and procedures to be followed.
 - Inform owner of right to [just compensation](#), extend invitation to owner or representative to accompany the appraiser.
 - Inform the owner that he or she could [donate](#) all or part of the needed right of way. A sample [full donation](#) form, a sample full donation for [temporary construction easement](#) and a sample [partial donation](#) form is available.
2. Inspect proposed right of way for possible environmental contamination or environmentally-sensitive conditions. An [Environmental Checklist for LPAs](#) is available for reproduction.
3. Have parcel appraised and the [appraisal](#) reviewed to establish amount of just compensation. The amount offered shall not be less than the approved appraisal or just compensation.

4. Deliver the written offer (initiation of negotiations) to purchase in an amount not less than the approved appraised value with a copy of the appraisal to the owner and immediately furnish a copy of the offer letter to TxDOT. Sample offer letters for a [parcel with improvements](#) and a [parcel with no improvements](#) are available. The date of delivery is very important in establishing eligibility for relocation assistance. It is very important that relocation assistance guidelines be followed.
5. When the offer is accepted, arrange payment and proceed to closing. Notify TxDOT when the deed is signed on each parcel.
6. File deed in county/city deed records.
7. Deliver “[Final Offer](#)” letter if negotiations are unsuccessful and offer is not accepted. Language such as the following should be added to the Final Offer Letter: **“If this offer is not accepted within ten (10) days from the date of this letter, or an Administrative Settlement request is not received, within 10 days from the date of this letter, it must be considered as having been rejected and the right to submit an Administrative Settlement forfeited, and condemnation proceedings will be instituted for the acquisition of the XXX-acre tract for right of way purposes.”** A sample final offer letter, which contains the above language, is available. The Final Offer letter will be mailed by Certified Mail.
8. Initiate condemnation proceedings should final offer letter be rejected. Notify TxDOT on each parcel as to the date that the transaction was closed or the date that the final judgment was filed in condemnation proceedings on each parcel. In no instance will the county or city intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his or her real property.
9. File certified copy of Final Judgment in county/city deed records.
10. Forward recorded deed(s) and/or recorded Final Judgment(s) to TxDOT.
11. Have your records in order for the Title III Parcel and Appraisal Review conducted by your local TxDOT District office. See [Chapter 9, Records](#) in this Guide for more information.

A [ROW Acquisition Flowchart for LPAs](#) is available in PDF format.

Section 4 — Answers to Your Questions

TxDOT District Contacts

The Texas Department of Transportation's (TxDOT's) Right of Way Manual, Appraisal and Review Manual, and Utility Manual, **and especially** TxDOT Right of Way personnel should be consulted for answers to specific questions and problems. Please contact your local TxDOT District Office LPA Coordinator. [TxDOT District](#) office addresses and telephone numbers may be accessed through the Internet.

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Section 1 — General ROW Project Development

Obtaining Relocation Funding - LPA Acquisitions (with State Participation)

- ◆ Costs for relocation payments and services will be paid for ROW projects involving LPA acquisitions with State reimbursement, unless otherwise stated in the contractual agreement (“agreement”) between the State and the LPA.
- ◆ Relocation costs incurred before project release by the State are not eligible for State reimbursement.

LPA Project Set Up (with State Participation)

Submit a request to TxDOT with the following information:

- ◆ Texas Transportation Commission approval of the project
- ◆ Environmental Clearance Date
- ◆ ROW map, property descriptions, and parcel plats approved by the District. For examples, see TxDOT’s *Right of Way Manual, Volume 1, Chapter 4, [Section 3](#)*.
- ◆ Any ROW acquired by the LPA prior to the signed contractual agreement with, and project release by, TxDOT will be considered non-reimbursable.

Section 2 — Contractual Agreements

Overview

An agreement must be executed by and between TxDOT and the applicable metropolitan planning organization (MPO) or LPA on all projects with State reimbursement. This will customarily be executed early on in project development. The agreement will give details about the project and will state who is responsible for the acquisition of the ROW. In any case, the purchase of ROW on any designated highway on the State Highway System must be in accordance with [49CFR](#) and the [Uniform Act](#) if Federal funds are used in any phase of the project, including construction.

For example agreements, see TxDOT's *Right of Way Manual, Volume 1, Chapter 2, Section 1*. Although TxDOT does not mandate the use of its forms, they are, however, preferred. TxDOT will approve all instruments of conveyance; refer to Chapter 3, [Section 14](#) in this Guide for more information on instruments of conveyance.

The acquiring agency is responsible for all aspects of the acquisition process as detailed in the agreement between the parties.

The [Contract Services Office](#) of TxDOT has implemented a new agreement procedure, which will eventually replace the most commonly used agreements. The new procedure consists of two agreements. These are:

- ◆ a Master Agreement Governing Local Transportation Project Advance Funding Agreement (MAFA), and
- ◆ a Local Project Advance Funding Agreement (LPAFA).

At this time, the Right of Way Division (ROW) of TxDOT still requires the use of a contractual agreement with LPAs, which can be either the LPAFA or a *Contractual Agreement for Right of Way Procurement – Local Government*.

Through these agreements, regardless of the type of agreement signed, TxDOT will authorize and request the LPA to proceed with ROW acquisition and agrees to reimburse the LPA for its share of costs incurred according to the agreement's provisions. The agreement provides LPA acceptance of responsibility to acquire all needed ROW and to obtain acceptable title in the name of the State of Texas.

Terms of the contractual agreement apply to:

- ◆ new ROW authorized and requested by TxDOT which is needed and not yet dedicated, in use, or previously acquired in the name of the State or LPA for highway, street, or road purposes; and

- ◆ needed outstanding property interests in existing ROW, and eligible utility adjustments not previously made, as authorized and requested by TxDOT.

Amendments

An amendment or amendments to the agreement will be necessary if certain acquisition responsibilities or participation requirements change during the course of an ongoing project. If the agreement originally called for the LPA to be the acquiring agency and it desires to transfer all or a portion of the remaining acquisition responsibilities to TxDOT, an amendment to the agreement shall be used, subject to TxDOT approval.

If the participation ratios or roles change, an amendment will be necessary. For example, a Minute Order designating an LPA as an [economically disadvantaged county](#) would require an amendment. Also see [Appendix A](#).

Section 3 — Cost Participation

Overview

All cost participation should be in accordance with the agreement.

TxDOT typically participates in costs of:

- ◆ Special Commissioners' Hearings;
- ◆ appraisal expenses for the State's fee appraisers used in condemnation cases;
- ◆ utility relocations; and
- ◆ fencing and property adjustments;

...and typically assumes the responsibility for:

- ◆ land surveys,
- ◆ property descriptions,
- ◆ title information,
- ◆ preparation of instruments, ROW maps, supplemental investigations or appraisals necessary to determine the appropriateness of submitted values and fees for title services,
- ◆ appraisals where the State is to determine values as a result of the LPA's use of the waiver provision of the contractual agreement,
- ◆ relocation assistance, and
- ◆ removal of improvements.

The LPA typically assumes entire responsibility for:

- ◆ costs incurred in arriving at values to recommend for State approval,
- ◆ costs relative to negotiation,
- ◆ its attorney fees for condemnation proceedings, and
- ◆ [costs](#) of recording instruments of conveyance.

Section 4 — Payment Procedures

Procedure

The procedures for payment to the LPA should follow standard payment procedures described in Reimbursement Policies and Procedures in Chapter 3, [Section 20](#) of this Guide, and TxDOT's *Right of Way Manual, Volume 2, Chapter 18*.

Upon delivery to TxDOT of acceptable instruments conveying to the State the required ROW, a voucher for the reimbursement to the LPA will be prepared and transmitted to the Comptroller of Public Accounts.

If the amount contributed by the LPA is greater than the final actual ROW costs, the excess amount will be refunded to the LPA. Since it is possible that some projects could financially burden an LPA if the entire contribution is required with the submittal of the contractual agreement, the LPA can make incremental payments. Any agreement with an incremental payment schedule has to be approved by the Executive Director of TxDOT in accordance with [43TAC §15.52, Subsection 6\(B\)](#).

Section 5 — Acquisition Procedures for Economically Disadvantaged Counties

Procedure

Acquisition procedures for counties designated as economically disadvantaged are the same as for non-designated counties, or are as stipulated in the agreement, except that the Texas Transportation Commission may adjust the amount of local funds to be contributed. Note that all cities situated in a county that has been designated as “economically disadvantaged” are also eligible for adjustment of their participation ratio. Refer to [Appendix A](#), Disadvantaged Counties, in this Guide for eligibility requirements.

Section 6 — ROW Maps and Parcel Numbering

Definition & Preparation

A ROW map is a compilation of engineering data, property descriptions, parcel plats, appraisal information, and improvements related to a transportation project. All ROW maps must be prepared under the supervision of a Registered Professional Land Surveyor (RPLS). ROW maps do not have to be signed and sealed by an RPLS. ROW maps are recognized as internal engineering plans and management documents.

Parcel Numbering

The methodology of numbering ROW parcels must be correct and consistent to avoid problems in the appraisal process or with record maintenance through the Right of Way Information System. Anyone preparing ROW maps must communicate regularly with the District for uniformity of methodology.

For detailed information on TxDOT map standards, parcel numbering, and submission/approval of ROW maps, refer to TxDOT's *Right of Way Manual, Volume 1, Chapter 4, [Section 2](#)*.

Property Descriptions and Parcel Plats

In contrast to ROW maps being engineering documents, property descriptions, and parcel plats are prepared as exhibits for the conveyance of a property interest. The property descriptions and parcel plats reflect a boundary survey and must be signed and sealed by an RPLS. Property descriptions prepared for ROW projects consist of a heading with TxDOT identification items, along with a regular metes and bounds description and parcel plats prepared on letter size sheets. Letter size sheets allow the descriptions and plats to be filed with the County Clerk's office without reducing copies.

For detailed information on property descriptions and parcel plats, refer TxDOT's *Right of Way Manual, Volume 1, Chapter 4, [Section 3](#)*.

Chapter 3 — ROW Acquisition

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Section 1 — Advance Acquisition of ROW

Overview

If an LPA chooses to purchase property with its own funds **prior** to completion of the environmental process, it may do so and not jeopardize Federal participation in future project costs **provided** the following requirements are met:

- ◆ the acquired property must not influence the need for or location of the project;
- ◆ the acquisition must comply with the *Uniform Act*, as amended;
- ◆ the acquisition must comply with *Title VI* of the Civil Rights Act of 1964;
- ◆ the acquisition must not include lands protected by Section 4(f) of the DOT Act (now codified as [23CFR Part 771 §135](#)) which include significant publicly-owned parks, recreation areas, wildlife or waterfowl refuges, and historic sites;
- ◆ the final project must meet all requirements for a normal Federal project such as compliance with the National Environment Protection Act (NEPA), Historical Preservation Act (HPA), Endangered Species Act (ESA), Wetland Executive Order (WEO), etc.; and,
- ◆ advance acquisitions must not be used to circumvent Federal laws or regulations.

Acquiring large quantities of ROW in advance of Federal approval could likely influence project location or need, and it is important to realize that any advance acquisition is done totally at the LPA's risk. It also causes considerable problems when displacements are involved since relocation funding cannot be set up prior to completion of public involvement and final environmental clearance. Remember, an LPA is responsible for relocation costs.

Section 2 — Administrative Requirements after Formal Release for ROW Acquisition

General

LPAs are directed to acquire ROW for highways when requested and authorized by TxDOT, as provided for by existing laws. In the event condemnation is necessary, follow the same procedure as that described in [Property Code](#), §§21.001 to 21.065, inclusive.

