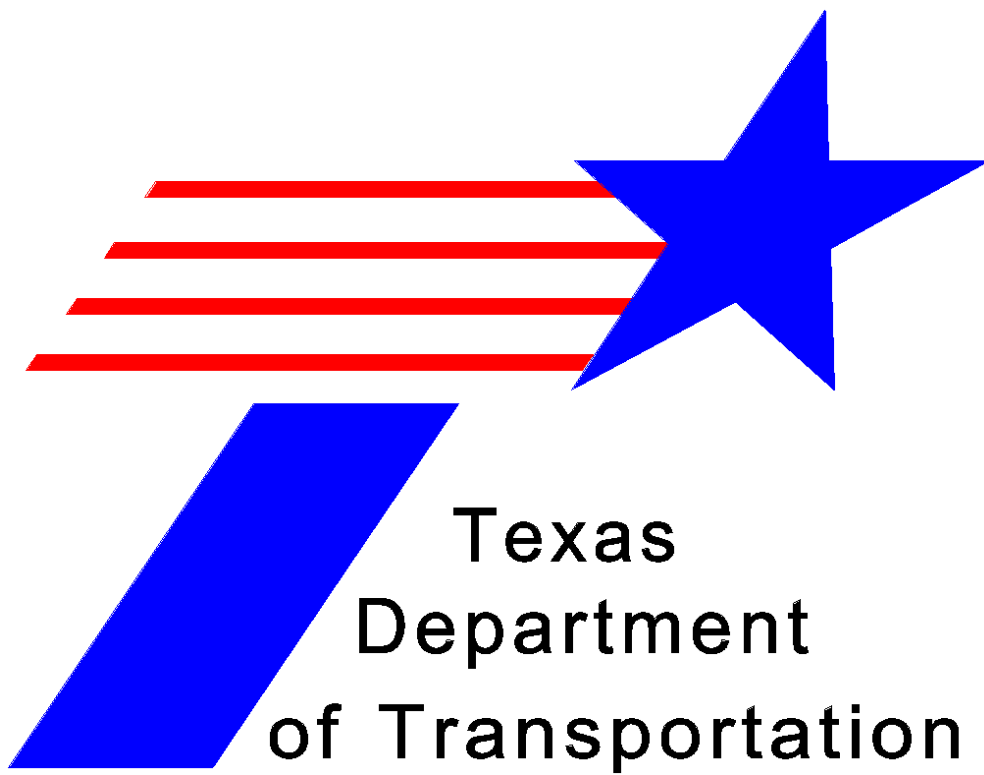


ROW Vol. 5 - Property Management



**Texas
Department
of Transportation**

November 2007

**© by Texas Department of Transportation
(512) 416-2055 all rights reserved**

Manual Notice 2007-1

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

Manual: Right of Way Manual Vol. 5 – Property Management

Effective Date: November 01, 2007

Purpose

To remove Chapter 1 - Disposition of Improvements, since disposition of improvements is a topic covered in the General Services Division [Property Management Manual](#). To revise chapters 2, 3, 4, and 5.

Changes

Chapter 1 – Disposition of Improvements: Chapter has been deleted, and subsequent chapters have been re-numbered.

Chapter 1 – Disposition of Surplus Right of Way Interests: Minor text changes and link corrections have been made throughout the chapter, and the following items were revised:

- ◆ In Section 1 - [“Introduction”](#), modified text to clarify the statute and delete list of minute orders.
- ◆ In Section 2 - [“Types of Transactions”](#), made text changes to clarify the different types of transactions.
- ◆ In Section 3 – [“Initial Procedures for all Dispositions”](#), added text regarding service fee amounts. Also modified description of District and ROW Division processes.
- ◆ In Section 4 - [“Sale of Surplus Right of Way \(Fee Simple\) to an LPA”](#), modified text throughout the section.
- ◆ Removed former Section 5 – Sale of Surplus Right of Way (Highway Easement) to an LPA, and re-numbered subsequent sections.
- ◆ In Section 10 – [“Exchange of Surplus Right of Way \(Fee Simple\) for a Property Interest Needed for a State Highway Purpose”](#), removed text regarding submission of a billing statement because the same information is already covered in Section 13.
- ◆ In Section 11 – [“Exchange of Surplus Right of Way \(Drainage or Channel Easement\) with Underlying Fee Owner\(s\)”](#), removed text regarding submission of a billing statement because the same information is already covered in Section 13.
- ◆ In Section 12 - [“Disposition of Right of Way Interests without Consideration”](#), added [“Quit-claim of Right of Way”](#).

- ◆ Removed former Section 14 - Removals from the State Highway System, and re-numbered subsequent sections.
- ◆ Combined two former sections, Section 15 - Closing and Accounting Procedures and Section 16 - Map Notations, into one section. The section is now titled Section 13 - [“Closing Procedures and Map Notations”](#).

Chapter 2 – Disposition of Surplus Real Property Facility Sites: Minor text changes and link corrections have been made throughout the chapter, and the following items were revised:

- ◆ In Section 3 - [“Sale of Surplus Site and Any Improvements to an LPA”](#), added text to clarify what information the Districts submit to ROW Division.
- ◆ In Section 4 - [“Sealed Bid Sales”](#), added text to clarify that cities/counties/local school districts may purchase a site prior to a second sealed bid sale.

Chapter 3 – Acquisition of Real Property Sites: Minor text changes and link corrections have been made throughout the chapter, and the following items were revised:

- ◆ In Section 2 - [“Acquisition of Land for a Real Property Site”](#), added text to clarify what information ROW Division provides to the Finance Division.

Chapter 4– Leasing: Minor text changes and link corrections have been made throughout the chapter, and the following items were revised:

- ◆ In Section 1 - [“Overview”](#), added text to clarify TxDOT’s authority to lease its real property assets.
- ◆ In Section 7 - [“Preparation of Lease Forms”](#), removed text regarding acknowledgement forms in lease agreements.
- ◆ In Section 9 - [“Submission Package to the ROW Division”](#), deleted acknowledgements from the list of submission package contents.
- ◆ In Section 10- [“ROW Division Review”](#), deleted ROW Division review and approval of fair market value, and deleted submission to FHWA for approval.
- ◆ In Section 13- [“Lease Management”](#), added text regarding notification to ROW Division when a lease needs to be amended, cancelled, or terminated.

Contact

Hilda Correa, ROW Division Administrative Manager, 512.416.2902

Archives

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

Table of Contents

Chapter 1 — Disposition of Surplus Right of Way Interests

Section 1 — Introduction	1-2
Overview	1-2
Section 2 — Types of Transactions	1-3
Overview	1-3
Section 3 — Initial Procedures for all Dispositions	1-5
Overview	1-5
Section 4 — Sale of Surplus Right of Way (Fee Simple) to an LPA	1-7
Overview	1-7
District Submission Requirements	1-7
Division Procedure	1-8
Completion of Transaction	1-8
Section 5 — Transfer of Surplus Right of Way to an LPA for the Savings to the State of Future Maintenance Costs	1-9
Overview	1-9
Section 6 — Sale of Surplus Right of Way (Fee Simple) to the Abutting Landowner(s)	1-10
Overview	1-10
Procedures	1-10
Sale by Sealed Bid	1-10
Section 7 — Sale of Surplus Access Rights	1-11
Overview	1-11
District Procedure Prior to Sale Approval	1-11
Procedures After Sale Approval	1-11
Completion of Transaction	1-12
Section 8 — Sale of Surplus Right of Way (Highway Easement) to the Underlying Fee Owner(s) . 1-13	
Overview	1-13
Procedures	1-13
Section 9 — Sale of Surplus Right of Way (Drainage or Channel Easement) to the Underlying Fee Owner(s)	1-14
Overview	1-14
Procedures	1-14
Section 10 — Exchange of Surplus Right of Way (Fee Simple) for a Property Interest Needed for a State Highway Purpose	1-15
Overview	1-15
Section 11 — Exchange of Surplus Right of Way (Drainage or Channel Easement) with Underlying Fee Owner(s)	1-17
Overview	1-17

Section 12 — Disposition of Right of Way Interests without Consideration	1-19
Overview	1-19
Disposition to Honor a Reversionary Clause.	1-19
Disposition to Correct an Error or Ambiguity.	1-19
Quitclaim of Right of Way	1-19
Section 13 — Closing Procedures and Map Notations	1-21
Procedures	1-21

