

ROW Property Management Manual



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Manual Notice 2019-1

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Purpose

The purpose of this revision is to update the manual to incorporate items from the United States Code of Federal Regulations (CFR) into the *ROW Property Management Manual*.

Changes

In Chapter 1 [“Disposition of Right of Way Interests No Longer Needed for Highway Purposes”](#), the following sections contain modified content:

- ◆ In Section 3, [“Initial Procedures for all Dispositions”](#), added discussion of the Stewardship and Oversight Agreement between TxDOT and FHWA. Also added subsection titled “Environmental Review”.
- ◆ Added Section 13, [“Proceeds from the Use or Disposition of Federally Funded Property”](#).

In Chapter 4 [“Leasing”](#), added paragraph explaining that FHWA is the approving authority for ROW leases and use agreements on the interstate.

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Archives

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

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Chapter 1 — Disposition of Right of Way Interests No Longer Needed for Highway Purposes

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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 no longer needed by the Texas Department of Transportation (TxDOT). This includes roadside parks and material source sites.

The *ROW Property Management Manual* provides guidance for disposition of real property interests that are no longer needed for state highway purposes. The disposition is governed by *Vernon's Texas Codes Annotated*, [Transportation Code, Chapter 202](#), and subject to Repurchase Rights as provided in the [Texas Property Code, Title 4, Chapter 21, Subchapter E, Sections 21.101 to 21.103](#) (the "Property Code").

Section 2 — Types of Transactions

Overview

The following are the most common transactions:

- ◆ Sale of a right of way interest no longer needed for state highway purposes:
 - to a governmental entity (GE) with the authority to condemn the property when the state owns fee simple title (see [“Sale of Right of Way \(Fee Simple\) No Longer Needed for State Highway Purpose to a GE under the Statutory Priority”](#))
 - to a GE for monetary savings to the state of future maintenance costs or continued road purposes (see [“Transfer of Right of Way No Longer Needed for a State Highway Purpose to a GE with Waiver of Payment to the State”](#))
 - to the abutting landowner(s) when the state owns fee simple title (see [“Sale of Right of Way \(Fee Simple\) No Longer Needed for a State Highway Purpose to the Abutting Landowner\(s\)”](#))
 - by sealed bid (see [“Sale of Right of Way \(Fee Simple\) No Longer Needed for a State Highway Purpose by Sealed Bid”](#)):
 - to the abutting landowner(s) or a GE when the state owns access rights (see [“Disposition of Access Rights”](#))
 - to the underlying fee owner(s) when the state owns an easement (see [“Sale of Easements No Longer Needed for a State Highway Purpose to Underlying Fee Owner”](#))
- ◆ Exchange of real property acquired but not needed for a highway purpose (see [“Exchange of Real Property Interests”](#)):
- ◆ Disposition without Consideration (see [“Disposition Without Consideration of Right of Way Interests No Longer Needed”](#))
 - to honor a reversionary clause
 - to correct an error or ambiguity
 - quitclaim of right of way

Section 3 — Initial Procedures for all Dispositions

Overview

The Right of Way Division (ROW) is available to assist with all dispositions of real property no longer needed for state highway purposes. Specifically, ROW Division Headquarters will:

- ◆ Search the Specifically Designated Nationals and Blocked Persons List, maintained by the Treasury Department through the Office of Foreign Assets Control (OFAC), to ensure neither the potential purchaser nor any of its partners, members, managers, officers, or directors, are parties TxDOT would be prohibited from doing business with.
- ◆ Conduct a review of any real property acquired through a condemnation proceeding filed on or after September 1, 2011, to see if the property may be subject to extended repurchase rights afforded under the Texas Property Code, Sections 21.101-21.103.
- ◆ For any real property acquired by advance acquisition, pursuant to which Texas Transportation Code 202.112 applies, first offer any such surplus property for sale to the person from whom the Commission acquired the property for the lesser of 1) the price the commission paid the person to acquire the property; or 2) the fair market value of the property at the time it is offered for sale, taking into account any damage to the property. This offer must be made within 180 days of discovery of the applicability of Texas Transportation Code 202.112.
- ◆ Subject to the caveats cited immediately above, offer such real property for sale pursuant to Texas Transportation Code 202.021(b) and (c).
- ◆ For all dispositions below fair market value and all dispositions of Interstate project real estate at fair market value in which federal funds participated in any phase of the project, obtain approval of the transaction from the FHWA as required by 23 CFR 710.409. Under 23 CFR 710.403, such dispositions are subject to a [Stewardship & Oversight Agreement](#) between TxDOT and FHWA, which establishes which approvals TxDOT may make on behalf of FHWA, as well as those which FHWA may not delegate to TxDOT. Some types of dispositions have been pre-approved under 23 CFR 710.409, such as potential use for parkland, transfers to local governments for continued public road purposes subject to reversion, and disposal of non-right of way which was not federally funded.
- ◆ Prepare and process the minute order requesting Commission action.
- ◆ After the minute order is passed, prepare and route an appropriate conveyance document for execution.
- ◆ Notify the purchaser by letter that the minute order has been approved and the buyer will have 60 days from receipt of letter to close transaction. The letter should also state that if the