Section 3 — Basic Acquisition Responsibilities (for LPA)

With State Participation

The acquisition of ROW will be the responsibility of the LPA with participation by the State as specified by the law and agreed upon in the contractual agreement. The LPA shall obtain a title policy or a licensed [attorney's opinion](#) acceptable to TxDOT. The State's payment for title company services includes the cost of closing services. The benefits of the Relocation Assistance Program will be administered by the State, unless otherwise stated in the agreement with the LPA (refer to [Chapter 4, Relocation Assistance](#), in this *Guide*). Property owner's incidental expenses to transfer property to the State may be reimbursed by the State.

For projects with State cost participation, the State's approved value sets the upper limit eligible for reimbursement if the parcel is acquired by negotiation. The LPA will not offer less than the State's approved value. While it is permissible for District personnel to assist the LPA in their ROW acquisition, it is not intended that District personnel actually perform any of the responsibilities.

Without State Participation on or off the State Highway System

Since acquisition is the responsibility of the LPA, the LPA may choose to purchase a title insurance policy. However, the LPA will be responsible for providing acceptable title to the acquired property. The State will administer the benefits of the Relocation Assistance Program only if required by the agreement with the LPA.

The District will advise the LPA when all prerequisites have been met and acquisition can be initiated. Acquisition responsibilities that lie with the LPA, and the amounts disbursed, will be at their discretion subject to certain requirements imposed by *Title III* of the [Uniform Act](#), as amended and Federal Regulations pertaining to said Act.

Task Sharing

The following chart explains which tasks property acquisition personnel may or may not perform when complying with the *Uniform Act*:

Table 3-1. Task Sharing Chart

CAN YOU PERFORM THIS TASK?					
IF YOU PERFORM THE TASK BELOW:	Appraise Parcel	Review Parcel Appraisal	Negotiate Parcel \$2500 or Less	Negotiate Parcel More Than \$2500	Deliver Parcel Payment
Appraise Parcel		NO	YES	NO	NO

Table 3-1. Task Sharing Chart

CAN YOU PERFORM THIS TASK?					
Review Parcel Appraisal	NO		NO	NO	NO
Negotiate Parcel \$2500 or Less	YES	NO			NO
Negotiate Parcel More Than \$2500	NO	NO			NO
Deliver Parcel Payment	NO	NO	NO	NO	

Section 4 — District's Monitoring of LPA Acquisition

Requirement

Federal regulations require TxDOT to document that ROW procured by political subdivisions was acquired in accordance with *Title III* of the *Uniform Act*. This requirement does not in any way relieve the LPAs of the need to have complete documentation in their files; however, the Districts will obtain and maintain in their files a certification of compliance containing the following clause and signed by the LPA:

“ .certify that right of way for_____ has been acquired according to policies of the Texas Department of Transportation and in accordance with applicable Federal and State laws governing the acquisition policies for acquiring real property. Documentation for compliance with these requirements is available for audit in our files. “

A standard form for this certification has not been printed because some LPAs may prefer to furnish it in the form of a resolution while others may wish to have it signed by a LPA official. Certificates are required for each project.

Section 5 — Appraisal and Negotiation Requirements

Informational Notice to Owners Required

Federal regulations require that property owners be notified of the LPA's interest in acquiring ROW. Property owners must also be informed of basic protections provided to them by law, and of TxDOT regulations and procedures.

Provide notice after the project is released for acquisition, and schedule delivery of notice to provide favorable relations with property owners. The notice may be given before or at pre-appraisal contact. An [Informational Notice](#) is available.

The notice should be understandable and should include the name and telephone number of a LPA representative. Property owners unable to read or understand the notice must be given appropriate translation and counseling. Furnish TxDOT's booklet, "*Right of Way Purchase by Counties and Cities*" (for LPAs), which briefly explain the ROW acquisition process to property owners, with this informational notice.

Give the property owner or his designated representative an opportunity to accompany the appraiser during inspection of the property.

This notice is **not** the same as the relocation assistance notice discussed in *General Information Notice (Notice of Displacement)*, in TxDOT's *Right of Way Manual Volume 3, Chapter 9, [Section 1](#)*.

Pre-appraisal Contact

The pre-appraisal contact should be a personal meeting. During this meeting, give the property owner information on the overall timing of ROW acquisition, the general type of facility to be constructed, and the appraisal procedure that will follow. However, do not make a commitment to value or make an offer before receiving approved values. Use this contact to initially determine existence of the following items:

- ◆ property improvements
- ◆ leasehold interests in improvements on the property
- ◆ known hazardous materials affecting the property
- ◆ known or evident underground improvements
- ◆ known liens against the property
- ◆ advertising signs on the property

During pre-appraisal contact, resolve any possible controversy with the property owner by distinguishing between realty being acquired and personalty not being acquired.

Pre-appraisal contact is discussed in TxDOT's *Appraisal and Review Manual*. LPA's may use TxDOT's Form ROW-A-PAC, Pre-Appraisal Contact with Property Owners, during the pre-appraisal contact. Form [ROW-A-PACs](#) is available.

NOTE: LPAs should make every effort to identify potential on-site hazardous materials during the acquisition process.

Establishment of Just Compensation Required

Before initiation of negotiations, appraise the real property, and have the values reviewed by a qualified reviewing appraiser, to establish just compensation. Samples of contracts for fee appraisers and fee reviewers are available. An exception to this requirement is when a parcel will be donated and the property owner waives the establishment of just compensation through the appraisal process. Refer to [Procedures](#) for Receiving Donations in this Guide, as well as *ROW Donations and Exchanges* in TxDOT's *Right of Way Manual, Volume 2, Chapter 6, Section 1 for more information on donations.*

If the State is participating in the cost of acquisition, the LPA must use TxDOT forms. Just compensation will not be approved until the appraisals are reviewed and accepted by TxDOT personnel.

The amount of just compensation will not be less than the approved appraisal, taking into account the value of allowable damages or enhancements to any remaining property. For acquisition by negotiation, just compensation is the amount established as the approved value through the appraisal process and shown on [ROW-A-10, Tabulation of Values](#). This form is available from TxDOT. For more information on the use of this form, refer to TxDOT's *Appraisal and Review Manual*.

In accordance with the agreement, either the County Judge, City Mayor, or their appointed designees shall approve **all** appraisal reports, thereby approving the values.

Policies on Use of Appraisers

The LPA shall establish criteria for determining the minimum qualifications of appraisers. Appraiser qualifications shall be consistent with the level of difficulty of the appraisal assignment. Rather than establish its own qualifications of appraisers, the LPA may, as its standard procedure, elect to use fee appraisers approved by the Department.

Effective January 1, 1993, appraisal assignments to independent fee appraisers on projects where there is Federal-aid in right of way and/or construction of the project may only be made to fee appraisers who are certified or licensed by the Texas Appraiser Licensing and Certification Board.

The Board maintains a roster of certified/licensed appraisers and the roster is available in the Right of Way Section of each District office. Also, TxDOT's list of approved fee appraisers contains the certification/license information for each appraiser and may be used by the LPA for reference and verification.

No appraiser or review appraiser shall have any interest, direct or indirect, in the real property being appraised for the LPA that would lead to a conflict with the preparation or review of the appraisal. Compensation for making an appraisal shall not be based on the amount of the valuation.

Appraisal Standards

A detailed appraisal shall reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition and Uniform Standard Practices for Appraisal Professionals (USPAP). An appraisal must contain sufficient documentation, including valuation data and the appraiser's analysis of that data, to support his or her opinion of value. LPAs are encouraged to consult with TxDOT Right of Way personnel regarding acquisitions that require a detailed appraisal as well as those presenting uncomplicated valuations. As a minimum, the appraisal shall contain the following items:

- ◆ The purpose and/or the function of the appraisal, a definition of the real estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal.
- ◆ An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property); a statement of the known and observed encumbrances, if any; title information; location; zoning; present use; an analysis of highest and best use; and at least a five-year sales history of the property.
- ◆ All relevant and reliable approaches to value consistent with commonly accepted professional appraisal practices.
- ◆ A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.
- ◆ A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of damages and enhancements, if any, to the remaining real property.
- ◆ The effective date of valuation, date of appraisal, signature, and certification of the appraiser.
- ◆ The condition of the property in regards to environmental conditions.

The LPA shall develop minimum standards for appraisals consistent with established and commonly accepted appraisal practice for those acquisitions which, by virtue of low value or simplicity, do not require the in-depth analysis and presentation necessary in a detailed appraisal.

An appraisal is not required if the owner is donating the property and releases the LPA from this obligation.

If LPA determines that an formal appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at \$10,000.00 or less, based on a review of available data, **and there is no State cost participation involved**, it shall use the [ROW-A-PVD, Parcel Value Determination for LPAs](#). **If State cost participation is involved**, the LPA *must* use a State-approved appraiser and shall submit TxDOT's Form [ROW-A-7, Real Estate Value Finding Report \(TxDOT\)](#) with supporting documentation, to TxDOT for its review and acceptance. Should TxDOT disapprove the value, either additional documentation or a formal appraisal will be required.

An administrative settlement may be made on a parcel value determination, even if the total settlement may exceed \$10,000.00. For more information on administrative settlements, refer to [Administrative Settlements](#) in this *Guide*.

The Uniform Act requires that the property owner, or the owner's designated representative, be given an opportunity to accompany the appraiser during the appraiser's inspection of the property. The invitation to the property owner may be given either by the acquiring agency or by the appraiser. The invitation should be made in writing, with sufficient lead time for the owner to arrange to be present or to request an alternative time. If the owner declines the invitation to accompany the appraiser, the declination should also be in writing and be retained in the agency's file. A form type of letter may be used for this purpose. TxDOT personnel should be consulted if additional information regarding owner accompaniment is desired.

Appraisal Review Requirements

The LPA shall have an appraisal review process which includes as a minimum:

- ◆ A qualified reviewing appraiser shall examine all appraisals to assure that they meet TxDOT appraisal requirements and shall, prior to acceptance, seek correction or revision of those which do not.
- ◆ If the reviewing appraiser is unable to approve or recommend approval of an appraisal as adequate support for compensation, the reviewing appraiser may develop appraisal documentation in accordance with the procedures entitled [Appraisal Standards](#) to support an approved or recommended value if it is determined that it is not practical to obtain additional appraisals.
- ◆ The reviewing appraiser's certification and the recommended or approved value of the property shall be set forth in a signed written statement which identifies the appraisal reports reviewed and explains the basis for such determination. Any damages or enhancements to any remaining property shall also be identified in the statement.
- ◆ The environmental condition of the property.

The review appraiser plays an important role in the acquisition process and is charged with a great deal of responsibility. Persons assigned this responsibility should be thoroughly qualified by education and experience to review appraisal and specialty reports to ensure that the approved estimate of fair market value is reasonably supported. Reviewers are also responsible for obtaining corrections and/or revisions to reports when necessary. For details concerning specific educational and experience qualifications and for assistance in selecting qualified review appraisers, LPAs are encouraged to contact TxDOT Right of Way personnel.

Policies on Appraisal and State Acquisition of Improvements

Include all buildings, structures, or other improvements located on ROW parcels in appraisals, whether owned by landowner or lessees, when determined to be real property under State law.

The LPA may make payments to the property owner, acquiring all improvements in the name of the State on State program system projects. Alternately, the LPA may allow the property owner to retain improvements. Make appropriate reductions in the parcel price if the property owner retains improvements.

If an improvement is classified as a Category II bisection, a supplemental paragraph will be submitted on the *Tabulation of Values*, signed by responsible engineering personnel stating that the cutting of the building is a design and location requirement and that any reduction in right of way would adversely affect requirements for highway purposes. This recommendation will then bear the signature of the District Engineer or designated representative.