Chapter 2 — Disposition of Surplus Real Property Facility Sites

Section 1 — Introduction	2-2
Overview	2-2
Section 2 — Types of Transactions	2-3
Overview	2-3
Section 3 — Sale of Surplus Site and Any Improvements to an LPA	2-4
Overview	2-4
District Written Recommendation.	2-4
Appraisal and Recommended Value	2-4
Resolution from LPA.	2-5
Conveyance of Property	2-5
Completion of Transaction	2-5
Section 4 — Sealed Bid Sales	2-6
Overview	2-6
Procedures Prior to Bid Opening.	2-6
Bid Opening.	2-7
Division Review of Bids	2-7
Bid Deposit Checks	2-7

Chapter 3 — Acquisition of Real Property Sites

Section 1 — Introduction	3-2
Overview	3-2
Section 2 — Acquisition of Land for a Real Property Site.	3-3
Site Selection	3-3
District Submission Requirements	3-3
Appraisal	3-3
Offer and Counteroffer	3-4
Deed, Memorandum of Agreement, and Closing	3-4
Section 3 — Acquisition of Land for Gulf Intracoastal Waterway Disposal Area Sites	3-6
Overview	3-6

Chapter 4 — Leasing

Section 1 — Overview	4-2
Authority	4-2
Assets Eligible for Lease	4-2
Section 2 — Types of Leases	4-3
Descriptions	4-3
Section 3 — Requests to Lease	4-4
Requirements	4-4
Processing a Request to Lease	4-4
Section 4 — Methods of Awarding Leases	4-6
Overview	4-6
Section 5 — Survey	4-7
General	4-7
Section 6 — Appraisal	4-8
Consideration	4-8
Section 7 — Preparation of Lease Forms	4-9
General	4-9
Section 8 — Insurance and Bonds	4-10
General	4-10
Section 9 — Submission Package to the ROW Division	4-11
Contents of Package	4-11
Section 10 — ROW Division Review	4-12
Process	4-12
Section 11 — Completing a Lease Agreement	4-13
Procedure	4-13
Section 12 — Rental Payments	4-14
General	4-14
Section 13 — Lease Management	4-15
Overview	4-15
Assignments and Subleases	4-16
Lease Extensions and Amendments	4-16
Section 14 — Leasing of Right of Way by LPAs	4-18
General	4-18

Chapter 1

Disposition of Surplus Right of Way Interests

Contents:

- Section 1 — Introduction
- Section 2 — Types of Transactions
- Section 3 — Initial Procedures for all Dispositions
- Section 4 — Sale of Surplus Right of Way (Fee Simple) to an LPA
- Section 5 — Transfer of Surplus Right of Way to an LPA for the Savings to the State of Future Maintenance Costs
- Section 6 — Sale of Surplus Right of Way (Fee Simple) to the Abutting Landowner(s)
- Section 7 — Sale of Surplus Access Rights
- Section 8 — Sale of Surplus Right of Way (Highway Easement) to the Underlying Fee Owner(s)
- Section 9 — Sale of Surplus Right of Way (Drainage or Channel Easement) to the Underlying Fee Owner(s)
- Section 10 — Exchange of Surplus Right of Way (Fee Simple) for a Property Interest Needed for a State Highway Purpose
- Section 11 — Exchange of Surplus Right of Way (Drainage or Channel Easement) with Underlying Fee Owner(s)
- Section 12 — Disposition of Right of Way Interests without Consideration
- Section 13 — Closing Procedures and Map Notations

Section 1

Introduction

Overview

The Texas Transportation Commission (Commission) has the authority to determine that an acquired right of way interest is not required for state highway purposes and can declare that it is surplus to the needs of the Texas Department of Transportation (TxDOT). This includes roadside parks and material source sites.

The disposition of surplus right of way interests is governed by Vernon's Texas Codes Annotated, [Transportation Code, Chapter 202, Subchapter B](#) (the statute).

Section 2

Types of Transactions

Overview

The following are the most common transactions:

- ◆ Sale of a surplus right of way interest to:
 - a local public agency (LPA) when the state owns fee simple title (see [“Sale of Surplus Right of Way \(Fee Simple\) to an LPA”](#))
 - an LPA for the savings to the state of future maintenance costs (see [“Transfer of Surplus Right of Way to an LPA for the Savings to the State of Future Maintenance Costs”](#))
 - the abutting landowner(s) when the state owns fee simple title (see [“Sale of Surplus Right of Way \(Fee Simple\) to the Abutting Landowner\(s\)”](#))
 - the abutting landowner(s) or an LPA when the state owns access rights (see [“Sale of Surplus Access Rights”](#))
 - the underlying fee owner(s) when the state owns a highway easement (see [“Sale of Surplus Right of Way \(Highway Easement\) to the Underlying Fee Owner\(s\)”](#))
 - the underlying fee owner(s) when the state owns a drainage or channel easement (see [“Sale of Surplus Right of Way \(Drainage or Channel Easement\) to the Underlying Fee Owner\(s\)”](#))
- ◆ Exchange of a surplus right of way interest:
 - for a property interest needed for a state highway purpose when the state owns fee simple title (see [“Exchange of Surplus Right of Way \(Fee Simple\) for a Property Interest Needed for a State Highway Purpose”](#))
 - with an underlying fee owner when the state owns a drainage or channel easement (see [“Exchange of Surplus Right of Way \(Drainage or Channel Easement\) with Underlying Fee Owner\(s\)”](#))
- ◆ Disposition without Consideration (see [“Disposition of Right of Way Interests without Consideration”](#))
 - to honor a reversionary clause
 - to correct an error or ambiguity
 - quitclaim of right of way

You can link to diagrams showing the process for the following types of transactions:

- ◆ [Sale of Surplus Right of Way](#)
- ◆ [Exchange of Property Interests](#)

- ◆ [Sale of Surplus Access Rights to Abutting Landowner](#)
- ◆ [Sale of Surplus Real Property to Local Public Agency \(City, County, School District\)](#)
- ◆ [Sale of Surplus Real Property by Sealed Bid to General Public](#)

Section 3

Initial Procedures for all Dispositions

Overview

The Property Management Section (PRM) of the Right of Way Division (ROW Division) is available to assist with all dispositions of surplus real property.

District personnel should inform those interested in acquiring surplus right of way that TxDOT will only **consider** the request to sell, exchange, or release any right of way interest owned by the state because any proposed transaction requires approval by the Commission and TxDOT administration.

The District notifies the requesting party to send a letter to the District presenting their proposal that should include:

- ◆ name, address, telephone number, email address, fax number, and authorized contacts
- ◆ letter-size sketch showing the TxDOT property and all abutting landowners
- ◆ letter-size location map of the general area
- ◆ copy of instrument(s) conveying the right of way to the state.

The District reviews the appropriate right of way map to locate TxDOT's property. The District also reviews the conveyance document(s) to the state to determine what interest, if any, that the state owns in the property and whether the conveyance document contains a reversionary clause. The District should determine whether the state owns a right of way interest before ordering a survey or appraisal. The District also determines whether the property is needed for a state highway purpose.

The District sends the requesting party a letter explaining the process and informing them that they will be responsible for all expenses, including appraisal, survey and service fees. If applicable, the service fee is \$300 or 2% of the sales price up to a maximum of \$1,600.

- ◆ A registered Professional Land Surveyor (RPLS) will survey the surplus right of way and prepare a signed and sealed legal description. The field notes should include a preamble citing the original conveyance(s) to the state with the recording information.
- ◆ The surplus right of way interest will be appraised using a state certified appraiser from TxDOT's current list. Only TxDOT approved appraisal forms are acceptable.

- ◆ The landowner(s) will provide a [current licensed attorney's opinion](#), based on an examination of the deed records, identifying all of the landowner(s) abutting or underlying the surplus right of way interest.
- ◆ An appropriate conveyance document will be provided by the state.
- ◆ All existing utilities, if any, will remain in place or will be adjusted at no expense to the state.
- ◆ The transaction is subject to all matters of public record and all easements, leases, and licenses affecting the property.
- ◆ The transaction is subject to approval by TxDOT, the Commission, and, if the value of the surplus right of way interest exceeds \$10,000, the Attorney General's office, the Governor, and the Secretary of State.
- ◆ The landowner(s) will provide a letter agreeing to purchase the property for the appraised value plus the service fee, if applicable. An LPA does not pay a service fee.