transaction does not close within 60 days at the fault of the state, the buyer shall not lose the right to purchase the property nor any deposit placed on the property.

- ◆ An escrow company may be used for closing at the cost of the buyer. TxDOT will not be responsible for any expenses in connection with the use of an escrow company. TxDOT forwards executed conveyance instruments to an escrow company or follows agreed upon escrow instructions. At closing, escrow company will record the document. TxDOT shall maintain the right to request a return of the executed deeds at any time before closing.
- ◆ If there is no escrow company used, then after FIN notifies ROW Division Headquarters that the funds have been deposited, ROW will send fully executed documents to the TxDOT contact for delivery to the purchaser.

A party interested in purchasing TxDOT real estate may be requested to send a letter or email to TxDOT that includes identifying information including, but not limited to:

- ◆ 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.

ROW reviews the conveyance document(s) to the state to determine what interest, if any, the state owns in the property and whether the conveyance document contains a reversionary clause.

The District in which the requested tract is situated determines whether there is any current or future need for the tract for a highway purpose.

See the SOP [“Project Release for Real Property Disposition”](#) to initiate project setup in the Right of Way Information System (ROWIS).

- ◆ Unless a satisfactory survey or other legally sufficient property description already exists, TxDOT will require a survey of the tract and a signed and sealed legal description by a registered Professional Land Surveyor (RPLS). The field notes should include a preamble citing the original conveyance(s) to the state with the recording information. TxDOT maintains the right to order and coordinate the survey used for a particular transaction.
- ◆ TxDOT will require an appraisal by a department certified appraiser. TxDOT maintains the right to order and coordinate the appraisal used for a particular transaction. The appraisal is merely a component of determining fair market value of the real property and is not necessarily the dispositive factor in the determination.
- ◆ Pursuant to Texas Transportation Code 202.029, if the State disposes of real property that is being used by a public utility or common carrier having a right of eminent domain for right-of-way and easement purposes, the sale, conveyance, or surrender of possession of the real property is subject to the right and continued use of the public utility or common carrier. The State will incur no utility relocation expenses as a result of any real property disposition.

- ◆ The transaction is subject to all matters of public record and all easements, leases, and licenses, whether publicly recorded or not.
- ◆ Transactions are also subject to approval by TxDOT's Executive Director, the Commission, and, if the value of the right of way interest exceeds \$10,000, the Attorney General's office, the Governor, and the Secretary of State.
- ◆ The purchaser will provide a written agreement to purchase the property for the agreed upon value plus a service fee of 2% with a minimum of \$300 and a maximum of \$1,600 and any other expenses incurred by the State in furtherance of the sale, if any. A GE is not subject to the service fee.

Environmental Review

All disposal actions and ROW use agreements, including leasing actions are subject to the environmental review requirements set forth in 23 CFR 771.

Under 23 CFR 771.117(d)(6) such dispositions, if they do not involve a significant adverse impact, may be done subject to a categorical exclusion (CE). The CE determination is a fairly simple process. A review for potential significant adverse impacts should be done by the District.

Section 4 — Sale of Right of Way (Fee Simple) No Longer Needed for State Highway Purpose to a GE under the Statutory Priority

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 a GE, subject only to the advance acquisition and repurchase rights described in Section 3 above. TxDOT sends notice to a GE that the GE has a priority right to purchase the right of way. TxDOT may provide a time frame by which the GE must exercise its priority right or consider it waived. TxDOT may impose a deadline for the GE to close a purchase after receiving notification that TxDOT is ready to close. If two or more GEs exercise their priority, a sealed bid between the exercising GEs will be conducted and the highest bid amount will determine the purchaser.