Written Offer to Purchase Required

Make a prompt written offer for the full just compensation amount to the property owner. Delivery of the offer constitutes initiation of negotiations and is the principal date for determination of relocation assistance entitlements. Include the following items in written offers:

- ◆ A statement of the amount offered as just compensation. In the case of partial acquisition, state compensation for real property and compensation for damages, if any, separately.
- ◆ A description and location of the ROW parcel and of the type of interest to be acquired. The description and location of the parcel can be in general terms.
- ◆ A copy of the appraisal (excluding the review document) on which the offer is based.

Retain copies of all signed letters in LPA files and promptly forward one copy of the offer letter to the District.

Sample offer letters for a parcel with improvements and a parcel with no improvements are available. These sample offer letters contain supplemental wording for use in those cases where a [Petroleum Storage Tank Removal Agreement](#) is required.

In accordance with the agreement, either the County Judge, City Mayor, or their appointed designees shall sign **all** offer letters.

When delivering final offer letters, include an explanation of the administrative settlement process for the property owner's (s') information.

Owner Retention of Improvements

The property owner may retain some or all of the real property improvements located on an improved parcel if the parcel is acquired through negotiation. When improvements are retained by the owner, just compensation for the real property interest acquired will not be less than the difference between (1) the **approved value** for the owner's entire interest and (2) the established retention values of all improvement(s). The amount deducted from just compensation for a parcel when any improvement is retained is referred to as "retention value."

Form [ROW-A-10](#), or similar form, shows improvements to consider in negotiations and retention values. When a ROW taking bisects an improvement, identify the improvement as either a Category I bisection or Category II bisection on form utilized. TxDOT's *Form ROW-A-10* and retention value determination are discussed in TxDOT's Appraisal and Review Manual.

If improvements are retained, the property owner's deed to TxDOT must properly indicate all retention. Deed clauses required for retention of improvements and bisections are discussed in TxDOT's *Right of Way Manual, Volume 2, [Chapter 14](#)*.

Negotiation Contacts and Reports

Negotiations are usually conducted through personal contacts with the property owner. Due to constraints of staff or travel, negotiations may be conducted via electronic means or by postal service mail, with a follow-up telephone call. If the owner is available in the local area, they should be offered the option of a personal contact.

The **negotiation** contact usually consists of more than one meeting with a property owner. During negotiation contact:

- ◆ present the offer letter;
- ◆ fully discuss the offer;
- ◆ answer any questions the owner has regarding the offer and acquisition;
- ◆ explain the [administrative settlement](#) process to the property owner;
- ◆ give the owner a ROW acquisition brochure;
- ◆ give the owner a relocation brochure;
- ◆ deliver a copy of the appraisal upon which the offer is based; and

- ◆ have property owner sign [ROW-A-RA](#), Acknowledgement of Receipt of Appraisal Report, which is available from TxDOT, or use a similar form. Should the property owner refuse to sign an acknowledgement of receipt of appraisal report, the agency may send the appraisal report to the property owner via certified mail, return receipt requested.

No specific negotiation report is required; however, **all** owner contacts should be documented in the file.

Updating Offer of Just Compensation

Have an appraisal updated or obtain a new appraisal if any of the following conditions occur:

- ◆ Information provided by the property owner indicates a need for a new or updated appraisal, such as the owner locating an overlooked improvement.
- ◆ A material change in the property's condition indicates a need for a new or updated appraisal.
- ◆ Significant time passes since the last appraisal.
- ◆ Real estate market conditions change significantly.

If the updated appraisal report or new appraisal indicates a need to change the just compensation purchase offer, then submit a revised written offer to the property owner. The revised written offer **must** rescind the original offer.

Negotiations after Condemnation Proceedings Have Been Initiated

When a revised approved value of just compensation indicating an increase in value is established before the Special Commissioners' hearing, deliver a written revised final offer for the value. **Do not terminate condemnation proceedings until the parcel is completely closed by negotiation.**

Control of Access Rights

Per [Transportation Code](#), §203.031, the Texas Transportation Commission may designate the entire interstate highway system and portions of the State Highway System as controlled access highways. Consequently, along these highways, it is necessary to either limit or completely deny abutting owner access rights. These access rights include right of ingress and egress and right of direct access to and from the abutting property.

For further information, refer to TxDOT's *Right of Way Manual, Volume 2, Chapter 5*, [Section 15](#).

Policy on "Uneconomic Remainders" (With State Participation)

Refer to TxDOT's *Right of Way Manual, Volume 2, Chapter 5*, [Section 16](#) for TxDOT policy on uneconomic remainders.

TxDOT will not participate in acquiring property in excess of ROW required for the project, **unless** a parcel is being acquired in the name of the State, and has been designated by the Texas Transportation Commission as an uneconomic remainder.

Excess Takings (With State Participation)

The LPA, however, may choose to acquire a whole property when only a portion of the property is in the required ROW. In this case, TxDOT's reimbursement is based only on the predetermined value of the portion required for ROW purposes, plus damages to the remainder. In no case will this amount exceed the total paid by the LPA. For excess takings, title will be vested in TxDOT only for the parcel required for ROW purposes.

If an excess taking involves an Category I bisected improvement and not retained by the property owner, TxDOT reimbursement for the improvement depends on the LPA conveying title to TxDOT for the improvement and for the tract of land needed for ROW purposes. The deed from the LPA must include the approved proper clause for conveyance of bisected improvements found TxDOT's *Right of Way Manual, Volume 2, [Chapter 14](#)*. TxDOT then sells the improvement through the Texas Building and Procurement Commission (TBPC) and gives the LPA appropriate credit.

Information for Income Tax Purposes for Property Owners

Generally, the State's policy also applies where LPA's are acquiring ROW under contractual agreement with TxDOT. Refer to TxDOT's *Right of Way Manual, Volume 2, Chapter 5, [Section 25](#)*. However, the responsibility for and the method of furnishing such information will be as follows:

- ◆ Any breakdown of the total consideration paid between compensation for property acquired and compensation for damages to the owner's remaining property is not to be documented in the deed but may be documented in a separate agreement or contract of sale. This separate agreement with the property owner is strictly a responsibility of the LPA.
- ◆ TxDOT's approved value is for the sole purpose of establishing the maximum amount in which TxDOT will participate. This does not in any way restrict the LPA in negotiations or in what they consider damages. Therefore, TxDOT will not be party to any agreement or contract of sale between a property owner and the LPA. Thus, TxDOT will not be involved in any monetary breakdown made for tax purposes.

Section 6 — Special Appraisal Situations

Irrigation and Drainage Canals

A canal, as defined here, means any open ditch or pipe facility carrying non-potable water for irrigation or drainage purposes. When ROW is required for canal adjustments, such acquisition is handled according to how ownership is held and the physical canal orientation with respect to the highway. Ownership is held either publicly or privately. Canal orientation is either perpendicular or parallel to the highway.

For publicly-owned canals, adjustments are handled similar to utility adjustments. Facilities should be identified as either crossing (perpendicular to the highway) or longitudinal (parallel to the highway). Real property costs will be handled as ROW expenses.

For privately-held canals, handling of costs should follow the real property acquisition process. Facilities should be identified as either crossing (perpendicular to the highway) or longitudinal (parallel to the highway). Real property costs shall be handled through the appraisal process as part of the ROW acquisition parcel.

Additional policies and procedures regarding the removal, relocation, or adjustment of irrigation and drainage canal facilities are in TxDOT's Utility Manual. Procedures for appraising canals in private ownership are included in TxDOT's Appraisal and Review Manual.

Private Utility Lines

Private gas, water, sewer, telecommunication, or other utility lines may be handled in the same manner as canals. Refer to both TxDOT's *Appraisal and Review Manual* and *Utility Manual*.

Acquisition of TxDOT Employees' Property (with State Participation)

When property owned by TxDOT employees or officials is required for ROW, standard procedures are followed in appraising, securing approved values, and offering to negotiate. However, to prevent unjust accusation of collusion, it is preferred that such employees and officials refuse to negotiate. Thereby, proper compensation is determined through condemnation proceedings, as set forth in Minute Order No. 43775. The minute order was designed to discourage anyone within TxDOT from speculating on ROW.

Administrative Settlements

An administrative settlement is any settlement, initiated by the property owner, made or authorized by the responsible acquiring agency, before initiating the ED process, which exceeds the agency's

approved value. Use of an administrative settlement can enhance negotiations and reduce the number of ED actions.

On LPA acquisition projects with TxDOT reimbursement, an LPA may make a settlement if an agreement cannot be reached on the approved value. TxDOT will not participate in the settlement (the amount above the approved value) **unless** the proposed settlement is submitted to the District and approved under TxDOT's administrative settlement procedures. Refer to TxDOT's *Right of Way Manual, Volume 2*, Chapter 5, [Section 33](#).

Procedures for Receiving Donations

After being informed of the right to receive just compensation for their property interest, an owner may donate his interest, in whole or in part. The LPA must obtain an appraisal of the property, unless the property owner releases the LPA from this obligation. Sample full donation (for [fee simple](#) and for a [temporary construction easement](#)) and [partial donation](#) form letters are available.

If negotiations result in a ROW donation, LPA files must document supporting circumstances. See TxDOT's *Right of Way Manual, Volume 2*, Chapter 6, [Section 4](#) for suggestions about documentation.

For local participation projects in which ROW acquisition is funded partially by an LPA and partially by TxDOT, the LPA should obtain all donations in its name and not in TxDOT's name. Therefore, standard acquisition forms that identify the State of Texas as grantee must not be used, and the deed must identify the LPA as the grantee. When partial acquisitions for **controlled access facilities** are involved, a new deed form, *Form ROW-N-24, Donation Deed (Controlled Access Highway Facility) – LPA*, has been developed for use by LPAs. An example [ROW-N-24](#) is available.

Should the acquisition **not involve** a controlled access highway facility, the LPA should use Form ROW-N-25, Donation Deed –LPA. An example [ROW-N-25](#) is available.

After the LPA acquires clear title in its name, acceptable to TxDOT, it will deed the property to TxDOT, and the deed will not require a minute order or donation agreement. LPAs should be informed of this procedure before execution of the contractual agreement for ROW acquisition between TxDOT and the LPA.

For LPA Farm-to-Market (FM) projects in which no TxDOT money is used for ROW acquisition, but the ROW is obtained in the name of the State of Texas, the procedure for donated parcels will be the same as in the preceding paragraph.

If the LPA suspects that donated property is environmentally contaminated, it should obtain right of entry from the property owner to investigate contamination **prior** to accepting the donation. Use the [Environmental Checklist for LPAs](#) form.

Section 7 — Matching Fund Credits for LPAs

Matching Fund Credits to LPA (State Funded Project; No Federal-Aid)

Donations

- ◆ For local participation projects in which TxDOT is acquiring the ROW, the value of ROW donated by the LPA may be used as a credit toward the LPA's matching share of cost of ROW to be acquired for the project. Donation credit will not be applied if the LPA is the acquiring agency.
- ◆ This credit must be supported by an appraisal and should include the fair market value of the land and improvements being conveyed to TxDOT, but should exclude any damage to the remainder. The fair market value should be established as of the effective date of the LPA's contractual agreement and should not include increases or decreases in value caused by the project. The cost of appraisal will be the responsibility of TxDOT. TxDOT will review the submitted documentation and make a final determination of value; provided however, TxDOT may perform any additional investigation deemed necessary, including supplemental appraisal work by TxDOT employees or employment of fee appraisers.
- ◆ Credit will be given only for property transferred at no cost to TxDOT after the effective date of the LPA's contractual agreement and TxDOT's issuance of a letter of funding authority, and only for property which is necessary to complete the project. There will be no credit for property which is already dedicated and/or in use as a public road. Donation credit will be in lieu of monetary contributions required to be paid to TxDOT for the LPA's funding share of ROW to be acquired for the project. The total credit cannot exceed the LPA's matching share of the right of way obligation under their contractual agreement, and credits cannot be reimbursed in cash to the LPA, applied to project phases other than right of way, nor used for other projects. In the event the LPA's monetary contributions to TxDOT for acquisition of ROW, when added to its donation credits, exceed the LPA's matching share of the right of way obligation, there will be no refund to the LPA of any portion of its contributed money.

