

# **ROW Appraisal and Review Manual**



Revised June 2023

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## **Manual Notice 2023-1**

**From:** Kyle Madsen, Right of Way Division Director

**Manual:** ROW Appraisal and Review Manual

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### **Purpose**

This revision is intended to update the manual to match current requirements for right of way appraisals.

### **Changes**

All chapters contain revised text. Removed ROWIS references and replaced with TxC references and processes and added or updated links to regulatory code references.

**Chapter 1** - Updated *Section 1 - Preface* and *Section 4 – Cost Estimates for Design Purposes*.

**Chapter 2** - Updated *Section 1 - Introduction*, *Section 2 - Appraiser Qualifications & Evaluations*, *Section 3 - Certified Appraiser Process*, *Section 4 – Other Services*, and *Section 11 – Economic Adjustments*.

**Chapter 3** - Removed ROWIS references and replaced with TxC references and processes.

**Chapter 4** - Updated *Section 1- General*.

**Chapter 5** - Updated *Section 2 – Reviewing Personnel*.

**Chapter 6** - Removed ROWIS references and replaced with TxC references and processes.

**Chapters 7, 8, 9, & Appendix A**- Minor formatting and grammar updates.

### **Disclaimer**

Some hyperlinks will not work when a PDF version of this manual is downloaded and used offline.

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## Archives

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

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# Chapter 1 — Introduction

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[Section 2 — The Review Appraiser](#)

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## Section 1 — Preface

### Purpose

The purpose of this manual is to provide a flexible guide to the understanding and effect of the existing state and federal laws and policies, as they apply to the field of appraisal and appraisal review, for those appraisers or reviewers working for the Texas Department of Transportation (TxDOT) or local public agencies (LPAs) involved with TxDOT on transportation projects.

The appraisal policy subjects discussed here are not usually encountered in other types of appraisals. They are unique to right of way appraising, particularly for partial acquisitions.

### Manual Organization

[Chapter 2](#), Operating Procedures, covers the type & number of appraisals, appraiser qualifications, & evaluations, use of fee and staff appraisers, other services, assigning appraisals, independent appraisals, confidentiality of appraisals, working with property owners, reappraisals, property adjustment work & economic adjustments, and other matters pertaining to the appraisal assignment.

[Chapter 3](#), Valuation – Legal Aspects and Policy, considers those items specific to right of way appraising and reviewing. Items discussed are the purposes of appraisals; the definition of market value; legal instructions on Personalty and Realty, Non-compensable Items, Damages and Enhancements, Control of Access Rights; and, procedures on appraisals of specific types and situations such as Advertising Sign and Leasehold interests, Bisected Improvements, Convenience Stores, Fencing, Mobile Homes as Realty, Partial Acquisitions, Private Utility Lines, Project Influence, etc. The discussions of a legal nature do not attempt to give the full basis for the law. They set forth the accepted opinions concerning the handling of items in the appraisal process. The appraiser may or may not agree with these conclusions. However, these conclusions conform to the laws of Texas and the appraiser must follow them for an appraisal to be legally correct. In its role as a sovereign governmental agency, TxDOT determines policy on right of way appraisal procedures with these conclusions in mind.

[Chapter 4](#), Appraisal Forms, discusses requirements and instructions in completing the Real Estate Appraisal Report (forms ROW-A-6 and ROW-A-5); Real Estate Value Finding Report (form ROW-A-7); and, the Memorandum of Value Determination (form ROW-A-8). Also discussed are miscellaneous forms such as forms ROW-A-9 (Property Classification Agreement); ROW-A-10D (Value Determination); ROW-A-13 (Declaration as to Method of Handling of Mobile Home); and, form ROW-A-PVD (Parcel Value Determination for LPA's).

[Chapter 5](#), Appraisal Review, discusses the review of appraisal reports plus special appraisal problems that do not appear in all reports. The sections within this chapter discuss reviewing personnel;

reviewing for completeness, consistency, and variances in land and component values; reviewing the appraisal of the “Remainder After” and “uneconomic” remainders; and reviewing the appraisal of lessee interests and updated values.