ROW Division Headquarters

ROW Division Headquarters will do the following:

- ◆ prepare and submit a minute order for the Commission to consider the sale and conveyance of the 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 headquarters 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 Headquarters.
- ◆ notify the purchaser to send funds for purchasing the right of way to the FIN Division for deposit into the state highway fund or send prepared documents to the appropriate escrow company
- ◆ If no escrow company is used, after the FIN Division notifies ROW Division headquarters that the funds have been deposited, send the document to the TxDOT contact for recording and delivery to the purchaser.

Section 5 — Transfer of Right of Way No Longer Needed for a State Highway Purpose to a GE with Waiver of Payment to the State

Overview

The Commission has the authority to waive payment when transferring a right of way interest no longer needed for a state highway purpose to a GE 1) if savings to the state for future maintenance costs equals or exceeds the fair value of the property; or 2) applicable to highway right of way only, the GE assumes or has assumed jurisdiction, control and maintenance for public road purposes and the deed contains a reservation providing that if the property ceases to be used for public road purposes, the property shall immediately and automatically revert back to the state. This type of transaction is primarily used where a segment of highway is being removed from the state highway system and transferred to a GE for continued use as a roadway.

In Lieu of Future Maintenance

In addition to the submission requirements in [Section 4 — Sale of Right of Way \(Fee Simple\) No Longer Needed for State Highway Purpose to a GE under the Statutory Priority](#), TxDOT personnel will coordinate with the appropriate area office or maintenance section to compute the future maintenance costs. The future maintenance costs must equal or exceed the fair market value of the right of way in order for ROW Division Headquarters to prepare a minute order for Commission consideration.

GE Assumption for Public Road Purposes

A transfer under this provision requires a reservation in the conveyance document to the GE providing that if the property being transferred ceases to be used for public road purposes, the property shall immediately and automatically revert to the state.

For guidance on this type of transaction, please contact ROW Division Headquarters.

Section 6 — Sale of Right of Way (Fee Simple) No Longer Needed for a State Highway Purpose to the Abutting Landowner(s)

Overview

If a GE does not exercise its priority right to purchase a tract of right of way, abutting landowner(s) may be notified of their priority right to purchase the right of way. The purchase price of the right of way cannot be less than the amount offered to the GEs in their priority period.

In any sale or exchange where the abutting landowner is a trust, or a person who is a trustee, contact ROW Division Headquarters.

TxDOT may choose to offer the priority right of abutting landowners to purchase a share of the right of way that is proportionate to the amount of shared property line between the abutting tract and the subject right of way interest or TxDOT may choose to offer the entire tract to each owner of land abutting the property. If abutting landowners are offered a portion of the right of way tract, and any of the abutting landowners decline to exercise their priority right to purchase their portion, the remaining abutting landowners may purchase the adjusted portions of the tract, 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 right of way interest, the entire tract can be sold to that owner, even if their property does not abut the entire tract.

If multiple abutting landowners are offered their priority right to purchase an entire real estate tract of which a portion abuts their land, and in response, multiple abutting landowners express their intent to purchase on the offered terms, then the exercising abutting landowners will enter a sealed bid just among those abutting owners that expressed intent to purchase to determine who the purchaser will be.

If an abutting landowner proposes to exercise its priority right, the landowner will provide a [current licensed attorney's opinion](#) that based on an examination of the deed records, identifies all of the landowner(s) abutting the property to be sold.

Section 7 — Sale of Right of Way (Fee Simple) No Longer Needed for a State Highway Purpose by Sealed Bid

Sale by Sealed Bid

Right of way no longer needed for a state highway purpose may be sold by sealed bid to the general public if the appropriate governmental entities with condemnation power and the abutting landowners do not exercise their priority right to purchase the right of way.

The minimum bid shall no less than the price offered to the GE's and/or the abutting landowners during their priority purchase periods.

Before a general public sealed bid opening, a legal notice must be published in a newspaper of general circulation in the county in which the subject tract is located once a week for three consecutive weeks. The sealed bid opening shall occur no less than 20 days after the last publication.

The successful bidder shall be determined solely on the basis of the highest conforming bid submitted.

Section 8 — Disposition of Access Rights

Overview

When an abutting landowner wants to acquire access rights for a driveway location where access is denied to the highway facility, as a result of a prior deed, judgment, or relinquishment of asset, use the SOP “Designation and Sales of Access Rights”.