Matching Fund Credits to LPA (Federal-aid Project)

Donations

- ◆ If Federal funds are used in any part of a project (preliminary engineering, ROW, or construction), the value of donated ROW may be used as a credit toward the LPA's matching share on the Federal project, provided that the additional Federal funds are available for the project.
- ◆ This credit must be supported by an appraisal and should include the value of the land and improvements in the acquisition, but should exclude any damages to the remainder. If Federal funds are used in ROW, costs to obtain the donation (e.g., appraisal and negotiations costs) would be eligible for Federal reimbursement. If the owner waives the right to an appraisal, the

appraisal to support the credit is not considered as part of the negotiations with the owner and owner accompaniment would not be required.

Method of Credit

- ◆ If an LPA wants to obtain any ROW credits on a Federal project, the District should contact the ROW Division to discuss the particular circumstances and procedures needed to obtain the credit.

Section 8 — Advertising Sign Interests

Overview

The general procedures outlined in TxDOT's Right of Way Manual, Volume 2, [Advertising Sign Interests](#) through Moving Certain [Off-Premise Signs](#), will be followed on 90-10 projects.

Procedure

When the pre-appraisal contact and inspection shows the presence of an advertising sign within the parcel, follow the following procedures **before** conducting the appraisal of the property:

1. **Where landowner also owns the advertising sign:**
 - Determine whether the landowner also owns the sign structure. If the property owner does own the sign structure, then proceed with conducting the appraisal, and advise the appraiser of such ownership. The appraiser should be instructed to consider the sign structure itself to be personal property and not include the value of the structure in the appraisal of the real property. The landowner should be provided relocation information relating to the sign structure (in the manner set out below, including the possibility of relocating the sign to the remainder where a partial acquisition is involved), and other relocation information should also be provided should the landowner also be considered displaced by the acquisition.
2. **Where landowner does not own the advertising sign, complete all requirements listed below, before proceeding with the appraisal:**
 - If the property owner **does not** own the advertising sign, do not acquire the sign structure as part of the land being acquired, but consider the sign structure itself to be personal property. Where an advertising sign is located upon the parcel and the sign is not owned by the property owner, attempt to obtain the following information from both the property owner and the sign owner relating to such sign:
 - By what authority or authorization is the sign allowed upon the property, and if by a written agreement, obtain a copy of such agreement (lease agreement usually). If unable to obtain a copy of a written agreement, obtain as much information as possible regarding any agreement authorizing the sign (such as whether there is in fact a written agreement, even though a copy may not be obtained from the landowner or the sign owner, how long the sign has been on the property, and when does the current agreement expire).
 - Check the sign structure for the presence of a permit number and verify with the District Sign personnel to determine if the sign at this location has a current valid sign permit. If the sign is located within a municipality that is certified by TXDOT to issue its own sign permits, such verification should be made with the municipality.

- If the parcel is only a partial acquisition, so there is a remainder, is the property owner willing to allow the sign owner to move and relocate the sign onto the remainder?

If the LPA has been able to verify that there is a valid ground lease associated with the sign structure currently in effect with a remaining term of more than a month to month time period, the appraisal of the parcel may proceed, with the appraiser being instructed to consider the sign structure itself to be personal property and not include the value of the structure in the appraisal of the real property. All information obtained relating to the terms of the ground lease that is associated with the sign should be provided to the appraiser, and the appraiser should consider the ground lease as part of the real property appraisal in the manner set out under “Advertising Sign Sites” in TxDOT’s Appraisal and Review Manual.

Relocation Procedures For Signs With Valid Permits

Where it has been verified above that the sign upon a specific parcel has a valid permit for the location upon such parcel, the additional procedures set out below regarding the relocation of such a legal sign should be followed. In the event it has definitely been determined that the sign does not have a valid permit, and is therefore considered an “illegal” sign, no relocation benefits or procedures should be offered to the sign owner. However, in such event, the ground lease associated with such sign structure (if separately determined to be a valid ground lease and for more than a month to month time period) will still need to be included in the appraisal of the parcel itself and such ground lease either released (quitclaimed) by the sign owner prior to or at the closing of the parcel, or acquired through the eminent domain process in the same manner as other real property leases.

NOTE: It is the general policy and procedure of the ROW Division to not close with the fee owner of the parcel without first having obtained a release of other real property leases that have more than a month to month term remaining (including ground leases associated with advertising sign structures).

If the parcel with the sign located upon it is located within a municipality or the extraterritorial jurisdiction (ETJ) of a municipality, the LPA ROW Agent should determine whether there are any local zoning regulations that would restrict or prohibit the relocation of an existing sign onto the remainder of the same property or elsewhere upon another property within the municipality).

If there appear to be no local restrictions on relocating the sign either onto the remainder or to another location within the general vicinity, the LPA ROW Agent should make contact with the sign owner and determine if sign owner will relocate the sign (either onto the remainder if the landowner will permit, or to another site of the sign owner’s selection in the vicinity). The LPA ROW Agent should advise the sign owner that the sign owner may be eligible to receive payment of relocation benefits associated with such sign relocation. If there are local (municipal) zoning restrictions that prohibit the relocation of the sign structure within the municipality, the LPA ROW Agent should still make contact with the sign owner and determine if the sign owner will relocate the sign to another location within the general marketing area served by the sign owner, outside of

the municipality, or to the Sign Owner's warehouse or other storage facility (again advising that the sign owner may be eligible to receive payment of relocation benefits associated with such sign relocation). In either event, at the time of the initial contact with the sign owner, the LPA ROW Agent should provide relocation benefit information and additionally inform the sign owner that the Department's Sign Regulations provide for less restrictive sign spacing requirements where a sign is being relocated due to such sign being displaced because of a highway right of way acquisition. As part of the relocation information provided to the sign owner, Form [ROW-OA-Waiver](#) should be provided to and executed by the sign owner; also see [relocation](#) guidelines in Moving Certain Off-Premise Signs below.

If feasible, arrange for the completion of sign relocations prior to continuing with the acquisition of the parcel itself. Such completion must include the sign owner to executing a quitclaim deed using Form ROW-N-30 to any interest in the parcel as part of the completion of the relocation process. If such relocation has been completed, then the LPA Right of Way agent may proceed with commencing with acquisition of the parcel without including the advertising sign structure, or any ground lease relating to the sign (from the perspective of the sign owner), and the additional steps below do not need to be followed. Note, however, that the ground lease (and any other real property leasehold interests) may still be considered as part of the appraisal of the value of the fee owner's interest.

If it appears that the sign owner is unwilling to relocate the sign under the above procedures and circumstances, the LPA Right of Way agent should proceed as follows:

- ◆ The LPA Right of Way agent should check with the local taxing entities (or a central appraisal office if one exists) to determine whether the owner of the sign (usually a sign company) has rendered the particular sign at this location for ad valorem taxes.
- ◆ After gathering all of the above information regarding the sign ownership, agreements, zoning, permit status, and tax status, the LPA Right of Way agent should then provide all of this information to the LPA ROW Administrator, for utilization in working with the land owner should a negotiated closing with such landowner be attempted. In general, the handling of ground leases associated with advertising signs, shall be accomplished in the same manner as other real property [leasehold interests](#), and in order to close by negotiated deed, the landowner would need to work out agreements with any of the outstanding leasehold interests for which there may be a compensable interest (usually a lease for more than a month to month basis).
- ◆ If releases of all of such compensable leasehold interests can not be obtained, then in order to obtain clear title, eminent domain proceedings will need to be utilized to acquire all property interests, and the landowner, and all parties holding compensable leasehold interests (including ground leases associated with advertising signs) must be joined as parties in the eminent domain proceedings. Copies of all of such leases, if they have been obtained, should be included in the eminent domain submission package. If the LPA Right of Way Agent has determined that the sign owner has rendered the sign structure as real property for ad valorem tax purposes, notice and documentation of this fact (copies of the tax rendition), along with a copy

of the sign lease should be included in the eminent domain submission package, and special note of this fact made on the LPA's cover memo.

Remove signs erected without property owner permission, non-permitted, or abandoned signs after parcel acquisition.

Leasehold Advertising Signs

The costs of acquiring leasehold advertising sign interests are eligible for State participation only when a compensable realty interest has been determined and a release or quitclaim of property interests has been obtained. The determination of compensability need not be submitted to the ROW Division. However, the release or quitclaim must be submitted, along with the deed from the fee owner, before reimbursement can be made. It is recommended that the LPA follow the procedures outlined in [Advertising Sign Interests](#) and [Moving Certain Off-Premise Signs](#). The District should closely coordinate the LPA's efforts in this regard.

In the event any existing, future, or proposed LPA ordinance, commissioners court order, rule, policy, or other directive, including, but not limited to, those concerning outdoor advertising, are more restrictive than State law, policy, or directive, and thereby result in any increased costs, then the LPA will pay one hundred percent (100%) of all such increased costs, even if the applicable county qualifies as an economically disadvantaged county.

Section 9 — Fencing Policies

Procedure

The LPA will handle ROW fencing in the manner established in the approved value.

When ROW or other fencing will be part of the cash consideration paid to the property owner, or will be handled as a property adjustment required by the ROW taking, the appraised value of this fencing is included in the approved value. Refer to TxDOT's *Right of Way Manual, Chapter 9, [Section 3](#)*, for procedures on jointly-owned fences.

The LPA may elect to perform ROW fencing on an actual cost or lump sum basis as a part of the total ROW consideration. In this case, neither value for existing fences whose utility is restored by the new ROW fence, nor damages for an unfenced condition are to be included in the approved property owner payment value.

When ROW fencing will be performed on a lump sum or actual cost basis, the type of fence constructed will be limited to that constructed by the LPA, or to the type of fence being replaced. If fencing is accomplished as a property adjustment, the fence type constructed is a matter between the LPA and the property owner. However, TxDOT's upper participation limit will be TxDOT's approved value, less any retention.

Section 10 — Passes

Pass Policies

The Texas Transportation Commission's policy for passes on the highway system is contained in [Minute Order No. 62491](#). Handle pass installations in the ROW transaction with construction and cost responsibilities as outlined in the minute order. Refer to *Cost Charges for Passes* in TxDOT's *Right of Way Manual, Volume 2, Chapter 9, Section 2*.

Section 11 — Acquisitions of State Lands

Procedure

If an LPA is the acquiring agent on a project, they are responsible for the acquisition of all needed ROW, including that across State owned property. An LPA may initiate and handle all negotiations for the acquisition of TxDOT needed ROW across State-owned land without TxDOT assistance. The LPA must do so under specific statutory authority granted to the LPA.

If an LPA desires TxDOT assistance in the acquisition of ROW across State-owned lands, TxDOT can invoke the authority of [Transportation Code](#), §203.053(B), and the District will negotiate directly with the State agency involved. If the District handles negotiations, it will offer the full, approved value to the State agency involved.

Under this procedure, TxDOT acts for the LPA. Proposed conveyance instruments are transmitted to the LPA by the District for review and approval. Any consideration recited in the deed and jointly approved by the LPA and TxDOT is paid directly by the LPA and is eligible for applicable reimbursement by TxDOT, as customary for other type properties.