After the ROW Division receives the District's submission requesting the disposition of the surplus right of way interest, the ROW Division will:

- ◆ notify the District to have the surplus right of way interest appraised. The requesting party will contract with and pay the appraiser directly. The District approves the recommended value for the surplus right of way without review from the ROW Division, and sends a copy of the approved value form ([ROW-A-10S](#)) to the ROW Division.
- ◆ prepare and process the minute order requesting Commission action
- ◆ after the minute order is passed, prepare and route an appropriate conveyance document for signatures
- ◆ notify the purchaser by letter to send the funds to the Finance Division (FIN Division) for deposit into the state highway fund
- ◆ after the FIN Division notifies ROW Division that the funds have been deposited, send fully executed document to District for recording and delivery to the purchaser.

Section 4

Sale of Surplus Right of Way (Fee Simple) to an LPA

Overview

When the state owns fee simple title to right of way that is going to be sold, the statute requires that it must first be offered to an LPA, which is either a city or county. The District sends a letter, along with a sketch or copy of the appropriate right of way map, to an LPA advising that the LPA has the first opportunity to purchase the right of way. The District's letter should state that the LPA will have thirty days to notify the District if the LPA wants to purchase the right of way. If the LPA donated the original right of way to the state, Commission policy is to sell the right of way. However, see Section 5 regarding the transfer of surplus right of way to an LPA for the savings to the state of future maintenance costs.

If the LPA is interested in acquiring the surplus right of way interest, the LPA must provide the District with a sealed survey, including a plat. An LPA does not pay a service fee for the sale.

District Submission Requirements

The District's written recommendation to the ROW Division must include:

- ◆ district engineer's statement advising that the surplus right of way is not needed for a state highway purpose and recommending the sale; the memo can be signed by an authorized designee of the district engineer
- ◆ a copy of the original conveyance document(s) to the state
- ◆ a survey, which includes an approved metes and bounds description on letter-size paper signed and sealed by an RPLS clearly showing the surplus right of way and including a preamble citing the original conveyance document(s) and recording information. If the surplus right of way is on a controlled access highway, the metes and bounds description must include an appropriate control of access clause. This clause should describe where access is denied. Refer to the appendix of TxDOT's Right of Way Manual Vol. 4 - Eminent Domain, for guidance in preparing control of access clauses.
- ◆ a letter-size [survey plat](#) prepared by an RPLS. The plat should show the right of way interest, including metes and bounds, north arrow, scale, legend, full width of the highway clearly indicated, ownership of all adjoining land, control of access lines (if applicable), and any existing drainage structures or utilities in the surplus right of way.

- ◆ a letter-size area location map with north arrow.

Division Procedure

When all the required information is received, the ROW Division will notify the District to have the surplus right of way appraised.

The LPA or District will choose a state certified appraiser from TxDOT's approved list and will require that TxDOT approved forms be used. The LPA will contract with and pay the appraiser directly. The District approves the recommended value for the surplus right of way without review from the ROW Division, and sends a copy of the approved value form to the ROW Division.

The ROW Division will do the following:

- ◆ prepare and submit a minute order for the Commission to consider the sale and conveyance of the surplus right of way interest
- ◆ prepare the appropriate conveyance document
- ◆ if the sale amount is \$10,000 or less, send the document to the Executive Director for signature
- ◆ if the sale amount is more than \$10,000, the Executive Director will concur by signing the document. ROW Division will forward the document to the Attorney General, who then forwards the document to the Governor's General Counsel for review. The Governor and Secretary of State sign the document, and it is returned to ROW Division.
- ◆ notify the purchaser to send funds for purchasing the surplus right of way to the FIN Division for deposit into the state highway fund
- ◆ after the FIN Division notifies ROW Division that the funds have been deposited, send the document to the District for recording and delivery to the purchaser.

Completion of Transaction

After the purchaser receives the recorded conveyance document, the District will follow procedures outlined under [“Closing Procedures and Map Notations”](#).

Section 5

Transfer of Surplus Right of Way to an LPA for the Savings to the State of Future Maintenance Costs

Overview

TxDOT has the authority to transfer a surplus right of way interest to an LPA in consideration for savings to the state of future maintenance costs. This savings is instead of a cash consideration. This type of transaction is primarily used where a segment of highway is being removed from the system and transferred to an LPA for continued use as a roadway.

In addition to the District submission requirements in Section 4, [“Sale of Surplus Right of Way \(Fee Simple\) to an LPA.”](#) the District Right of Way personnel will coordinate with the appropriate area office or maintenance section to compute the future maintenance costs. After the surplus right of way interest has been appraised and the recommended value has been approved, the future maintenance costs must equal or exceed the recommended value of the surplus right of way in order for the ROW Division to prepare a minute order for Commission consideration.

For guidance on this type of transaction, please contact PRM.

Section 6

Sale of Surplus Right of Way (Fee Simple) to the Abutting Landowner(s)

Overview

If the LPA does not acquire a surplus right of way interest when the state owns fee simple title, it can be sold to the abutting landowner(s).

In any sale or exchange when the abutting landowner is a trust, or a person who is a trustee, contact PRM.

If any of the landowners decline to purchase their portion, the remaining abutting landowners may purchase the adjusted portions of surplus right of way, provided there is no interference with an adjacent owner's rights, including access to the highway facility.

If only one of the abutting landowners is interested in purchasing the surplus right of way interest, the entire tract can be sold to that owner, even if their property does not abut the entire surplus tract.

Procedures

The District notifies owner(s) of their eligibility to purchase a portion of the surplus right of way interest abutting their property and explain all associated expenses.

The District prepares submission package.

The ROW Division follows procedures outlined in Section 4, [“Sale of Surplus Right of Way \(Fee Simple\) to an LPA.”](#)

After the District approves the recommended value, the District will ask the landowner(s) to provide a [current licensed attorney's opinion](#) based on an examination of the deed records and indicating all the owners of land abutting the surplus right of way interest.

Sale by Sealed Bid

Occasionally, surplus right of way may be sold by sealed bid to the general public:

- ◆ if the tract of land owned in fee simple by the state is surrounded by public roads and other right of way
- ◆ if the abutting landowner declines to purchase a tract of surplus right of way.

In this type of sealed bid sale (see [“Sealed Bid Sales”](#)), the District must be sure that any property interests of abutting private property owners are not interfered with, especially access to the highway facility.

Section 7

Sale of Surplus Access Rights

Overview

When an abutting landowner wants to purchase access rights for a driveway location, the District should contact the Design Division for current requirements. If a public street is proposed to intersect with the frontage road of an existing controlled access facility, the District should contact the Design Division for current requirements.

District Procedure Prior to Sale Approval

Before the sale has been approved:

- ◆ The District checks the project map for access control and state ownership.
- ◆ The District examines the conveyance document(s) for the original parcel(s) to determine how the state acquired the access rights.

Procedures After Sale Approval

After the sale has been approved:

- ◆ The District will send the ROW Division:
 - a copy of the original conveyance document(s) for the parcel(s) where the access rights were acquired
 - a surveyed description of the access line on letter-size paper, signed and sealed by an RPLS, including a preamble citing the original conveyance(s) to the state including recording information. The surveyor should describe the property line of the original parcel(s), in addition to the boundary line of the adjoining property.
 - a letter-size [survey plat](#) prepared by an RPLS to accompany the property description showing the access line, north arrow, scale, and legend showing the control of access.
- ◆ The ROW Division notifies the District to have the surplus access rights appraised.
- ◆ The District contacts PRM for guidance on appraising access rights.
- ◆ The purchaser or the District will choose a state certified appraiser from TxDOT's approved appraiser list and will require that TxDOT approved forms be used. The purchaser will pay the appraiser directly.
- ◆ The District approves the recommended value for the surplus access rights without review from the ROW Division, and sends a copy of the approved value form to the ROW Division.
- ◆ The ROW Division will:

- prepare and submit a minute order for the Texas Transportation Commission to consider the sale of the surplus access rights
- prepare appropriate conveyance document and route for signatures
- notify the purchaser to submit the purchase price to the Finance Division for deposit into the state highway fund
- forward the document to the District for recording and delivery to the purchaser.

Completion of Transaction

The District follows instructions outlined under [“Closing Procedures and Map Notations”](#).

Section 8

Sale of Surplus Right of Way (Highway Easement) to the Underlying Fee Owner(s)

Overview

If the **current** underlying fee owner(s) donated the right of way interest to the state, then the state can release the right of way interest at no cost other than the state's service fee.