[Chapter 6](#), Establishing Right of Way Values, describes the completion of form ROW-A-10 (Tabulation of Values) to obtain approval of a recommended value, a revised value, a cancellation of a value, and/or an administrative settlement. Also discussed are “overlooked items of value” and the discussion of an “X-parcel.”

[Chapter 7](#), Eminent Domain – State Acquisition, deals with the recommendations of appraisers and expert witnesses for eminent domain proceedings and/or jury trials; obtaining updated or new appraisal reports; Special Commissioners’ Award and Mediation Settlements analysis procedures; participation guidelines for the Pre-Mediation Conference and the actual Mediation; and, a discussion on using comparable sales subsequent to the “Date of Taking” in appraisal reports.

[Chapter 8](#), LPA Acquisition, provides information on the state's program to acquire right of way in cooperation with LPAs (Local Public Agencies), with or without federal-aid, though most of the information in the manual applies to both the federal aid and LPA programs. The exceptions that apply to the LPA program are noted in this special chapter. Appraisal, appraisal review, and eminent domain guidelines are also included in this chapter.

[Chapter 9](#), Special Site Appraisal Situations, contains information and procedures regarding appraisals and valuations of:

- ◆ engineering and maintenance sites,
- ◆ dredge disposal sites,
- ◆ property no longer needed for highway purposes,
- ◆ leasing of state-owned property,
- ◆ Aviation Division site acquisitions, and
- ◆ “fee in lieu of” mitigation assignments/procedures.

There is an appendix:

- ◆ Appendix A: a review and outline of [Pre-appraisal Contact Procedures](#)

## Acronyms and Abbreviations Used in This Manual

CFR	Code of Federal Regulations
Commission	Texas Transportation Commission
CS (formerly OAS)	Commercial Signs (formerly Outdoor Advertising signs (billboards))
DBE	Disadvantaged Business Enterprise
FHWA	Federal Highway Administration
LG	Local Government
LPA	Local Public Agency, i.e., a municipality, county, city, etc.
OAG	Office of the Attorney General
PREAS	Professional Real Estate Appraisal Services
RFP	Request for Proposal
ROW	Right of Way
ROW PD	Right of Way Project Delivery
ROW Program Office	Right of Way Division Headquarters in Austin, TX
ROWAPS	Right of Way Acquisition Professional Services
ROWIS (former software application system)	Right of Way Information System, TxDOT's former right of way acquisition data storage, tracking and retrieval software application
TAC	Texas Administrative Code
TALCB	Texas Appraiser Licensing and Certification Board
TxC (This software replaces ROWIS.)	TxDOTCONNECT
TxDOT	Texas Department of Transportation
USPAP	Uniform Standard of Professional Appraisal Practice

## Definitions Used in This Manual

**Administrative Review** - An administrative review process performed by a TxDOT staff member that is not a licensed appraiser.

**Administrative Reviewer** - A TxDOT staff member who signs the administrative review document only, but is not a licensed appraiser.

**Appraisal** - The term appraisal means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described prop-

erty as of a specific date, supported by the presentation and analysis of relevant market information. (source: [49 CFR 24.2\(a\)\(3\)](#))

**Appraisal Consulting** - The act or process of developing an analysis, recommendation, or opinion to solve a problem, where an opinion of value is a component of the analysis leading to the assignment results. An appraisal consulting assignment involves an opinion of value but does not have an appraisal or an appraisal review as its primary purpose.

**Appraisal Practice** - Valuation services performed by an individual acting as an appraiser, including but not limited to appraisal and appraisal review. Appraisal practice is provided only by appraisers, while valuation services are provided by a variety of professionals and others. (source: *USPAP 2022-2023 edition*)

**Appraisal Review** - (noun) The act or process of developing an opinion about the quality of another appraiser's work (i.e., a report, part of a report, a work file, or some combination of these), that was performed as part of an appraisal or appraisal review assignment; (adjective) of or pertaining to an opinion about the quality of another appraiser's work that was performed as part of an appraisal or appraisal review assignment. (source: *USPAP 2022-2023 edition*)