Section 12 — Acquisition of Federal Lands for ROW

General

At the request of an LPA, the District will assist in the negotiation for needed ROW across Federal land. If District assistance is requested, procedures and submission requirements contained in TxDOT's *Right of Way Manual, Volume 2*, [Chapter 11](#), are applicable.

The LPA should negotiate directly with Federal agencies, unless the Federal agency requests negotiations be handled through application with FHWA.

Property Adjustment Work on Federal Lands

All property adjustments on Federal lands will be dictated either by the agreement or by any supplement thereto.

Section 13 — Acquisition of County or City Property for ROW

General

Legal authority for LPAs to convey land to TxDOT for highway purposes is contained in [Transportation Code](#), §203.055. Under these provisions, the LPA governing body is authorized to make ROW conveyances to the State of any property needed for, or in connection with, the construction or operation of the State highway system.

Lands acquired by LPAs for highway, street, road, or alley purposes before TxDOT project ROW funding authorization has been obtained, or lands in use for these purposes and needed by TxDOT for construction or operation of the State highway system, should be made available to the State at no cost.

For properties owned by the LPA that were acquired for purposes other than street, highway, or alley construction, such as building sites, excess land acquired along with previous ROW, etc., TxDOT obtains appraisals to determine value. TxDOT will reimburse the LPA for the contractual percentage of the approved value. The instrument conveying title to the State lists the consideration, in accordance with the agreement.

For parcels to be purchased from an LPA, a note is required on the ROW map stating that the parcel was not acquired by the LPA for public road purposes.

Acquisition of Mitigation Lands (Federally-funded projects)

The FHWA may require the purchase, outside of the ROW, of replacement land for certain types of property acquired for the ROW. The extent of replacement land purchased depends on the specific mitigation commitments made in the project's environmental document. [23CFR Part 771 §135](#), may require replacement land for a ROW acquisition from a significant publicly owned park, recreation area, wildlife or waterfowl refuge, or any significant historic site. [23CFR Part 777 §11](#) may require replacement land for privately owned wetlands acquired for ROW. In some circumstances, when authorized by an appropriate Federal agency, a fee may be paid in lieu of having to acquire specific mitigation property. Prior to beginning any acquisition activities associated with mitigation requirements, close coordination with the TxDOT District office's Environmental Section (and the Environmental Affairs Division of TxDOT, if necessary) should first take place. In addition to the above Federal Regulations, refer to [Transportation Code](#), §203.004 , §203.051, §203.052, and §201.601.

Section 14 — Instruments of Conveyance (State Participation)

General Requirements for Proper Conveyance

Deeds, easements, and other instruments of conveyance will be prepared on ROW Division standard forms in accordance with the provisions of Standard Conveyance Forms, (see Table 3-1 below). All instruments must show the name of grantors or other parties the same as on the title report, and the cash consideration recited in the deed must be the amount of money actually paid the owner. Signatures and acknowledgments should be in exact agreement with the names of grantors or other parties appearing in the caption or the body of the instrument.

Standard Conveyance Forms

NOTE: A major change in the standard conveyance forms was instituted in 2003 and as of the update to this Manual in April 2004, there is primarily one basic Deed form, designed to be used in all acquisition circumstances, both whole and partial acquisitions, as well as both controlled and non-controlled access highway facilities. Due to access rights being an important and valuable property interest, and due to legislation adopted in 2003, it is necessary that every deed contain a reference to the extent access is allowed or denied (even for non-controlled access highway facilities). Current law (Transportation Code § [203.003](#) (a)) provides that access may be controlled at specific locations on any designated State Highway (even though the specific segment of the highway facility may not itself be designated as a controlled access facility). As many existing non-controlled access highways on the State Highway System are improved, entrance and exit ramps may be designed into such older highways, and therefore some access control may be required in the vicinity of such ramps.

Surveys and property descriptions (including plat maps) being prepared for all State Highway projects are now supposed to contain within the legal descriptions and at the end of the legal description a reference to whether access is denied or permitted, and where access is denied, a control of access line (coincident with the right of way boundary line) should be shown on the parcel plat. The new deed form (ROW-N-14), references that access is governed by the provisions set out in Exhibit “A” (the parcel’s property description that is attached to the deed). Therefore, no separate reference or provisions about access is contained within the body of the deed. Therefore, the property description exhibit is very important, and needs to be reviewed carefully to determine if the access provisions, and a statement about access, has been included by the surveyor.

NOTE: For those situations where older property descriptions are being utilized which do not contain access provisions, or the surveyor has failed to include access provisions (including situations relating to a non-controlled access highway where there is no denial of access associated with a specific parcel), it may be necessary to prepare a

generic access clause indicating that access is permitted, which may either be placed below the surveyor’s seal at the bottom of the property description if there is room (as part of Exhibit “A”), or if there is no room and to avoid making any type of alteration to a surveyor’s property description’s final page, the following generic access clause may be placed on a separate page (marked Exhibit “B”) to be placed behind the Exhibit “A” property description and parcel plat:

“ACCESS CLAUSE

Access will be permitted to the highway facility from the remainder of the property lying XXXXX [insert direction, i.e. “north”] of XXXXX [insert highway designation, i.e. U.S. Highway 277].”

In this case, be sure and change the “Exhibit ‘A’” that appears just prior to the “SAVE AND EXCEPT” on page 2 of the deed form, to “Exhibit ‘B’”.

Where access is in fact being either fully or partially denied, and if the property description being utilized does not contain any access provisions and/or an access clause immediately following the property description, the Right of Way Division should be contacted for assistance, if necessary, in drafting an appropriate clause that describes where the access is permitted and where it is denied. Depending upon how this is described, this may require a surveyor to prepare such a clause, or possibly that the property description be amended by the original surveyor who prepared the survey.

On the interstate highway system and other controlled access highways officially designated by the Texas Transportation Commission to be developed under the provisions of [Transportation Code](#), Chapter 203, the sample conveyance documents found in the following table are to be used in acquiring ROW.

Table 3-2. Standard Conveyance Forms

Form Number	Title
ROW-N-13	Release and Relinquishment of Access Rights, Controlled Access Highway Facility (No land taking, access to and from abutting property waived, released and relinquished)
ROW-N-14	Deed
ROW-N-15	Right of Way Easement (for right of way)
ROW-N-16	Right of Way Lien Release (All lien release situations)
ROW-N-17	Release of Easement (Use to acquire utility or any other existing easement interest)
ROW-N-21	Release of Mineral Surface Rights (All existing surface rights released)
ROW-N-30	Quitclaim Deed (For release of advertising sign interest(s) and other interests where quitclaim is needed to clear title)
ROW-N-31	Drainage Easement for Highway Purposes
ROW-N-83	Temporary Easement (For detour and other construction easement purposes)

Table 3-2. Standard Conveyance Forms

Form Number	Title
ROW-N-85	Subordination of Mineral Lease (Non-Controlled Access Highway Facility)
ROW-N-271	Easement for Purpose of Producing and Hauling Materials (Borrow and base material pits)

NOTES

These standard forms have been prepared for conveyance of various property interests to the State. Use all pages of standard forms. Pages from another form should not be combined with the form being used. Each form is separate and stands on its own. Appropriate special clauses, referred to in the next subsection, may be added to the forms as necessary.

IMPORTANT: Standard State forms are not to be altered for any reason without the written consent of the ROW Division of TxDOT. All ROW deeds and forms containing modifications or clauses not contained in this Guide or the Right of Way Manual must be approved by the ROW Division in advance.

Special clauses for insertion in the certain ROW instruments to cover special conditions pertinent to a particular ROW transaction are outlined in the following Section 15, Special Clauses for Conveyance Instruments in this Guide. It is the **State's responsibility** to furnish LPAs with accurate property descriptions and proper forms for deed, easements, and other instruments necessary for acquisition of each parcel. It is the **LPA's responsibility** to deliver acceptable instruments, which convey valid title to the State.

In closing the transaction, the conveyance instrument should recite the actual cash consideration paid to the property owner, or in separate documentation of considerations paid to the owner. Any breakdown of the total consideration paid, which separates compensation for property acquired from compensation for damages to the owner's remaining property, should not be documented in the deed. However, this breakdown may be documented in a separate agreement or contract of sale, as outlined in [Information for Income Tax Purposes for Property Owners](#).

TxDOT must approve, in advance, any revision, deletion, or addition to State-approved forms necessary for special conditions. Modified instruments, even though acceptable in personal transactions, may not meet State title requirements. If all instrument revisions originate with or receive prior approval from TxDOT, it will have determined the acceptability of each instrument before its execution and recording, thereby avoiding difficulties at the reimbursement stage. If there is any question concerning the acceptability of a proposed instrument, the instrument must be submitted through the District.

Special Warranty Deeds

A full warranty deed is preferable. However, additional text may be added to Form ROW-N-14, Deed, when the fee owner refuses to sign a full warranty deed, provided that the title company will guarantee title without an exception due to use of this added language. The **additional bolded** text below shall be added at the end of the following paragraph, found on the last page of Form ROW-N-14:

"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, **by, through, or under Grantors, but not otherwise.**"

Possession and Use Agreement, Form ROW-N-7

[ROW-N-7](#), Possession and Use Agreement for Transportation Purposes (PUA), can reduce delays in the negotiation process, thus allowing TxDOT to provide transportation improvements in a timely manner. This procedure allows partial payment for the parcel once the PUA is signed.

Memorandum of Agreement (MOA)

Use of an MOA is optional when the transfer of property is simple, and specific notations, arrangements, and agreements are unnecessary to ensure property conveyance. When the transfer is not simple, or special agreements are necessary, an MOA may be used for added special provisions.

A written agreement with the property owner, executed at the conclusion of property acquisition negotiation, is preferred for documentation of all transaction terms. Execution of a written agreement documents the process of payment and transaction closing, and protects TxDOT or the LPA against false claims of non-performance.

Section 15 — Special Clauses for Conveyance Instruments

Policy (with State Participation)

As a matter of general policy, special clauses that do not have TxDOT prior approval are not to be included in deeds or other conveyance instruments. It is desired that the LPA secure acceptable title to the interest covered by the conveyance instrument, and special clauses often cloud title and cause doubt in the future chain of title. If special conditions occur, these are to be covered in the Memorandum of Agreement (MOA) or Possession and Use Agreement (PUA). If a property owner insists on the inclusion of deed clauses not covered by approved procedure, these are to be submitted to TxDOT for consideration as a policy exception before instrument execution.

Special care must be exercised to ensure that the LPA and the property owner are protected with appropriate deed clauses when needed. Every improvement that is part of the realty must be conveyed in the deed, unless excepted by specific reference. When the owner retains improvements lying within the ROW taking, the retention clause printed in the conveyance instrument must list each retained improvement and its removal date. This includes advertising signs that are to be retained in the deed when owned by the fee owner, or in the quitclaim deed when owned by the lessee.

Approved Special Clauses for Use in Conveyance Instruments

In a ROW transaction, conditions may be encountered that are normal under certain circumstances but not applicable in all cases. Standard clauses established to cover these circumstances are included in either the conveyance instrument or the agreement. The following special clause situations may be found in TxDOT's *Right of Way Manual, Volume 2*, [Chapter 14](#):

- ◆ Special Clause for Reserving Minerals
- ◆ Retention of Improvements
- ◆ Control of Access
- ◆ Appointment of Single Payee or Attorney-in-Fact
- ◆ Bisected Improvements.
- ◆ Stock Pass and Other Pass
- ◆ Special Mineral Clause
- ◆ Retention of Private Rights

Section 16 — Title Requirements, Conflicts, and Exceptions

General Title Requirements

When an LPA is the acquiring agency for TxDOT on a project and cost participation is requested from TxDOT, title insurance in the amount of the consideration paid for the parcel will be obtained.