Procedures

The District will:

- ◆ notify owner(s) of their eligibility to purchase the easement interest and explain all associated expenses
- ◆ prepare submission package (see [“District Submission Requirements”](#))
- ◆ the District Engineer's statement should also explain why the easement is no longer needed for a state highway purpose
- ◆ the underlying fee owner(s) will provide the District with an acceptable certificate verifying the name(s) of the underlying fee owner(s)

The ROW Division follows procedures outlined above in Section 4, [“Sale of Surplus Right of Way \(Fee Simple\) to an LPA.”](#)

Section 9

Sale of Surplus Right of Way (Drainage or Channel Easement) to the Underlying Fee Owner(s)

Overview

If the **current** underlying fee owner(s) donated the right of way interest to the state, then the state can release the right of way interest at no cost other than the state's service fee. Occasionally a drainage or channel easement may be sold to a drainage district.

Procedures

The District will:

- ◆ notify owner(s) of their eligibility to purchase the easement interest and explain all associated expenses
- ◆ prepare submission package (see [“District Submission Requirements”](#))
- ◆ the District Engineer's statement should also explain why the easement is no longer needed for highway drainage
- ◆ the underlying fee owner(s) will provide the District with an acceptable certificate verifying the name(s) of the underlying fee owner(s)

The ROW Division follows procedures outlined above in Section 4, [“Sale of Surplus Right of Way \(Fee Simple\) to an LPA.”](#)

Section 10

Exchange of Surplus Right of Way (Fee Simple) for a Property Interest Needed for a State Highway Purpose

Overview

TxDOT has the authority to exchange right of way no longer needed for a state highway purpose for needed property. If the District is acquiring new right of way, TxDOT can save money by exchanging surplus right of way for new right of way. An LPA would not have to be offered the opportunity to buy the right of way, since this transaction involves the exchange of right of way instead of the sale of right of way.

The District will follow the initial procedures outlined in Section 3, [“Initial Procedures for all Dispositions.”](#) and the [“District Submission Requirements”](#) in Section 4. The District needs to verify that the state owns fee title in right of way that can be exchanged for new right of way. In addition to the procedures in Section 3, the District will need to complete these steps for the acquisition portion of the exchange:

- ◆ order a title commitment for the new right of way
- ◆ complete any title curative needed for the new right of way
- ◆ have the new right of way appraised and the value approved
- ◆ prepare a deed from the appropriate parties conveying the new right of way to the state and have the deed executed

If the party to the exchange requests one, an [exchange agreement](#) can be prepared. Please contact PRM for assistance with exchange agreements.

After the values of the surplus right of way and the new right of way have been approved, two situations can occur:

- ◆ If the surplus right of way is worth more than the new right of way, then the landowner(s) will owe the state the cash difference. Occasionally an escrow agreement will be required to outline the responsibility of each party to this arrangement. Please contact PRM for guidance about escrow agreements.
- ◆ If the new right of way is worth more than the surplus right of way, then the value of the surplus right of way reduces the amount of money that the state owes the landowner(s) for the new right of way. The state can pay the landowner(s) the cash difference, or the landowner(s) can donate the difference. If the landowner(s) decide to donate the cash difference and the difference is \$500 or more, then a modified donation agreement will be needed. ROW Division can provide the form.

The District will coordinate preparation of the donation agreement with PRM. When the landowner(s) sign the deed conveying the new right of way to the state, they can also sign the donation agreement. The ROW Division Director will sign the donation agreement after the Commission passes a minute order accepting the donation.

After the deed of the new right of way has been signed, the exchange agreement has been signed by the landowner(s) and the state, and the donation agreement, if required, has been signed by the landowner(s), the ROW Division prepares a minute order as discussed in Section 3.

After the Commission passes the minute order approving the exchange and, if applicable, accepting the donation, the ROW Division will process the document conveying the surplus right of way to the landowner(s). After all agreements have been fully executed, originals will be provided to all parties and all conveyance documents will be recorded.

The District and the ROW Division will follow the procedures in Section 13 to update the right of way map(s) showing the exchange of the surplus right of way.

Occasionally some Districts will be contacted by coal and lignite mining companies to relocate a portion of an existing road in exchange for the company constructing a new road. This is a special type of exchange that is coordinated with TxDOT's Office of General Counsel and the ROW Division. Contact PRM for guidance on this type of transaction.

Section 11

Exchange of Surplus Right of Way (Drainage or Channel Easement) with Underlying Fee Owner(s)

Overview

If the District receives a proposal to realign an existing drainage or channel easement, then the District will review the request to determine whether the existing easement can be declared surplus and exchanged for a new easement.

The District will follow the initial procedures outlined in Section 3, [“Initial Procedures for all Dispositions.”](#) and the [“District Submission Requirements”](#) in Section 4. The District needs to verify that the state owns an easement that can be exchanged for a new easement. In addition to the procedures in Section 3, the District will need to complete these steps for the acquisition portion of the exchange:

- ◆ order a title commitment for the new easement
- ◆ complete any title curative needed for the new easement
- ◆ review the proposed description of the new easement area and determine if any portion of the new easement overlaps the existing easement. If any portion of the existing easement is included in the area of the new easement, this portion must be excluded from the legal description since it is not surplus for state highway purposes.
- ◆ have the new easement appraised and the value approved
- ◆ prepare an easement instrument from the appropriate parties conveying the new easement to the state and have the instrument executed.

If the underlying fee owner(s) request one, an [exchange agreement](#) can be prepared. Please contact PRM for assistance with exchange agreements.

After the values of the surplus easement and the new easement have been approved, two situations can occur:

- ◆ If the surplus easement is worth more than the new easement, then the underlying fee owner(s) will owe the state the cash difference. Occasionally an escrow agreement will be required to outline the responsibility of each party to this arrangement. Contact PRM for guidance about escrow agreements.
- ◆ If the new easement is worth more than the surplus easement, then the value of the surplus right of way reduces the amount of money that the state owes the underlying fee owner(s) for the new easement. Typically, a donation is required since the transaction is for the benefit of the underlying fee owner(s), and a donation agreement, Form [ROW-N-143](#), will be needed.

The District will coordinate preparation of the donation agreement with PRM. When the underlying fee owner(s) sign the deed conveying the new easement to the state, they can also sign the donation agreement. The Director of the ROW Division will sign the donation agreement after the Commission passes a minute order accepting the donation.

After the new easement has been signed, the exchange agreement has been signed by the underlying fee owner(s) and the state, and the donation agreement, if required, has been signed by the underlying fee owner(s), the ROW Division prepares a minute order as discussed in Section 3.

After the Commission passes the minute order approving the exchange and, if applicable, accepting the donation, the ROW Division will process the instrument releasing the surplus easement to the underlying fee owner(s). After all agreements have been fully executed, originals will be provided to all parties and all conveyance documents will be recorded.

The District and the ROW Division will follow the procedures in Section 13 to update the right of way map(s) showing the exchange of the surplus easement.

Section 12

Disposition of Right of Way Interests without Consideration

Overview

In certain situations, the statute provides for a quitclaim deed, correction deed or other instrument to an appropriate party without consideration.

Disposition to Honor a Reversionary Clause

If an instrument conveying title to right of way contains a reversionary clause, the state can quitclaim or release its interest in the right of way. The ROW Division is available to provide guidance regarding determining if language in documents is a reversionary clause.

A \$300 service fee is required for the ROW Division to prepare a minute order and process an instrument quitclaiming or releasing the state's title to honor a reversionary clause. An LPA would not pay a service fee.

Disposition to Correct an Error or Ambiguity

When there is an error or ambiguity in a conveyance document to the state, the Commission may recommend that the Governor execute a quitclaim deed, correction deed, or other appropriate instrument to correct the error or ambiguity. No service fee is required.

Examples of errors or ambiguities are:

- ◆ incomplete or incorrect property description
- ◆ acquisition of land or an interest in land not intended to be acquired and not needed for a state highway purpose.

The District submission requirements and the ROW Division procedure are similar to those in Section 4. However, there will not be an appraisal and there won't be a new survey unless there was an incomplete or incorrect property description in the conveyance document to the state.

Quitclaim of Right of Way

The statute includes certain situations requiring the state to quitclaim any interest in land that may have accrued from the state's use of the land. It will also be necessary to remove the land from the State Highway system.

Some of these situations are:

- ◆ there is no record title in the name of the state or an LPA
- ◆ record title is in the name of an LPA and the state has been using the right of way as part of the system
- ◆ record title is in the county's name but the right of way is now within city limits. If the city needs the right of way for local road purposes, the city and county pass resolutions requesting the removal from the system and the transfer of jurisdiction and maintenance to the city. The right of way can be quitclaimed to the city.