If a public street is proposed to intersect with the frontage road of an existing controlled access facility, TxDOT should coordinate with the Design Division.

If the sale of a real estate asset will affect the access of other land owners to a highway, a plan must be made to maintain reasonable access to a public road.

Completion of Transaction

See instructions outlined under [Section 12 — Closing Procedures and Map Notations](#).

Section 9 — Sale of Easements No Longer Needed for a State Highway Purpose to Underlying Fee Owner

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.

TxDOT may only release an easement interest to the owner of the underlying fee title.

TxDOT will require:

- ◆ a legal description of the easement interest
- ◆ an approval by the District in which the easement interest is situated
- ◆ an appraisal of the easement interest prepared to TxDOT required standards
- ◆ a certification by an attorney licensed in Texas that the future grantee is the current owner of the underlying fee.

Section 10 — Exchange of Real Property Interests

Overview

TxDOT has the authority to exchange an interest in real property no longer needed for another interest in real property needed for a state highway purpose. For transactions involving an exchange, rather than the sale of right of way, GE's and abutting landowners do not have a priority right to purchase the property.

TxDOT will follow the initial procedures outlined in [Section 3 — Initial Procedures for all Dispositions](#) and the submission requirements in [Section 4 — Sale of Right of Way \(Fee Simple\) No Longer Needed for State Highway Purpose to a GE under the Statutory Priority](#). TxDOT needs to verify that the state owns fee title in right of way that can be exchanged for new right of way. In addition, TxDOT will need to complete these steps for the acquisition portion of the exchange:

- ◆ order a title commitment for the new real property
- ◆ complete any title curative needed for the new real property
- ◆ determine fair market value of the new and existing real property
- ◆ prepare an appropriate instrument for the new real property interest to the state and have the appropriate parties execute it

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

After the fair market value of the real properties are determined, two situations can occur:

- ◆ If the existing real property is worth more than the new property, then the landowner(s) will owe the state the cash difference. An escrow agreement may be required to outline the responsibility of each party to this arrangement. Please contact ROW Division Headquarters for guidance about escrow agreements.
- ◆ If the new real property is worth more than the existing real property, then the value of the existing real property reduces the amount of money that the state owes the landowner(s) for the new real property. The state can pay the landowner(s) the cash difference, or the landowner(s) can donate the difference. If the landowner(s) decides to donate the cash difference and the difference is \$500 or more, then a modified donation agreement will be needed.

ROW Division Headquarters will coordinate preparation of the donation agreement. When the landowner(s) signs the deed conveying the new real property to the state, they can also sign the donation agreement. ROW Division Headquarters will sign the donation agreement after the Commission passes a minute order accepting the donation.

After the deed of the new real property 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), ROW Division Headquarters prepares a minute order for the Texas Transportation Commission.

After the Commission passes the minute order approving the exchange and, if applicable, acknowledging the acceptance of the donation, ROW Division Headquarters will process the document conveying the existing real property 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 TxDOT contact and/or ROW Division Headquarters will follow the procedures in [Section 12 — Closing Procedures and Map Notations](#) to ensure updated right of way map(s) showing the exchange of the right of way no longer needed for a state highway purpose.

Occasionally TxDOT 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, Contract Services, and ROW Division Headquarters. Contact ROW Division Headquarters for guidance on this type of transaction.

Section 11 — Disposition Without Consideration of Right of Way Interests No Longer Needed

Overview

In certain situations, the statute provides for a quitclaim deed, correction deed or other instrument to an appropriate party without consideration. TxDOT has the option to follow the procedures in [Section 3 — Initial Procedures for all Dispositions](#) and applicable procedures in [Section 4 — Sale of Right of Way \(Fee Simple\) No Longer Needed for State Highway Purpose to a GE under the Statutory Priority](#).

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. ROW Division Headquarters is available to provide guidance regarding determining if language in documents is a reversionary clause.

A \$300 service fee is required for ROW Division Headquarters to prepare a minute order and process an instrument quitclaiming or releasing the state's title to honor a reversionary clause. A GE 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.

TxDOT submission requirements and the ROW Division Headquarters procedure are similar to those in [Section 4 — Sale of Right of Way \(Fee Simple\) No Longer Needed for State Highway Purpose to a GE under the Statutory Priority](#). However, there may not be an appraisal or 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 may 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 a GE
- ◆ record title is in the name of a GE 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.