When an LPA is the acquiring agency and there is no cost participation by the State, title insurance may be obtained at the sole expense of the LPA, or a statement from the LPA that adequate title has been acquired must be submitted to TxDOT. **In this instance, the LPA is responsible for any cost or expense because of any failure of title.**

In instances where an LPA pays a consideration for a parcel but decides to relinquish the right to reimbursement because an acceptable title policy or Attorney's Certificate cannot be obtained, require a written statement from the LPA protecting TxDOT against future liability relative to title questions **is required.**

Conflict of Title and Encroaching Improvements

The following procedures for acquiring parcels involving conflicts of title and encroaching improvements will be used, except when the alternative of obtaining quitclaim deeds in lieu of simultaneous closings is applicable. Reimbursement to LPAs for these parcels may be made when quitclaims are not obtained, provided acceptable title to these parcels is furnished the State.

- ◆ Temporary Right of Occupancy. In the acquisition of ROW, the owner or tenant in possession is allowed a temporary period of occupancy if necessary for relocation purposes. For more detailed information, refer to TxDOT's *Right of Way Manual, Volume 2*, [Chapter 14](#).

The TxDOT form, ROW-RM-37, Contractual Agreement – Local Government, clearly states the LPA's responsibility in this regard:

“Upon payment to the property owner of the agreed purchase price, the Local Government is authorized and directed to secure for the State possession of each parcel in accordance with all applicable Federal and State laws governing relocation assistance, notices to vacate and forcible detainer.”

Policy Regarding Kind of Title to be Acquired

Two types of title to parcels are generally acquired by TxDOT: fee simple and easement. For all parcels included within the limits of the ROW, fee simple title, **less oil, gas and sulfur, with no right of exploration on the acquired property**, will be acquired. In rare circumstances, a ROW easement may be used in acquiring the ROW. If this type of easement is to be used, make a written

request to TxDOT outlining the reasons for acquiring an easement instead of fee simple title. A permanent easement or right to use the surface area will be acquired for parcels which are needed for drainage, lateral support, slopes, or similar purposes. A temporary easement for a specified period of time will be acquired for parcels that are needed for construction purposes.

Current and Delinquent Taxes

In normal real estate transactions, it is customary for current taxes to be prorated between the buyer and seller, but a different situation occurs in a sale to TxDOT because TxDOT is not obliged to pay State or local tax. In cases of condemnation proceedings, the date of possession on condemned parcels is the date the award amount warrant is deposited in the registry of the court. If no deposit is made before the date the judgment is rendered, the date of the judgment will constitute the date of taking.

In acquiring ROW by negotiation, the LPA must cooperate with all taxing agencies for payment of current taxes on whole takings, on a prorated basis. Prorated taxes will be determined by the taxing agencies. Prorated taxes may be disbursed from the proceeds due the property owner or may be paid prior to closing by the property owner. In partial takings when payment of current taxes is not handled during the closing of the transaction, future settlement of tax liability will be a matter between the taxing agency and the property owner involved.

When whole takings are condemned, the taxing agencies will not be joined, and they will be notified of the proceedings.

Section 17 — Title Insurance

General

When the LPA is required to provide title insurance in the name of the State of Texas, the LPA must deliver to TxDOT an acceptable title insurance policy.

When State cost participation is requested, the cost of title insurance will be addressed in the agreement. TxDOT does not require title policies for off-system projects; however, if no State funds are involved, it is recommended that the LPA obtain a title policy.

The LPA must be aware that the arbitration clause on any title policy **must be deleted** prior to signing the title policy. This is standard TxDOT policy.

Section 18 — Procedure for Use of Attorney's Certificate

Procedure

The use of Attorney's Certificates when an LPA is the acquiring agency and State cost participation is involved is governed by State procedures. Refer to TxDOT's *Right of Way Manual, Volume 2, Chapter 17, [Sections 1](#) through 3*.

Section 19 — Recording of Legal Instruments (with or without State Participation)

General

When an LPA acquires ROW it will be responsible at its own expense for recording deeds, judgments, or other instruments in the real property records of each county in which the property is located.

Section 20 — Reimbursement Policies and Procedures

Payment for Appraisers' Eminent Domain Services

When an LPA is the acquiring agency, the State does not participate in condemnation proceedings except as specified by law and agreed to in the ROW acquisition contractual agreement. Use of State-approved fee appraisers in condemnation proceedings is provided for in this contractual agreement. In executing the agreement, the LPA pays the appraiser under the terms of his appraisal contract with the State. State participation in this cost is limited as described below:

- ◆ Before the Commissioners' Hearing

The LPA pays for appraisal services performed at the request of the LPA in anticipation of condemnation proceedings. However, the State pays for these services when:

- ◆ a new parcel value is established based upon the appraiser's updated report, or;
- ◆ the State determines that the appraisal report should not be used in the condemnation proceedings.

If the appraiser's updated appraisal report for condemnation does not result in a new parcel value and the report is approved for testimony, the LPA may release payment for the appraiser's fee. This payment is eligible for State reimbursement as agreed upon in the ROW acquisition contractual agreement.

- ◆ After the Commissioner's Hearing

The State does not make payments directly to appraisers for services rendered after the Commissioner's Hearing. The LPA makes these payments with prorated State reimbursement, when eligible.

- ◆ Payment and Pay Procedures for LPA Acquisition

The LPA may exercise its option to perform the required ROW acquisition activities and payments with prorated cost reimbursement by the State. Under this program (usually US or SH projects), initial payments must be made by the LPA, and State reimbursement is performed according to contractual agreement between the State and LPA.

State Reimbursement for LPA-Acquired ROW

- ◆ LPA's Requests for Reimbursement

TxDOT will promptly reimburse LPAs under the terms of the contractual agreement. However, all reimbursements must be initiated by a request from the LPA. To verify that all required data is sub-

mitted, and to expedite the State's processing of these requests, sample forms are available for the LPA's use in billing the State.

The LPA does not need to complete its acquisitions or expenditures on an entire ROW project before requesting reimbursement. Reimbursement requests may be submitted on one or more parcels, when all reimbursable expenditures (except ROW fencing and not less than 80 percent of the State's participation of the award on condemned parcels) are included in one billing. It is generally more practical to group several parcels in each request.

Reimbursement submission requirements for various reimbursable items are described in the following sections. Reimbursement requests may be combined into one request when each individual support requirement is fulfilled.

- ◆ Reimbursement Forms

All LPA requests for reimbursement by the State must be billed on TxDOT Form 132. The LPA uses [ROW-N-20-AB](#), Tabulation of Cost, to show agreement with amount to be reimbursed.

All parcel reimbursements (with the exception of those for LPA ROW fencing) done on an actual cost or lump sum basis must be supported by three copies of the *Form ROW-N-20AB, Tabulation of Cost*, sent to the District. The form must include ethnic coding to identify the property owner as minority or non-minority.

For condemned parcels, support Forms 132 and ROW-N-20AB with:

- ◆ one copy of [ROW-N-20C](#), District Check Sheet to Support Reimbursement on Condemned Parcels;
- ◆ three copies of the breakdown of costs incurred in acquisition by condemnation;
- ◆ 80% of the State's participation of the billing based on Commissioners' Award or billing based on the final judgment;

A [Reimbursement Checklist for LPAs](#), available for reproduction, may be used to ensure the inclusion of all items in the reimbursement package.

Support Form 132 for ROW fencing by the LPA by submitting three copies of County's or City's Support for Form 132 on [Lump Sum Fencing](#), or County's or City's Support for Form 132 on [Actual Cost Fencing](#), to the District.

Submission for Reimbursement of ROW Fencing

- ◆ Lump Sum

The LPA's reimbursement request on the firm commitment for ROW fencing (under the supplemental agreement to the project's contractual agreement) must be made on Form 132 and supported by County's or City's Support for Form 132 on Lump Sum Fencing. Fencing must be completed on

the entire project and only one billing per project will be processed, unless more than one agreement is authorized.

- ◆ Actual Cost

If the LPA prefers not to use the firm commitment agreement method for ROW fencing and values for existing fences (or damages for an unfenced condition have not been included in the approved value), the LPA may be reimbursed on the basis of its actual costs instead of entering into the firm commitment agreement. The billing must be made on Form 132 and supported by a breakdown of the cost of labor, materials, and equipment. If fencing is done by contract, also attach a copy of the successful bid received on a competitive bid basis. Also, support Form 132 by showing:

- ◆ distribution of the total cost, by parcel,
- ◆ the description of the type of fence constructed,
- ◆ the total linear feet of fencing constructed, and
- ◆ the average cost per linear foot.

Fencing reimbursement on the actual cost basis can be made when ROW fencing on a parcel is complete and paid for. The number of fencing submissions should be kept to a minimum by combining as many parcels as possible in each billing.

Incidental Expenses on Transfer of Real Property (State Participation)

- ◆ General Requirements

On projects using State or Federal funds, reimbursement of certain incidental expenses, as outlined in the contractual agreement, is the sole responsibility of the LPA.

- ◆ Recording and Transfer Fees

Recording fees, transfer fees and similar expenses incidental to conveying property to the State are eligible for reimbursement. The following are examples:

- ◆ If the property owner has to pay a lending agency for execution of release, resurvey, or preparation of a deed, then these costs are eligible incidental expenses.
- ◆ If appointment of a guardian is needed in the process of transferring property to the State, then reasonable costs for related legal services are eligible incidental expenses. It should be noted that the property owner's attorney's fee would not be eligible.

Mortgage Prepayment Penalty

Eligible expenses include penalty costs for prepayment of preexisting mortgage (entered into in good faith encumbering such real property) if the mortgage was on record at the time of closing.

Chapter 4 — Relocation Assistance

Contents:

[Section 1 — Legislative Provisions/Laws and Regulations](#)

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[Section 3 — Pre-Negotiation Contacts](#)

[Section 4 — Real Property versus Personal Property](#)

Section 1 — Legislative Provisions/Laws and Regulations

Federal Law and Regulations

Federal regulation governing relocation is contained in [49CFR Part 24 §§201-505](#).

State Law

Texas relocation assistance rules may be found in *43TAC*, [Chapter 21, Subchapter G](#) and in [Property Code, §21.046](#).

Relocation Payments Non-Income Status

Payments received under this section will not be considered income for purpose of Internal Revenue Code of 1986. Likewise, payments are not considered income for determining the eligibility, or extent of eligibility, of any person for assistance under the Social Security Act or any other Federal law, except Federal law providing low-income housing assistance. Refer to [42USC §4636](#).

Fair Housing

The Federal Fair Housing Act (*42USC 3601, et seq*; [24CFR Part 100](#)) contains the following provision for most residential transactions:

“After December 31, 1968, it shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers’ organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him or her in the terms or conditions of such access, membership, or participation, on account of race, color, religion, sex, familial status, or national origin.”

Relocation Assistance and Local Public Agencies

State Participation. If the State participates in a project, the LPA must comply with TxDOT’s instructions on relocation assistance.

If ROW is acquired by an LPA **before** project authorization by the Commission and release by TxDOT, then relocation assistance and payments are the LPA’s **sole responsibility**.

If ROW is acquired by an LPA after project authorization and release by the Right of Way Division, then relocation assistance and payment is TxDOT’s responsibility unless otherwise stated in the agreement.

No State Participation. If there is **no** State participation, the LPA must conform to the minimum Federal requirements of the [Uniform Act](#).