In these situations, the District will submit the required information to the ROW Division and send a copy to the Transportation Planning and Programming Division (TPP). The TPP will review the information and concur with the District's recommendation that the right of way is no longer needed as part of the system.

The District's written recommendation to the ROW Division, with a copy to TPP, must include:

- ◆ District Engineer's statement advising that the right of way is not needed for a state highway purpose and recommending the removal from the system
- ◆ if the grantee will be an LPA, then a resolution will be needed from the LPA requesting that the right of way be removed from the system and quitclaimed or released to the LPA
- ◆ an appropriate legal description of the right of way to be removed from the system and a survey plat
- ◆ a letter-size area location map with north arrow.

The ROW Division will:

- ◆ review the District's request and obtain concurrence from TPP
- ◆ notify the District that the request has been approved
- ◆ prepare and submit a minute order for the Commission to consider the removal from the system and quitclaim or release of the right of way
- ◆ route the quitclaim/release instrument for signatures
- ◆ send the fully executed instrument to the District for recording and for delivery to the grantee
- ◆ modify right of way map(s) to reflect the transaction.

The District will furnish the original recorded instrument to the grantee and update its records and modify right of way map(s) to make note of the transaction.

Section 13

Closing Procedures and Map Notations

Procedures

The ROW Division will send the fully executed conveyance document to the District to be recorded.

After the conveyance has been recorded and returned to the District, the District delivers the original, recorded conveyance document to the purchaser

In an exchange for new right of way, the District will send the original title policy, recorded conveyance document, and the title company invoice with a TxDOT billing statement, [Form 132 example](#).

The ROW Division processes the billing statement to pay the title company expenses.

The District and the ROW Division will modify right of way map(s) to reflect the sale/exchange along with the recording information of conveyance document(s).

The ROW Division maintains all original conveyance documents.

Chapter 2

Disposition of Surplus Real Property Facility Sites

Contents:

Section 1 — Introduction

Section 2 — Types of Transactions

Section 3 — Sale of Surplus Site and Any Improvements to an LPA

Section 4 — Sealed Bid Sales

Section 1

Introduction

Overview

The disposition of sites with any improvements, including area office, maintenance office, and former district offices, is governed by Vernon's Texas Codes Annotated [Transportation Code, Chapter 202, Subchapter B](#). Policy of the Texas Transportation Commission (Commission) is set out in several minute orders. Only the Commission has the authority to determine that property is no longer needed for a state highway purpose.

The Maintenance Division (MNT) is responsible for managing all of the Department's sites. The District will contact MNT to receive written concurrence to proceed with any disposition.

The District will determine whether the state holds title to the property, what kind of title or interest is owned (fee simple or easement), and whether any of the documents conveying that interest to the state contains a reversionary clause.

Improvements located on sites are generally sold with the land. If improvements are to be sold separately, the District should contact the General Services Division about the current procedure.

Section 2

Types of Transactions

Overview

The following are the most common transactions:

- ◆ [“Sale of Surplus Site and Any Improvements to an LPA”](#)
- ◆ sale of surplus site and any improvements by sealed bid to the general public (see [“Sealed Bid Sales”](#))

Unlike sales of surplus right of way (fee simple), the abutting landowner does not have the priority to purchase a surplus site and improvements.

Section 3

Sale of Surplus Site and Any Improvements to an LPA

Overview

After the District receives written approval from MNT to proceed with the disposition of a site, the District should contact the city, county and local school district to determine if any of these entities need the site. The District's letter should state that these entities will have thirty days to notify the District if they are interested in purchasing the site. If only one of these entities needs the site, then the District will proceed with the sale of the site and any improvements.

If the site was donated to the state by one of these entities, they have priority to purchase the site.

If none or if more than one of the entities is interested in purchasing the site, the property will be sold by advertising and receiving sealed bids (see "[Sealed Bid Sales](#)") from the general public. The entities can bid on the site under this procedure.

District Written Recommendation

The District's written recommendation to the ROW Division must include:

- ◆ District Engineer's statement that the site is not needed for a state highway purpose and recommending the sale
- ◆ a copy of MNT's written concurrence in the proposed sale
- ◆ a copy of the original conveyance document(s) to the state
- ◆ a description of the land, which is either a metes and bounds description on letter-size paper signed and sealed by a Registered Professional Land Surveyor, including a preamble citing the original conveyance(s) to the state with the recording information, or, if the land doesn't need to be surveyed, a reference description of the recording information for the original conveyance(s) to the state
- ◆ a letter-size [survey plat](#) prepared by a Registered Professional Land Surveyor. The plat should show the site boundaries, including metes and bounds; north arrow; scale; legend; existing driveways; control of access (if applicable); and any existing drainage structures or utility lines.
- ◆ a letter-size area location map with north arrow

Appraisal and Recommended Value

The ROW Division advises the District to have the site and any improvements appraised.

The LPA or the District will choose a state certified appraiser from TxDOT's approved list and will require that TxDOT approved forms are to be used. The LPA will pay the appraiser directly.

The District approves the recommended value for the surplus site and improvements without review from the ROW Division, and sends a copy of the approved value form to the ROW Division.

Resolution from LPA

The District obtains a resolution from the LPA authorizing the purchase of the surplus site and any improvements for the approved value.

The District forwards the resolution to the ROW Division.

Conveyance of Property

The ROW Division will:

- ◆ Prepare and submit a minute order for the Commission to consider the sale and conveyance of the site and any improvements.
- ◆ Prepare the appropriate conveyance document.
- ◆ Send the document to the Executive Director for signature if the sale amount is \$10,000 or less.
- ◆ If the sale amount is more than \$10,000, the Executive Director will concur by signing the document. The ROW Division will forward it to the Attorney General for review and signature.
- ◆ The Attorney General signs the document and forwards it to the Governor's General Counsel for review.
- ◆ The Governor and the Secretary of State sign the document, and it is returned to ROW Division.
- ◆ Notify the purchaser to send funds for purchase to the Finance Division (FIN) for deposit into the state highway fund.
- ◆ After FIN notifies the ROW Division that the funds have been deposited, the ROW Division sends the document to the District for recording and delivery to the purchaser.

Completion of Transaction

After the District receives the recorded conveyance document, follow the procedures outlined under ["Closing Procedures and Map Notations"](#) in Chapter 1.

Section 4

Sealed Bid Sales

Overview

If an LPA or school district does not want to purchase a surplus site, or if more than one of these entities wants to purchase the same site and a single purchaser cannot be agreed on, then the site will be sold by sealed bid after being advertised to the general public.

For district submission requirements for this type of sale, refer to Section 3 above.

Procedures Prior to Bid Opening

After the ROW Division has received the District's submission, and all the necessary concurrences and approvals have been obtained, the ROW Division will:

- ◆ assist the District in preparing a Notice of Sale of State Land to be used in the newspaper ad
- ◆ assist the District with understanding the terms of the Bid Form that bidders will use when submitting their sealed bids

The following procedure for selling property by sealed bid has been codified in Texas Administrative Code, Title 43, Transportation, §21.104:

- ◆ The Notice of Sale must be advertised in the English language in at least one newspaper in the county where the land is located. The notice can be placed in multiple newspapers, even those in other counties.
- ◆ The Notice must appear once a week for three consecutive weeks before bids are opened, with the final notice appearing at least twenty days before the bid opening.

Information packages about the property may be furnished to potential bidders upon request. Also, eight foot by ten foot wooden "For Sale" signs may be placed on the property giving a contact phone number.

The District will pay for the survey, if needed; the appraisal fee; and the newspaper and advertising costs. The successful bidder will reimburse the District for these costs as part of the bid deposit. If there is no successful bidder, these costs are absorbed by the District. If it takes more than one sealed bid sale to obtain a successful bid, then the District will not recuperate these costs. Before the District proceeds with a second bid sale, check with the city, county, and local school district to determine whether they are interested in purchasing the site.

Bid Opening

On the day of the bid opening, the District will:

- ◆ Have the District Engineer or designee open the bids at the advertised place and time. The bids can be announced and recorded if any bidders or members of the public are present.
- ◆ Send the ROW Division copies of all bid forms along with a recommendation for acceptance of the highest bid or for rejection of all bids. Any bid form that has been altered in any way, by addition or deletion, and any incomplete bid form will be automatically rejected.