When a highway or highway segment is recommended for removal from the highway system, TxDOT will submit the required information to ROW Division Headquarters.

TxDOT's written recommendation to ROW Division Headquarters, with a copy to the Transportation Planning and Programming Division (TPP), must include:

- ◆ TxDOT'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 a GE, then a resolution will be needed from the GE requesting that the right of way be removed from the system and quitclaimed or released to the GE
- ◆ 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.

ROW Division Headquarters will:

- ◆ review TxDOT's request and obtain concurrence from TPP
- ◆ notify TxDOT 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 instrument for signatures
- ◆ send the fully executed instrument to the TxDOT contact for recording and for delivery to the grantee
- ◆ modify right of way map(s) to reflect the transaction.

TxDOT 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 12 — Closing Procedures and Map Notations

Procedures

ROW Division Headquarters will modify the right of way map(s) to reflect the sale/exchange and ensure that the sale/exchange documents are properly recorded in the appropriate county property records.

ROW Division Headquarters is the office of record for maintaining all real estate transaction records.

Section 13 — Proceeds from the Use or Disposition of Federally Funded Property

Overview

The federal share of net income from the use or disposal of real property interests obtained with title 23 funds shall be used by TxDOT for activities eligible for funding under title 23.

Where project income derived from the use or disposal of real property interests is used for subsequent title 23-eligible projects, the funds are not considered federal financial assistance and use of the income does not cause title 23 requirements to apply.

Chapter 2 — Disposition of Real Property Facility Sites No Longer Needed for a State Highway Purpose

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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 generally responsible for managing all of TxDOT's sites. TxDOT 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, TxDOT should contact the Support Services Division about the current procedure.

Section 2 — Types of Transactions

Overview

Note: The *ROW Property Management Manual* provides guidance for disposition of property interests that are no longer needed for state highway purposes. Unless otherwise stated, procedures outlined below apply to property interests that are no longer needed for state highway purposes.

The following are the most common transactions:

- ◆ [“Sale of Site and Any Improvements No Longer Needed for a State Highway Purpose to a GE”](#)
- ◆ sale of site and any improvements no longer needed for a state highway purpose by sealed bid to the general public (see [“Sealed Bid Sales”](#))
- ◆ [“Exchange of Real Property”](#))

Unlike sales of right of way (fee simple) no longer needed for a state highway purpose, the abutting landowner does not have the priority to purchase sites and improvements that are no longer needed for a state highway purpose.

Section 3 — Sale of Site and Any Improvements No Longer Needed for a State Highway Purpose to a GE

Overview

Note: The *ROW Property Management Manual* provides guidance for disposition of property interests that have been determined by a District Engineer to be no longer needed for state highway purposes. Unless otherwise stated, procedures outlined below apply to property interests that are no longer needed for state highway purposes.

TxDOT should contact identified governmental entities to determine if any of these entities need the site. TxDOT's letter should state that these entities will have thirty days to notify TxDOT if they are interested in purchasing the site. If only one of these entities needs the site, then TxDOT will proceed with the sale of the site and any improvements. If more than one of these entities is interested in purchasing the site, the property can be sold through a sealed bid process between entities.

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

If none 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.

Appraisal and Recommended Value

To initiate project setup in ROWIS, use the SOP “Project Release for Real Property Disposition”.

TxDOT Written Recommendation

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

- ◆ 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

Resolution from GE

TxDOT obtains a resolution from the GE authorizing the purchase of the site and any improvements for the approved value.

TxDOT forwards the resolution to ROW Division Headquarters.

Conveyance of Property

ROW Division Headquarters 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. ROW Division Headquarters 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 Headquarters.
- ◆ Notify the purchaser to send funds for purchase to the Finance Division (FIN) for deposit into the state highway fund.
- ◆ After FIN notifies ROW Division Headquarters that the funds have been deposited, ROW Division Headquarters sends the document to the TxDOT contact for recording and delivery to the purchaser.

Completion of Transaction

After TxDOT receives the recorded conveyance document, follow the procedures outlined under [“Proceeds from the Use or Disposition of Federally Funded Property”](#) in Chapter 1.

Section 4 — Sealed Bid Sales

Overview

Note: The *ROW Property Management Manual* provides guidance for disposition of property interests that are no longer needed for state highway purposes. Unless otherwise stated, procedures outlined below apply to property interests that are no longer needed for state highway purposes.