Section 2 — Relocation Assistance Procedures

Relocation Assistance on LPA-Negotiated Property on FM and 90-10 Highway Projects

As soon as possible after the LPA has made their first contact to negotiate, they should notify the TxDOT District Right of Way personnel by immediately furnishing the District Office with a copy of the Offer Letter. **(Note: On parcels that involve displacees, the District Right of Way Section must be notified approximately three (3) weeks prior to the LPA contacting the owner).**

The LPA should also immediately advise TxDOT of the name and address of any tenant occupying the property.

After negotiations have begun on FM Highways, the LPA should provide TxDOT with a list of the advertising signs that are to be treated as personal property of the sign owners on the property to be acquired.

The LPA should again notify TxDOT on each parcel when the deed is signed or, in the case of eminent domain proceedings, when the award is deposited in the registry of the court.

The LPA should also notify TxDOT on each parcel the date that the transaction was closed or the date that the final judgment was filed in eminent domain proceedings.

In those cases where displacees are involved, it will still be TxDOT's responsibility to provide the displacee with written notice allowing them at least 90 days to vacate the premises and at least 30 days to vacate after acquisition. A copy of this letter will be furnished to the LPA so they can cause the parcel to be vacated on the prescribed date.

Section 3 — Pre-Negotiation Contacts

Procedure

When contact is made **before** initiation of negotiation, the LPA must inform the displacee:

- ◆ that relocation benefits are based on lawful occupancy of the premises;
- ◆ that relocation benefits are available only for individuals legally present in the United States;
- ◆ of the **proposed** date of initiation of ROW negotiation; and
- ◆ that all relocation expenses incurred before receipt of a written offer to acquire ROW may not be eligible for reimbursement unless the displacee receives a written notice of advance relocation eligibility before his move is initiated.

Section 4 — Real Property versus Personal Property

Procedure

When ROW is acquired by an LPA, determine which items are personalty and which are realty at the pre-appraisal stage. Make this determination in agreement with TxDOT's policies on negotiations and with TxDOT's Appraisal and Review Manual, Chapter 2, Section 2.04.

When identifying personal items eligible for moving expense payments, compare displaced personal property with items treated as realty in the appraisal report.

Chapter 5 — Eminent Domain

Contents:

[Section 1 — LPA Responsible for Condemnation](#)

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[Section 15 — LPA Reimbursement for Condemned Parcels \(State Participation\)](#)

Section 1 — LPA Responsible for Condemnation

General

An LPA will initiate [condemnation](#) proceedings whenever it is unable to obtain a conveyance by negotiation. Condemnation proceedings are the LPAs' responsibility and will be conducted at LPA expense, except as provided for in the agreement with the State. The LPA is responsible for ensuring that all owners of compensable property interests are properly made parties to the condemnation proceedings. Action to be taken in regard to taxing agencies is outlined in [Current and Delinquent Taxes](#), Chapter 3, Section 16 of this Guide.

Property descriptions furnished by TxDOT, including applicable special clauses, must be used by the LPA in all condemnation documents.

Section 2 — Filing of Notice of Lis Pendens

Procedure

The LPA must file a Notice of [Lis Pendens](#) in the real property records of the county clerk of the county where the land is located and should be done at the same time the plaintiff's petition is filed. A duplicate original should also be filed in the court papers along with the eminent domain petition. If a *Notice of Lis Pendens* is not recorded prior to filing of a certified copy of the final judgment, the land may be sold to a purchaser who is without knowledge of the pending litigation. This could require a refiling of the plaintiff's petition against the new owner.

Section 3 — Eminent Domain Forms for Cities

Overview

Sample forms for cities for fee title (less oil, gas, and sulfur) and easements may be found in TxDOT's *Right of Way Manual, Volume 4, Chapter 4, [Section 2](#)*. These forms are suggested as guidelines for use by cities in condemnation proceedings for on-system projects only.

The fee title and easement forms for Judgment of Court in Absence of Objection are the only sample forms of judgment prepared since it is the only situation in which standardization is practical.

The sample plaintiff's petition for an easement taking may require alterations to fit varying circumstances. Refer to TxDOT's *Right of Way Manual, Volume 4, Chapter 4, [Section 2](#)* for suggested substitute clauses.

Section 4 — Eminent Domain Forms for County

Overview

Sample forms for counties for fee title (less oil, gas, and sulfur) and easements may be found in TxDOT's *Right of Way Manual, Volume 4, Chapter 4, [Section 3](#)*. These forms are suggested as guidelines for use by counties in condemnation proceedings for on-system projects only.

The fee title and easement forms for *Judgment of Court in Absence of Objection* are the only prepared sample forms of judgment; this is the only situation in which standardization is practical.

The Plaintiff's petition for an easement taking may require alterations, similar to those set out in *Eminent Domain Forms for [City](#)* (above) to fit varying circumstances. Refer to TxDOT's *Right of Way Manual, Volume 4, Chapter 4, [Section 3](#)*, for suggested substitute clauses.

Section 5 — Commission Authorization of County Condemnation Proceedings

Overview

Authority for counties to acquire highway ROW by purchase or condemnation is contained in [Transportation Code](#), §224.003. To prevent the undue burden of TxDOT obtaining a separate minute order for each section of highway, with attached volumes of property descriptions, a policy and procedure was established by the Commission as set forth in Minute Order No. 42204. When a county requests formal verification of the State's request for the acquisition of certain ROW, it will be furnished a certified copy of Minute Order No. 42204, accompanied by a certification by the District Engineer or designee in accordance with Minute Order No. 42204. Certified copies of this minute order may be obtained from the District. This procedure meets the requirements of [Transportation Code](#), §224.003.

Section 6 — Condemnation in City's Name

Procedure

Agreements with cities make special provisions for a city to initiate condemnation proceedings in its own name. In these cases, the property so acquired will be conveyed from the city to the State by an instrument acceptable to TxDOT. If no excess taking is involved, the consideration shown in the instrument of conveyance will read:

“_____% reimbursement of grantor’s cost of \$_____ as set forth in the final judgment in Cause No. XXXXX .”

If the taking is in excess of TxDOT needs, see [Chapter 3, Section 5](#) of this *Guide* for the procedure to be followed.

Section 7 — Procedure for Notification to TxDOT

Procedure (State Participation)

Responsibility rests with LPAs to give prompt notice to TxDOT about all action taken in respect to condemnation proceedings. This includes written notification prior to filing of proceedings. The LPA must not initiate condemnation proceedings until authorized by TxDOT. Notice of the following events is required:

- ◆ Date of filing the petition. The District should be furnished with a file stamped “copy of the petition.”
- ◆ Date of hearing before the Special Commissioners, as soon as it is set, and prompt notification of any postponements.
- ◆ Date of the filing and the amount of the award, and whether the county or city plans to recommend appeal within the statutory allowable period. This should be furnished immediately to the District.
- ◆ Date of filing of notice of appeal by either party.
- ◆ Date of the jury or non-jury trial, as soon as it is set.
- ◆ Date and the amount of the jury verdict and whether the county or city intends to appeal.
- ◆ Notice of appeal of the jury verdict or non-jury judgment by the property owner, if applicable.

Section 8 — LPA Appeal of Unfavorable Awards

Procedure (State Participation)

Whenever an award by the Special Commissioners is greater than the approved value, TxDOT and the LPA should make every effort to agree on whether to appeal the award. Although the final decision for appeal rests with the LPA, TxDOT's desires should be strongly considered by the LPA in making its final determination. In the event the LPA fails or refuses to file an appeal, the District Engineer will decide whether to recommend intervention by TxDOT in the condemnation proceedings.

Section 9 — State Intervention in Condemnation Proceedings

Procedure (State Participation)

TxDOT has the right to become a party to condemnation proceedings at any time or stage and for all purposes, including the right of appeal.

Section 10 — Use of State Approved Appraisers and Expert Witnesses in Condemnation

Procedure (State Participation)

See TxDOT's Appraisal and Review Manual, for detailed procedures and responsibilities regarding LPA use of the State's approved appraisers and expert witnesses in condemnation.

Section 11 — Exhibits for Condemnation Proceedings

Procedure (State Participation)

When an LPA desires to purchase aerial maps, special exhibits, related photographs and other similar materials for use in condemnation proceedings, TxDOT will reimburse the percent as shown in the agreement of such costs if the District Engineer gives prior approval.

Section 12 — Improvements Acquired in Condemnation Proceedings

Procedure (State Participation)

When property is acquired in fee or easement in the State's name in condemnation proceedings, title to all fixed improvements located on the property should also be acquired. The sample eminent domain forms found in TxDOT's *Right of Way Manual, Volume 4*, [Chapter 4](#) incorporate acquisition of improvements. Improvements acquired in the State's name will be disposed of in the same manner as improvements acquired by negotiation.

Section 13 — Settlements of Condemnation Lawsuits

Procedure (State Participation)

[Transportation Code](#), §224.005 and agreements with LPAs provide that when ROW is acquired by negotiation, State participation will be based on the lesser of either the approved value, as determined by TxDOT, or the actual cost. For condemned ROW, State participation will be based on the final judgment, with the condition that TxDOT is notified in writing before filing suit and that prompt notice is given of all action taken.

If a Commissioners' Award is appealed, new or updated appraisals are obtained before proceeding to trial. If these new appraisals show a value greater than the original offer, TxDOT will notify the LPA that the new value supersedes the original approved value. The LPA may then re-negotiate on that basis and acquire title either by deed or by valid court judgment. TxDOT will not participate in any portion of the settlement amount greater than the approved value.

Section 14 — Payment of Litigation Expenses for Condemned Parcels

Procedure (State Participation)

If Federal funds are used in any part of a transportation project, the provisions of [42USC §4654](#) apply to LPA ROW Acquisition projects.

Section 15 — LPA Reimbursement for Condemned Parcels (State Participation)

Eligible Condemnation Costs and Methods of Reimbursement

LPA reimbursement for a condemned parcel is based on the final judgment amount and on eligible ED costs. Eligibility for reimbursement of condemnation charges (adjudged against the LPA and/or the State and paid by the LPA) is determined according to Attorney General’s Opinion Nos. M-134, M-142, M-483, H-886, and DM-26. The cost of recording judgments in the deed records is not eligible for State participation because of the division of responsibilities in the agreement, which states that the LPA must record all conveyance instruments at their own expense. Otherwise, there is no distinction between the condemnation charges for which **a city** can be reimbursed and those for which the State can pay. The difference between charges that the State can pay and those that can be paid by **a county** are discussed in Attorney General’s Opinion No. M-142. Counties should refrain from entering judgments calling for county payment of court costs that are a transfer of money from one county fund to another.

LPAs should make a single reimbursement request covering all eligible costs on a condemned parcel. However, in appealed cases the LPA also has the option of (1) asking for partial reimbursement at the award stage, and (2) then billing the State for the remaining costs following the final judgment, as discussed in *Submissions for [Partial Reimbursement Based on 80% of the State’s Participation Amount of the Commissioners’ Award](#)* following later in this Section. When objections to the Award of Commissioners are filed and the LPA has deposited the amount of the award in the court, the LPA may request reimbursement based on 80% of the State’s participation of the amount awarded by the Special Commissioners and 100% of all eligible costs incurred up to the time of the reimbursement request. Following the final judgment and its full payment into the court, the LPA must submit a second reimbursement request for (1) the difference between 80% of the State’s participation of the Award and the final judgment, and (2) all other eligible costs not included in the previous billing, as discussed in *Submissions for [Reimbursement Following Partial Reimbursement on the Commissioners’ Award](#)* following later in this Section.