Division Review of Bids

The ROW Division reviews the bid forms and advises the District if the highest bidder's form is acceptable. If the highest bidder is a corporation or partnership, the ROW Division will check with the Secretary of State and the Comptroller to be sure that the corporation is active and in good standing.

Bid Deposit Checks

The District deposits the check of the highest bidder after the ROW Division advises that this bidder's offer will be presented to the Commission.

The District returns the bid deposit checks to unsuccessful bidders. These checks are not deposited.

Chapter 3

Acquisition of Real Property Sites

Contents:

Section 1 — Introduction

Section 2 — Acquisition of Land for a Real Property Site

Section 3 — Acquisition of Land for Gulf Intracoastal Waterway Disposal Area Sites

Section 1

Introduction

Overview

The acquisition of real property sites, including maintenance, area office, resident engineering, and district headquarters office, is governed by Vernon's Texas Codes Annotated [Transportation Code, Chapter 203, Subchapter D](#). If necessary, TxDOT has the authority to condemn land for a site to be used for highway purposes under its eminent domain powers.

Section 2

Acquisition of Land for a Real Property Site

Site Selection

The District coordinates site selection with the Maintenance Division (MNT), which is responsible for all charges and costs. The District's environmental coordinator should examine the land for the proposed site to determine whether any environmental assessments may be needed. This determination is made in coordination with the Environmental Affairs Division.

District Submission Requirements

As soon as possible after MNT has concurred in site selection, the District will:

- ◆ provide the ROW Division with a current title commitment. The commitment is valid for ninety days from the effective date and should be updated when necessary.
- ◆ advise the ROW Division if all easements and other items listed as exceptions on Schedule B of the title commitment are compatible with the intended use of the site
- ◆ advise the ROW Division about any title curative that will be required. Common title curative matters include tax liens; deed restrictions; boundary line discrepancies; encroachments of improvements; gas pipelines; and oil and gas leases held by production.
- ◆ a metes and bounds description on letter-size paper signed and sealed by a Registered Professional Land Surveyor (RPLS).
- ◆ a letter-size survey plat prepared by an RPLS

If the proposed sellers of the surface estate for the site do not own the oil and gas rights, then the District will need to investigate this ownership with the title company. MNT has authorized the Districts to pay for a mineral title search, if this is necessary.

After at least 51 % of the mineral owners are identified, then the District will coordinate obtaining a release of mineral surface rights from these owners. If an active oil and gas lease covers the minerals under the land for the proposed site, then the District will obtain a release from the owner of the lease. The ROW Division is available to coordinate research at the Texas Railroad Commission to verify active oil and gas leases.

Appraisal

The ROW Division advises the District to have the land appraised.

The District will choose a state certified appraiser from TxDOT's approved list and will require that TxDOT approved forms are to be used.

The District approves the recommended value for the land without review from the ROW Division, and sends a copy of the approved value form to the ROW Division.

Offer and Counteroffer

The District makes a written offer to the owner(s) to purchase the land for the approved value. If the owner(s) has previously offered to sell the land for less than the approved value, then the District will make a written offer to purchase the land for this amount.

If the owner(s) make a counteroffer to TxDOT's offer to purchase the site for the approved value, then the District should forward a memorandum to MNT with a copy to the ROW Division outlining the reasons for accepting or rejecting the counteroffer. MNT will evaluate the counteroffer and advise the District how to proceed. If TxDOT accepts the counteroffer and agrees to purchase the land for an amount above the approved value, then the owner(s) should write the District a letter containing the terms of the sale. The District will forward this letter to the ROW Division.

Deed, Memorandum of Agreement, and Closing

After an agreement has been reached between the owner(s) and TxDOT to sell the property, the ROW Division will assist the District in preparing the Deed and Memorandum of Agreement. The Comptroller requires a Memorandum of Agreement even though its use for acquiring right of way has been discontinued.

The District submits the following to the ROW Division:

- ◆ an updated title commitment
- ◆ a certified copy of the signed deed
- ◆ a copy of the signed Memorandum of Agreement

The District prepares a Payee Identification Form with joint payees being the title company and the seller(s).

The District prepares and submits a Billing Statement, Form 132, and sends it to the District's accounting section. Then the District's accounting section will prepare a voucher to request the warrant.

The ROW Division provides the Finance Division (FIN) with copies of the title commitment, signed deed and memorandum of agreement, and preliminary closing statement. FIN forwards these to the Comptroller for issuing the warrant.

FIN forwards the warrant to the District, and the District closes the transaction.

The District obtains the title policy. The District should be sure that a deletion of arbitration provision form, if applicable, has been furnished to the title company so that the arbitration provision will be deleted from the title policy.

The District sends the billing statement for paying the title policy premium and expenses, unless the seller has paid for the title policy. Send the original recorded deed and original title policy with the billing statement to the ROW Division.

The ROW Division will process the billing statement to obtain a warrant for paying the title company expenses.

Section 3

Acquisition of Land for Gulf Intracoastal Waterway Disposal Area Sites

Overview

TxDOT acquires disposal area sites along the Gulf Intracoastal Waterway as required under the Texas Coastal Waterway Act of 1975. These sites are acquired in fee simple, and then the state conveys a surface easement to the U.S. Army Corps of Engineers for a specific term and use. These sites are acquired only in Districts along the Texas coast.

The Transportation Planning and Programming Division (TPP) is the lead Division for this type of acquisition, and acquisition costs come out of TPP's budget. The ROW Division assists in the acquisition process.

The site selection process is quite extensive and involves various state and federal agencies. If this type of site is selected to be acquired, the ROW Division will furnish instructions to the District before contact with the landowner(s) is made and before negotiations for buying land for this use are begun.

Chapter 4

Leasing

Contents:

- Section 1 — Overview
- Section 2 — Types of Leases
- Section 3 — Requests to Lease
- Section 4 — Methods of Awarding Leases
- Section 5 — Survey
- Section 6 — Appraisal
- Section 7 — Preparation of Lease Forms
- Section 8 — Insurance and Bonds
- Section 9 — Submission Package to the ROW Division
- Section 10 — ROW Division Review
- Section 11 — Completing a Lease Agreement
- Section 12 — Rental Payments
- Section 13 — Lease Management
- Section 14 — Leasing of Right of Way by LPAs

Section 1

Overview

Authority

TxDOT has authority to lease its real property assets, including but not limited to right of way, pursuant to the following:

- ◆ Vernon's Texas Codes Annotated (V.T.C.A.), Transportation Code, §202.052
- ◆ Title 43 Texas Administrative Code (43 TAC) §§21.600 to 21.606 inclusive
- ◆ Title 23 Code of Federal Regulations (23 CFR) §§710.405 to 710.407

The property to be leased must be surplus to TxDOT's needs for the term of the lease, and the consideration for the lease must be at least fair market value.

Assets Eligible for Lease

Any real property asset or interest therein which is surplus to TxDOT's needs is eligible. Examples include:

- ◆ right of way, including the airspace above, at or below grade and which is either currently on the highway system or has recently been acquired for future improvements;
- ◆ maintenance sites;
- ◆ portions of District sites;
- ◆ office space; and
- ◆ mineral interests.

All leases must be for commercial purposes only. TxDOT will not enter into a lease for any type of sign or for a residential purpose. The use under a lease must not create a safety hazard and must comply with all Federal, State and local laws, codes, ordinances, rules and regulations. All leases within right of way are subject to the statutory rights of public utilities and common carriers. Examples of uses under leases TxDOT has entered into include:

- ◆ parking,
- ◆ bridges,
- ◆ landscaping and maintenance,
- ◆ overhead conveyors, and
- ◆ a wide range of commercial activities.

Section 2

Types of Leases

Descriptions

Right of Way Lease. Includes leases for right of way currently on the highway system, maintenance sites and all other real property assets with the exception of mineral leases. A Right of Way Lease Agreement Form, [ROW-L-2](#) is available. In addition, a Telecommunications Lease Agreement, [ROW-L-2T](#), specific to telecommunications towers, is available.

Leaseback. A lease for recently acquired right of way, and the improvements thereon, back to the owner or tenant who occupied the property at the time of acquisition. These leases can be used to aid in the acquisition process. TxDOT has been able to settle cases and, in some instances, completely avoid condemnation by offering a lease to the owner. A Leaseback Agreement, [ROW-L-4](#), is available. **Note that certain relocation requirements, as specified in [Relocation Procedures for TxDOT Leasebacks](#), must be met prior to entering into a leaseback.**

State Agency Lease. A lease to another State agency. This does not include other subdivisions of the State such as cities, counties and school districts. A State Agency Lease Agreement, [ROW-L-8](#), is available.