If a GE does not want to purchase a site no longer needed for state highway purposes, then the site will be sold by sealed bid after being advertised to the general public.

For TxDOT submission requirements for this type of sale, refer to [Section 3 — Sale of Site and Any Improvements No Longer Needed for a State Highway Purpose to a GE](#) above.

Procedures Prior to Bid Opening

After ROW Division Headquarters has received TxDOT's submission, and all the necessary concurrences and approvals have been obtained, ROW Division Headquarters can:

- ◆ assist in preparing a Notice of Sale of State Land to be used in the newspaper ad
- ◆ assist 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, Section 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.

TxDOT will pay for the survey, if needed; the appraisal fee; and the newspaper and advertising costs. The successful bidder will reimburse TxDOT for these costs as part of the bid deposit. If there is no successful bidder, these costs are absorbed by TxDOT. Before TxDOT proceeds with a second bid sale, check with governmental entities to determine whether they are interested in purchasing the site.

Bid Opening

On the day of the bid opening, TxDOT 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 ROW Division Headquarters 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.

Review of Bids

ROW Division Headquarters reviews the bid forms and advises TxDOT if the highest bidder's form is acceptable. If the highest bidder is a corporation or partnership, ROW Division Headquarters 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

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

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

Section 5 — Exchange of Real Property

Overview

Refer to previous chapter's [Section 10 — Exchange of Real Property Interests](#).

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

TxDOT coordinates site selection with the Maintenance Division (MNT), which is responsible for all charges and costs. TxDOT'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, TxDOT will:

- ◆ provide ROW Division Headquarters with a current title commitment. The commitment is valid for ninety days from the effective date and should be updated when necessary.
- ◆ advise ROW Division Headquarters 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 ROW Division Headquarters 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 TxDOT will need to investigate this ownership with the title company. MNT has authorized TxDOT to pay for a mineral title search, if this is necessary.

After at least 51 % of the mineral owners are identified, then TxDOT 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 TxDOT will obtain a release from the owner of the lease. ROW Division Headquarters is available to coordinate research at the Texas Railroad Commission to verify active oil and gas leases.

Appraisal

ROW Division Headquarters advises TxDOT to have the land appraised.

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

TxDOT approves the recommended value for the land without review from ROW Division Headquarters, and sends a copy of the approved value form [ROW-A-10S](#) to ROW Division Headquarters.

Offer and Counteroffer

TxDOT makes a written offer to the owner(s) to purchase the land for the approved value.

If the owner(s) make a counteroffer to TxDOT's offer to purchase the site for the approved value, then TxDOT should forward a memorandum to MNT with a copy to ROW Division Headquarters outlining the reasons for accepting or rejecting the counteroffer. MNT will evaluate the counteroffer and advise TxDOT 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 TxDOT a letter containing the terms of the sale. TxDOT will forward this letter to ROW Division Headquarters.

Deed, Memorandum of Agreement, and Closing

After an agreement has been reached between the owner(s) and TxDOT to sell the property, ROW Division Headquarters will assist TxDOT 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.

TxDOT submits the following to ROW Division Headquarters:

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

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

TxDOT prepares and submits a Billing Worksheet, Form 2557, and sends it to TxDOT's accounting section. Then TxDOT's accounting section will prepare a voucher to request the warrant.

ROW Division Headquarters 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 TxDOT, and TxDOT closes the transaction.

TxDOT obtains the title policy. TxDOT 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.

TxDOT 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 ROW Division Headquarters.

ROW Division Headquarters 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 Maritime Division is the lead Division for this type of acquisition, and acquisition costs come out of the Maritime Divisions's budget. ROW Division Headquarters 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, ROW Division Headquarters will furnish instructions to TxDOT 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 — Leasing Policy](#)

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, Section 202.052](#)
- ◆ [Title 43 Texas Administrative Code \(43 TAC\), Sections 21.600 to 21.606 inclusive](#)
- ◆ [Title 23 Code of Federal Regulations \(23 CFR\), Sections 710.405 to 710.407](#)
- ◆ [Texas Property Code, Title 4, Chapter 21, Subchapter E, Sections 21.101 to 21.103](#)

The property interest to be leased must be leased for a purpose that is not inconsistent with applicable highway uses; the consideration for the lease must be at least fair market value; and will not be needed for a highway purpose during the term of the lease.