Submission for Single Reimbursement Based on Final Judgment

When an LPA elects to make only one reimbursement request based on a final judgment, perform the following actions:

- ◆ Send one certified, recorded copy of the final judgment and the necessary assurance of title to TxDOT with, or before, submission of the reimbursement request.
- ◆ Support the request with three copies of Form [ROW-N-20AB](#), Tabulation of Cost & Request for Reimbursement. Prepare Form ROW-N-20AB for condemned parcels according to the following instructions:
 - In Column 1, show the parcel number.

- In Column 2, show the amount awarded by final judgment, plus eligible ED costs as indicated on the supporting breakdown.
- In Column 3, show the amount of the LPA's requested reimbursement.
- In Column 5, show a total of Columns 3 and 4, and show the total amount of reimbursement requested.
- Enter the word "Condemnation" in Column 6, along with the item number of any improvement included in the State's approved value not acquired in the name of the State by final judgment.
- In condemnation, all consideration due a property owner is reduced to a monetary amount. Therefore, Column 7 does not apply for condemned parcels.
- In the lower portion of the form, show the total acreage acquired by condemnation of all parcels included in the reimbursement.
- ◆ If the final judgment submitted does not repeat the appointment of the Commissioners, include with the submission for reimbursement one copy of either (1) the Order Appointing Special Commissioners, or (2) the Commissioners' Award repeating their appointment.
- ◆ Also, include written evidence of the fees set by the judge. This is usually shown in the Award of the Special Commissioners.

Submissions for Partial Reimbursement Based on 80% of the State's Participation Amount of the Commissioners' Award

Where objections have been filed to an award, an LPA may request reimbursement based on 80% of the State's participation of the Commissioners' Award and 100% of all other eligible eminent domain costs paid up to that date. Prepare the request like requests for reimbursement based on the final judgment. This tabulation must indicate that only 80% of the State's participation of the award is used to complete the gross cost shown in Column 2 of Form ROW-N-20AB.

LPA reimbursement requests like this must be accompanied by one certified copy of the Commissioners' Award supported by either:

- ◆ a title policy commitment in the name of the State, or
- ◆ an Attorney's Certificate executed by the District's attorney.

If costs have been adjudged against the city or State, either:

- ◆ send one copy of the court clerk's statement or bill of cost to support the court officer's fees in the billing; or
- ◆ itemize the charges on the Breakdown of Costs.

Submission for Reimbursement Following Partial Reimbursement on the Commissioners' Award

When final judgment is given on a parcel where reimbursement was made based upon 80% of the State's participation of the Commissioners' Award, prepare the final reimbursement request like a single reimbursement request based completely on the final judgment, except indicate that only the difference between 80% of the State's participation of the Commissioners' Award and final judgment (along with other eligible eminent domain costs not submitted in the previous reimbursement) is included in the tabulation. Form ROW-N-20AB, Tabulation of Cost & Request for Reimbursement must contain a reference to the previous reimbursement.

Chapter 6 — Removal of Improvements

Contents:

[Section 1 — Responsibility for Improvements](#)

[Section 2 — Proceeds From Sale of Improvements](#)

Section 1 — Responsibility for Improvements

Procedure (State Participation)

When LPAs are responsible for acquiring ROW through negotiation or condemnation, they should notify the District as soon as practicable after the closing of a transaction as to which improvements were acquired in the name of the State, thus enabling the District to inspect, inventory, and remove the improvements. State-owned improvements will be inspected and inventoried by District personnel as soon as possible after being vacated. Therefore, LPAs should assist the State in advising when these improvements are vacated. Responsibility for actual State possession, including eviction, rests with the LPA.

Section 2 — Proceeds From Sale of Improvements

Procedure (State Participation)

Upon the sale of improvements through the Texas Building and Procurement Commission (TBPC), the General Services Division (GSD) will issue a Transmittal of Remittance showing the net proceeds from the sale, and the LPA will be credited with appropriate amounts and reimbursement requests should be prepared accordingly.

Chapter 7 — Leasing

Contents:

[Section 1 — Leasing of ROW by LPAs](#)

Section 1 — Leasing of ROW by LPAs

Overview

In unusual situations, LPAs may charge rent for occupancy of ROW. For example, on a large ROW project, an LPA might, on a hardship basis, purchase the land and improvements in its own name well before the land is needed by the State for construction purposes, and subsequently rent the property before conveying title to the State. In these cases, care must be exercised to assure that the amount of the rent does not exceed the fair rental value of the property based on its being rented to a short-term occupant.

Chapter 8 — Railroads

Contents:

[Section 1 — Railroad Relocation Procedures](#)

Section 1 — Railroad Relocation Procedures

Procedure

If it is determined that a railroad is to be relocated, an agreement concerning all aspects of the relocation should be obtained. This agreement will be between TxDOT, the railroad company, and the appropriate LPA. For detailed information, see TxDOT's *Right of Way Manual, Volume 6*, [Chapter 2](#).

For further information, consult with the Multi-Modal Operations Section (MMO) of the Transportation Planning and Programming Division (TPP) of TxDOT.

Chapter 9 — Records

Contents:

[Section 1 — Preparation for Closing ROW Projects](#)

[Section 2 — ROW Record Requirements](#)

Section 1 — Preparation for Closing ROW Projects

Procedure

Before submitting the request for final closing of a project, the LPA should verify that:

- ◆ all required ROW is acquired
- ◆ all condemnation cases are closed by final judgment
- ◆ all charges owed by the State are paid, and
- ◆ it has requested reimbursement on all expenses eligible for State participation, (if applicable), or
- ◆ it has billed the State for their share of the receipts from the sale of improvements. (if applicable)
- ◆ **all records have been reviewed** by the TxDOT right of way personnel for compliance with Title III requirements.

Title III Parcel Review Checklist

Form [ROW-LPA-IIIPR](#), Title III Parcel Review Checklist should be completed by the District and used to ensure that all Title III Parcel Review items have been covered prior to submission to ROW Division for payment and/or closure.

Section 2 — ROW Record Requirements

Overview

ROW acquisition records must be retained for three years after a property owner or relocatee receives final payment. In addition, the records must be retained for three years after the project is closed out. Within this time period, FHWA may audit the records at any time to verify that FHWA ROW acquisition requirements were met.

Chapter 10 — Utilities

Contents:

[Section 1 — Overview](#)

Section 1 — Overview

Approval by TxDOT

Performing the adjustment without obtaining TxDOT prior approval incurs the risk that the LPA and/or utility may expend funds that may not be eligible for TxDOT cost participation.

Further Information

For information on utilities, refer to TxDOT's [Utility Manual](#).

Appendix A — Disadvantaged Counties

Overview

The majority of the following information is taken from the “*Economically Disadvantaged Counties Program, Program Information, Texas Department of Transportation, September, 2001*”.

Background

Senate Bill 370 of the 75th Legislature amended the Transportation Code in §222.053 to:

...require the [Texas Transportation] Commission, when evaluating a proposal for a highway improvement project in a local government that consists of all or a portion of an economically disadvantaged county, to adjust the minimum local matching funds requirement after evaluating the local government’s effort and ability to meet the requirement.

Texas Administrative Code rules implementing the legislation became effective January 1, 1998. [43TAC, §§15.50-15.56](#), describe Federal, State, and local responsibilities for cost participation in highway improvement projects. The rules prescribe criteria the commission will consider in evaluating a request for an adjustment. §15.55 prescribes cost participation ratios for local governments in those projects.

Definition

The legislation defines an economically disadvantaged county as a county that has, in comparison to other counties in the state,

- ◆ below average per capita taxable property value,
- ◆ below average per capita income, and
- ◆ above average unemployment.

TxDOT will identify economically disadvantaged counties for each fiscal year based on data obtained from the Texas Comptroller of Public Accounts. After the determinations are made, the Transportation Planning and Programming (TPP) Division will notify each of TxDOT’s local district offices that contain all or a portion of an economically disadvantaged county.

Project Eligibility

To be eligible, an on-system project must be both commission-authorized and not yet let. An off-system project is eligible if it is not yet let and commission-authorized or -approved within a district bank balance program.

Appendix B — State Infrastructure Bank

Introduction

As the population of Texas grows, the challenge becomes harder to meet the demand for a safe and efficient transportation system. Local demands for transportation improvements greatly outnumber the funds available to meet them under traditional Federal and state funding methods. One tool to help TxDOT address the growing transportation needs of this state is the State Infrastructure Bank, or SIB.

Background

In November of 1995, the President of the United States signed *Public Law 104-59*, known as the *1995 National Highway System Designation Act*. *Section 350* of that law allowed the United States Secretary of Transportation to designate a maximum of ten states as pilot projects for the [State Infrastructure Bank](#) program. Texas was selected as one of the initial pilot states.

A State Infrastructure Bank, or a SIB, operates chiefly as a revolving loan fund and may provide a wide range of financial assistance in addition to loans. The purpose of the pilot program is to attract new funding into transportation, to encourage innovative approaches to transportation problems, and to help build needed transportation infrastructure. The law provides that each designated state may transfer up to ten percent of certain Federal dollars, match those funds with state funds, and deposit them into a State Infrastructure Bank. The greatest benefit of this program may well be the creation of a self-sustaining, growing, revolving loan fund.

In 1997, the 75th Texas Legislature passed *Senate Bill 370* that adopted [Transportation Code, Chapter 222, Subchapter D](#), which created the State Infrastructure Bank to be administered by the Texas Transportation Commission. In September 1997, the Texas Transportation Commission approved the administrative rules that govern the State Infrastructure Bank, which are located in 43TAC, [Chapter 6](#).

Purpose

The SIB program arose out of the need to improve, rehabilitate, and renovate transportation facilities. Transportation needs are increasing while Federal, state and local financial resources are constant or declining. The SIB program is one of the ways that the Federal government is utilizing innovative financial techniques to address growing transportation needs.

The purpose of the SIB is to:

- ◆ Encourage public and private investment in transportation facilities, including facilities that contribute to the multimodal and intermodal transportation capabilities of the state;
- ◆ Expand the availability of funding for transportation projects and reduce direct state costs; and
- ◆ Improve the efficiency of the state transportation system.

The mission of the SIB is to provide loans and other financial assistance for improving the transportation infrastructure in Texas. To accomplish this mission, TxDOT will operate the SIB as a self-sustaining, growth-oriented fund. TxDOT will also ensure projects satisfy all appropriate Federal, state and local planning and programming requirements.

TxDOT has designed the SIB to enhance the ability of borrowers to access capital funds at lower-than-market interest rates. The success of the SIB program will depend on maintaining strong credit standards and successfully leveraging funds to increase the program's activity through a revolving loan fund structure. The quality and diversification of the SIB's financial assistance will have a direct impact on the interest rates paid by borrowers.

How Does the SIB Work?

Much like a private bank, the SIB offers eligible customers a range of loans and credit enhancement services. The SIB will offer its financial services to finance or financially enhance transportation projects that meet its selection criteria. As loans are repaid to the SIB, additional assistance will be granted for more transportation projects. The SIB, in effect, is a revolving loan fund.

Advantage to Local Communities

Why would a local entity want to borrow money from the SIB when historically they have not had to pay for local transportation projects? The answer is twofold: time and money.

Currently, TxDOT expects to be able to fund only about one third of the needed transportation projects in Texas. TxDOT will continue to fund as many needed projects as possible. In many cases however, a project considered a very high priority by one community, may not be ranked high enough on a statewide basis to receive funding for several years.

If the local community wants the project completed faster, it could borrow money from the SIB and advance the project by several years. In addition, if the proposed transportation project would generate additional economic development, the local community may receive enough revenue from the increased tax base to easily pay for the financial assistance from the SIB.

Thus, the community could get its project completed much sooner with little or no additional cost.

For more information, please contact the [Transportation Planning and Programming Division](#) (TPP) of TxDOT at (512) 486-5000.