License. A short-term (six months or less) rental agreement for seasonal uses such as Christmas tree sales and expanded parking for shopping malls during the holidays. A License Agreement, [ROW-L-3](#), is available.

Oil and Gas Lease. An Oil and Gas Lease Agreement is available. By statute all leases for oil, gas and other minerals are administered by the Texas General Land Office, and any request for this type of lease should be referred to the following:

Texas General Land Office
Petroleum and Mineral Division
1700 North Congress Avenue
Austin, Texas 78701
(512) 475-1534

Section 3

Requests to Lease

Requirements

A party requesting to lease any of TxDOT's real property assets must submit such request in writing to the District Engineer of the District in which the property is located. Each request must include the following:

- ◆ the name, address and phone number of the party requesting the lease;
- ◆ a general description of the area to be leased, the intended use and the proposed term;
- ◆ a description and sketch of any proposed improvements to be constructed including utilities, drainage and access, and the relationship of any improvements to the existing highway(s); and
- ◆ the name, address and phone number of the individual authorized to act on behalf of the entity requesting the lease.

Processing a Request to Lease

When the District receives a request to lease an interest in a real property asset from TxDOT, the Right of Way Section in the District should coordinate a review of the request. The purpose of the review is to determine if the District concurs with the request and ultimately recommends the lease or denies the request. The request, description of the area to be leased, description and sketch of any proposed improvements to be constructed, and any other supporting documentation the District deems necessary should be distributed to the following for review and comment:

- ◆ Area Engineer with jurisdiction over the property to be leased,
- ◆ District Design Engineer, and
- ◆ District Maintenance Engineer.

The review should, at a minimum, address the following:

- ◆ Is the subject property surplus to TxDOT's needs or is it currently being used, or will it soon be needed, for any highway purpose?
- ◆ Will the proposed use pose a safety hazard to the traveling public or any other persons or property?
- ◆ Based upon future plans, for what period of time can the property be leased?
- ◆ Would the lease be consistent with beautification, maintenance, and operation of the system (43TAC §21.602)?
- ◆ Would the lease be economically beneficial to TxDOT (43TAC §21.602)?

The District will make a determination of the recommended term for leases. The law mandates that leased property is surplus to TxDOT's needs **for at least the term of the lease**. TxDOT's long term planning period is twenty years; therefore, **lease terms should not extend beyond twenty years**. However, there are rare situations where there will be construction of substantial improvements under a lease that may require an exception to this.

These cases usually involve a major capital investment by the lessee with long term financing which may require a longer-term lease. Additionally, as a matter of policy, leases for TxDOT property should **always include a cancellation provision** whereby the lessee or TxDOT can cancel the lease for any reason upon written notification to the other party. The District determines the time for the **notification period, which must not exceed two years**. Leases that have a primary term of two years or less, or that include a cancellation provision that is two years or less, may be approved at the ROW Division and are not required to be submitted to the Commission for approval.

If, after review, the District determines that the property can not be leased, the party making the request should be notified in writing. If the District concurs with the proposed lease, the proper party should be notified of such and processing should continue as described below. The same review procedures should be followed even if TxDOT initiates the lease and there is no request from a potential lessee.

Section 4

Methods of Awarding Leases

Overview

A lease may be negotiated with the following parties, provided the proposed lease is not inconsistent with the property rights of others:

- ◆ a party that holds a valid property right in the adjacent property
- ◆ a government entity, including school districts
- ◆ a party that has a written concurrence from the adjacent property owner, and tenant if applicable, concurring with TxDOT leasing the subject property to the party requesting the lease for a specific purpose
- ◆ for a leaseback, a party that had an interest in the property at the time of TxDOT's acquisition; and
- ◆ if the lease is for an area under an elevated structure, it can be negotiated with the adjacent property owner or tenant to the centerline of the highway. If the party requesting the lease desires to lease the entire area under an elevated structure follow the procedures described below.

If a party that holds a valid property right in the adjacent property requests a lease, and there is more than one adjacent owner, the party requesting the lease may provide concurrence letters from the other adjacent owners or the District may send a notification letter to all adjacent owners. The letter should notify the adjacent owners of the interest to lease and request that they respond in writing within thirty days if they also are interested in leasing any of the subject area. If there are no responses, the District may negotiate the lease with the requesting party. If there is more than one interested party, the lease should be awarded by sealed bid.

In the event the criteria described above can not be met, the lease should be awarded through a sealed bid process, provided that it does not interfere with any access or other rights any adjacent owner may have. The bid must be advertised at least twenty days before the bid opening by having notice thereof published once per week for three consecutive weeks preceding such bid opening in a newspaper of general circulation in the county in which the property to be leased is located. Form [ROW-L-6](#), Notice of Lease of State Land, and Form [ROW-L-7](#), Sealed Bid, Lease of State Real Property are available.

Note that the vast majority of leases TxDOT enters into are negotiated because most parties interested in leasing TxDOT property are adjacent owners.

Section 5

Survey

General

Once the District determines that a property can be leased, the area needs to be specifically identified by a metes and bounds property description. The property description should include a sketch with the survey calls and should show the relationship and distances of the lease area to the highway and to the lessee's adjacent property. The survey will serve as the basis for the appraisal, as the property description in the lease and, if the lease requires Commission approval, as an exhibit in the minute order. The exhibit must be printed on 8 1/2" X 11" white paper. The survey is to be provided by the lessee, at the lessee's expense, unless TxDOT already has a property description, as is the case with leasebacks because a survey was obtained for the acquisition. The District should review the survey to ensure its accuracy. A ROW Division review of the survey is not required.

Section 6

Appraisal

Consideration

The consideration for a lease must be for at least the appraised fair market rental value.

The consideration should be defined as either a monthly or annual rental. An appraisal can be prepared by the District in-house or by an appraiser on TxDOT's approved list. If the appraisal is not prepared by a TxDOT approved appraiser or a TxDOT employee, the lessee must pay for the appraisal.

A proposed purchaser or lessee of surplus real property may contract directly with a TxDOT approved appraiser. The District may assist the requester with selection of the appraiser and should provide the requester with instructions to the appraiser to assure a valuation work product compatible with Department requirements. In this case, the District will not collect a prepaid appraisal fee for deposit into a Departmental account, and therefore, a subsequent billing statement will not be required.

The District is responsible for reviewing the appraisal. A completed Form [ROW-L-10](#), Tabulation of Values - Leasing, should be included with each appraisal submission to the ROW Division.

Section 7

Preparation of Lease Forms

General

The District is responsible for drafting lease agreements using TxDOT's standard forms. There is a form for [each type of lease](#) identified above. The majority of the provisions in the lease forms are boilerplate and **can not be changed**. TxDOT's **policy is to not change the forms for any reason** because there is a responsibility to treat all lessees equally. However, there are circumstances where provisions need to be added, changed and/or deleted because of the unique nature of a particular lease.

District personnel working with leases **should** read the lease forms to become familiar with their content. The following is a list of items within the lease forms that need to be addressed when completing a lease agreement. Note that these items may occur in different sections or articles within each form.

- ◆ **Preamble** - county, lease number, lessee
- ◆ **Term** - the commencement and expiration dates of the lease and the time period for the cancellation notice
- ◆ **Consideration** - designation of the monthly or annual rent
- ◆ **Use** - a specific statement of the authorized use under the lease
- ◆ **Construction** - These provisions may need to be revised depending on whether there is proposed construction under the lease. There is a shortened lease form to be used if construction of improvements is not allowed. Check with ROW Division.
- ◆ **Security for Removal of Improvements** - In the event improvements will be constructed under the lease, the District will need to estimate the cost of removing the improvements and the amount designated in this provision. If no surety bond is required, this section (7.10) should be removed from the lease agreement and subsequent sections renumbered.
- ◆ **Miscellaneous** - Notices; Governing Law; District Engineer; Recordation: these provisions require the proper addresses, District designation, and county where the lease is located
- ◆ **Signature Block** - name and title of person executing the lease for the lessee
- ◆ **Property description** and sketch of the area to be leased labeled as Exhibit "A" follows signature page

When not experienced in drafting lease forms, District personnel should contact the ROW Division for guidance and forward a completed draft for review before submitting it to the lessee.