Assets Eligible for Lease

Any real property asset or interest therein which will not be needed for highway purposes 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;
- ◆ District sites;
- ◆ office space; and
- ◆ mineral interests.

TxDOT will not enter into a lease for any type of sign it regulates. 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. 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. 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 — Leasing Policy

Requests to Lease

A person desiring to lease a highway asset shall submit a request through TxDOT's website or by any other manner. Inquiries not directly received by ROW Real Estate Services Section (RES) must be forwarded to RES for processing.

Term

TxDOT will make a determination of the recommended term for leases. The law mandates that leased property interest is not needed for a highway purpose **for at least the term of the lease**. 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 by the ROW Division Director. All other leases are required to be submitted to the Commission for approval. TxDOT's long term planning period is twenty years; therefore, **lease terms should not extend beyond twenty years**. However, there are situations where there will be construction of substantial improvements under a lease that may require an exception to this. The Commission at its sole discretion may approve a lease of any term.

Survey

Once TxDOT determines that a property can be leased, the area needs to be specifically identified by a legally sufficient property description. When necessary 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. The identified leased area will serve as the basis for the appraisal or valuation, as the property description in the lease and, if the lease requires Commission approval, as an exhibit in the minute order. The survey is to be provided by the lessee, at the lessee's expense, and will need to be reviewed and approved by TxDOT prior to its incorporation, unless TxDOT already has a property description.

A proposed lessee of real property may contract and make payment directly with a licensed surveyor. TxDOT may assist the requester with selection of the surveyor and should provide the requester with instructions to the surveyor to assure the work product is compatible with TxDOT requirements. The proposed lessee is responsible for the full survey cost.

Appraisal / Valuation

The consideration for a lease must be for at least fair market rental value. Appraisal is merely a component of determining fair market value of the real property and is not necessarily the dispositive factor in the determination. If the commission finds it to be in the public interest, the commission may waive the fair market value requirement for a lease to a public utility provider or

an institution of higher education as defined by the [Education Code, Section 61.003](#), or for social, environmental, or economic mitigation purposes.

A proposed lessee of real property may contract and make payment directly with a TxDOT approved appraiser. TxDOT 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 TxDOT requirements. The proposed lessee is responsible for the full appraisal cost.

Methods of Awarding Leases

TxDOT may, in its sole discretion, award a lease by any method it determines to be in its best interest including but not limited to:

- ◆ Direct negotiation with an interested party
- ◆ Sealed bid
- ◆ Auction

RES will analyze identified surplus property that may be leased to determine the most effective method of award. Considerations may be, but are not limited to, value of property, number of abutters, number of interested parties, potential uses, lease term, market analysis.

Per 23 CFR 710.403 (A) and 23 CFR 710.405(e), FHWA is the approving authority for ROW leases and use agreements on the interstate. Application should be sent to FHWA together with any recommendation and necessary supplemental information.

Preparation of Lease Forms

TxDOT is responsible for drafting lease agreements using TxDOT's standard forms.

Insurance and Bonds

Each lease requires the lessee to carry **commercial general liability** insurance insuring against injury and damage during the lease term. 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 canceled.

The lessee must furnish TxDOT with a certificate of insurance providing the required coverage.

If improvements will be constructed under a lease, the lessee may be required to 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 TxDOT.

RES will receive and maintain the certificate of insurance and surety bond information that is provided.

Lease Management

Once the lease is executed and is in effect, TxDOT is responsible for managing the lease to ensure all required documents are in compliance and that the lessee honors all obligations outlined in the lease.

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 RES in writing.

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, TxDOT 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 TxDOT deems necessary to facilitate its approval.

Lease Extensions and Amendments

A lease may be extended, provided that the property is not needed for highway purposes during the term of the extension.

The rental value must be reevaluated if at least five years have passed since the last evaluation; unless the lease contains a rent schedule with escalations.

There are occasions when circumstances change and a lease must be amended, contact RES for guidance.

Rental Payments and Collection for Non-Payment

The Finance Division is responsible for receiving all rental payments for leases.

All rental payments should be **deposited immediately upon receipt**, into Fund 6 with reference to the lease number and object of [revenue code 3746](#), and department code 550087. The Finance Division shall provide reports to RES of payments received and delinquent accounts.

The Finance Division will be responsible for collection activities such as Notice of Non-Payment Letters. The Finance Division and RES will coordinate on collection activities to include referral to the Office of the Attorney General.