Section 8

Insurance and Bonds

General

Each lease requires the lessee to carry **commercial general liability** insurance insuring against injury and damage during the lease term. In certain cases, depending on the use, the lessee may be required to carry additional insurance such as environmental or liquor liability. Specific coverages are described in the liability insurance provisions in the lease. All liability insurance policies must be with companies licensed by the Texas Department of Insurance and must include the following endorsements:

- ◆ TxDOT is to be included as an additional insured
- ◆ a waiver of subrogation in favor of TxDOT
- ◆ a thirty day notice of cancellation to TxDOT if the insurance is cancelled.

The lessee must furnish TxDOT with a certificate of insurance providing the required coverage. When reviewing the certificate, the District should check that the minimum dollar amounts of the required coverage are met and that the endorsements described above are included in the policy.

If improvements will be constructed under a lease, the lessee must furnish TxDOT with a surety bond as security to ensure that, upon expiration of the lease, the lessee will fulfill its obligation to remove the improvements. The amount of the bond should be for the cost of removing the improvements as estimated by an engineer with the District. As referenced above, the District will need to include this amount in the "Security for Removal" provision when drafting the lease form.

Section 9

Submission Package to the ROW Division

Contents of Package

Include the following in the package submitted to the ROW Division for review and processing:

- ◆ memorandum from the District which includes the following:
 - recommendation to lease
 - proposed use under the lease
 - proposed term under the lease
 - statement that the right of way, or TxDOT asset, will not be needed for highway purposes during the term of the lease
 - statement that the lease be consistent with beautification, maintenance, and operation of the system (43 TAC §21.602)
 - statement that the lease be economically beneficial to TxDOT (43 TAC §21.602)
 - statement that the use will not present a safety hazard to the traveling public
 - acknowledgement that the first rental payment has been received and deposited if leases are being submitted for execution.
- ◆ written request from the entity proposing the lease
- ◆ District's recommendation of fair market value, including a copy of Form [ROW-L-10](#), Tabulation of Values - Leasing
- ◆ final draft of the lease agreement or three originals executed by the lessee
- ◆ property description and sketch of the area to be leased
- ◆ location map with a north arrow
- ◆ description and sketch of any improvements proposed to be constructed
- ◆ corporate resolution or other similar document (as proof that the designated person is authorized to sign the lease), if the lessee is a corporation, joint venture or partnership
- ◆ appropriate insurance certificate and bond (if required), if the District is submitting a lease to be executed.

Provide the following additional information if TxDOT is leasing back (to the previous owner or tenant) right of way that has been acquired for future improvements to the highway:

- ◆ clarification of the ownership of any existing improvements
- ◆ clarification of any bisection of improvements

Section 10

ROW Division Review

Process

After receiving submission of a **complete** package from the District, the ROW Division reviews and processes the proposal in the following manner:

- ◆ reviews the lease form
- ◆ prepares and submits a Minute Order to the Commission for authorization of the lease, if necessary
- ◆ upon receipt of all necessary approvals, coordinates execution of the lease by TxDOT.

Section 11

Completing a Lease Agreement

Procedure

The District may have the lease (three originals) executed by the lessee and submit them with the lease package to the ROW Division; or, the District may submit a draft of the lease and have the originals signed after all necessary approvals are obtained.

If a lease requires Commission approval, the lessee should not execute it until after such approval is granted.

The District should submit a draft for review by the ROW Division if the District has not had substantial experience with leasing.

When the District is ready to proceed with having the lease executed, obtain the following from the lessee:

- ◆ three signed originals of the lease
- ◆ certificate of insurance
- ◆ surety bond, if necessary
- ◆ first monthly or annual rental payment.

After execution of the lease by TxDOT, the ROW Division will return two fully executed originals to the District and retain one for the ROW Division files. The District should retain one original for its files and return one to the lessee.

Section 12

Rental Payments

General

Districts are responsible for receiving all rental payments for leases within their jurisdiction.

Rental payments are due in advance of the commencement of the lease term and on or before the first day of the month, if paid monthly, or on or before the anniversary of the commencement date if paid annually.

All rental payments should be **deposited immediately upon receipt**, by rapid deposit, into Fund 6. The District **needs to include the lease number** in the "Description" section of the deposit slip and the **"Object of Revenue Code" is 3746**. Correct information must appear on the deposit slip so that a proper accounting of lease revenues can be assured.

The District Right of Way Section should notify the District Accounting Section of all leases and should request that the Accounting Section be responsible for receiving and depositing rental payments. The Accounting Section should set up a tracking file to monitor when rental payments are due. If a rental payment is past due, the Accounting Section should notify the Right of Way Section for handling in accordance with procedures described below.

Section 13

Lease Management

Overview

Once the lease is executed and is in effect, the District is responsible for managing the lease, which includes the following:

- ◆ Set up a tracking file to monitor that rental payments for each lease are being made on time.
- ◆ Set up a tracking file for insurance certificates and surety bonds to monitor that they are being renewed and provided to TxDOT before their expiration, usually on an annual basis. A copy of each renewal should be forwarded to the ROW Division.
- ◆ Review and approve construction plans for improvements to be constructed within the lease area.
- ◆ Review and approve plans for on-premise signs.
- ◆ Inspect the lease area thirty days after the commencement of the lease, during and upon completion of construction and at least once per year thereafter. This inspection may consist of a "windshield" inspection, unless otherwise necessary.
- ◆ Reevaluate the rental value every five years in accordance with the terms of the lease to verify that TxDOT is receiving fair market value.
- ◆ In the event of default (e.g., non-payment of rent or failure to renew the required insurance), a written notification should be sent to the lessee in accordance with the default provisions in the lease. These provisions normally allow for a ten-day period to cure any monetary default (which includes failure to provide insurance) and thirty days to cure any non-monetary default - with the exception of an emergency situation.
- ◆ The notification referenced above will state that the lease will be cancelled if the default is not cured within the time specified in the lease. If the default is not cured within this time, the lease should be cancelled by sending written notification of such cancellation to the lessee.
- ◆ Usually within three to six months before the expiration of a lease, the District should notify the lessee in writing of the impending expiration and describe any necessary requirements for the lessee to meet its obligation to leave TxDOT's property in good repair and condition.
- ◆ If the lessee constructed improvements within the lease area and he will be required to remove them upon expiration of the lease, the District must notify the lessee in writing of such requirement within the time specified in the lease.
- ◆ If the lessee requests to continue the lease, and the District determines that the leased property is surplus to TxDOT's needs, then the lease can be extended in accordance with procedures described below.

- ◆ Notify the ROW Division when a lease needs to be amended, cancelled, or terminated.

All approvals and notifications referenced above must be in writing and signed by the District Engineer or designee.

Assignments and Subleases

TxDOT's leases allow the lessee to sublease or assign a lease upon the written approval of TxDOT.

Any request for a sublease or assignment must be submitted to the District in writing.

The Form [ROW-L-1](#), Sublease Approval Letter, is available.

The approval of an assignment should be in the form of a letter.

The District Engineer should sign both the approvals of a sublease and an assignment.

The approval of a sublease always requires that the lessee remain fully responsible for all terms, conditions and obligations under the lease. Under an assignment, the District may require the lessee to do the same or may release the lessee from the obligations under the lease. This decision should be made with consideration of the reputation and financial strength of the assignee.

The lessee and/or proposed assignee may be required to furnish any information that the District deems necessary to facilitate its approval.

Lease Extensions and Amendments

As referenced above, a lease may be extended, provided that the property is surplus to TxDOT's needs during the term of the extension. The following are procedures for extending a lease:

- ◆ The Area Engineer, District Design Engineer, and Maintenance Engineer should all be consulted when determining (1) whether the property is surplus and (2) the term length of the proposed extension.
- ◆ The rental value must be reevaluated if at least five years have passed since the last evaluation. If the rental value will change, submit a Form ROW-L-10 with supporting data. If the value will **not** change, provide a supporting review.
- ◆ Complete the Form [ROW-L-5](#), Extension of Lease.
- ◆ The District should submit three originals (signed by the lessee) and the approved value form to ROW Division for review and processing.

Upon review and approval, the ROW Division will coordinate execution of the lease extension by TxDOT and return two originals to the District. As with leases, the District should retain one original for its records and return one to the lessee.

There rare occasions when circumstances change and a lease must be amended, contact the ROW Division for guidance.

Section 14

Leasing of Right of Way by LPAs

General

In unusual situations, LPAs may charge rent for occupancy of right of way. For example, on a large right of way 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 on the basis of its being rented to a short-term occupant.