**Appraiser** - One who is expected to perform valuation services competently and in a manner that is independent, impartial, and objective. (source: *USPAP 2022-2023 edition*)

(2nd Option) "Certified appraiser" means a person who is certified under this chapter to practice as a certified general or certified residential appraiser. (source: [Texas Occupation Code, Chapter 1103.003\(5-a\)](#))

(3rd Option) An individual certified by the Texas Appraiser Licensing and Certification Board to provide real estate appraisal services in Texas. (source: [43 TAC 9.81\(1\)](#))

**Commercial Sign** - A sign that is: (A) at any time intended to be leased, or for which payment of any type is intended to be or is received, for the display of any good, service, brand, slogan, message, product, or company, except that the term does not include a sign that is leased to a business entity and located on the same property on which the business is located; or (B) located on property owned or leased for the primary economic purpose of displaying a sign. (source: [43 TAC 21.142](#))

**Department** - Texas Department of Transportation (also see TxDOT as an acronym).



**Department Certified Appraiser** - A real estate appraiser, either state-certified general or state-certified residential having received department certification with TxDOT. (*See definitions at [43 TAC 9.81](#)*)

**Eminent Domain** - Authority to exercise the power to take private property for public use upon payment of just or adequate compensation, based on the theory that property is granted to the property owner upon condition that it may be taken to serve the necessities for the sovereign power. Agencies created by the state to serve the public may exercise the power of eminent domain where that power is conferred by statute.

**Jurisdictional Exception** - An assignment condition established by applicable law or regulation, which precludes an appraiser from complying with a part of USPAP. (*source: USPAP 2022-2023 edition*)

**Off-System** - Off-system is off the TxDOT-designated highway system. (*source: TxDOT Glossary October 2013*)

**On-System** - On-system is on the TxDOT-designated highway system. (*source: TxDOT Glossary October 2013*)

**OnBase** - OnBase is the enterprise content management platform used by TxDOT to electronically store documents.

**Professional Services** - Services directly related to professional practices as defined by [Texas Government Code, Chapter 2254, Subchapter A](#).

**Real Estate Appraiser** - An individual licensed and having either residential certification or general certification to provide real estate appraisal services in the State of Texas. For the purposes of this manual, the term “contract fee appraiser” is used when referencing a licensed certified residential appraiser or certified general real estate appraiser that is performing appraisal services for TxDOT and is signing and certifying the appraisal document.

**Real Property Consulting** - The act or process of developing and reporting an analysis, recommendation, or opinion concerning real property, where an opinion of value is not a component of the analysis, recommendation, or opinion.

**Request for Proposal (RFP)** - A request for submittal of a proposal that demonstrates competence and qualifications of the provider to perform the requested services and shows an understanding of the specific project.

**Review Appraiser** - An individual licensed and having residential certification or general certification to provide real estate appraisal services in the State of Texas. For purposes of this manual, the term “contract review appraiser” is used when referencing a licensed certified residential or certified general real estate appraiser that is performing appraisal review services for TxDOT and is

signing and certifying the appraisal/review document. The type of property reviewed must fall within the appraiser's permitted scope of practice under the Texas Appraiser Licensing and Certification Act.

**Right of Way Acquisition Professional Services (ROWAPS)** - Work disciplines of right of way acquisition services, including appraisal services, but excluding surveying, engineering, or architectural services.

**TxDOTCONNECT (TxC)** - TxDOT's custom-built system for managing the delivery of transportation programs, projects, and right of way. Visit TxDOT's website for more [TxDOTCONNECT resources](#). TxC replaces the Right of Way Information System (ROWIS) software program.

**Uniform Act** - The term Uniform Act means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (*Pub. L. 91-646, 84 Stat. 1894; 42 U.S.C. 4601 et seq.*) and amendments thereto.

**Work Authorization** - A written authorization to begin work issued according to the entity and prime contract in place with TxDOT. The work authorization includes a detailed scope of work as well as a contract period and maximum amount payable that does not exceed the time or money restrictions specified in the prime contract.

## The “Prompt Payment Law”

The “Prompt Payment Law,” codified in Government Code, Section 2251, prescribes that a payment by a state governmental agency under a contract executed on or after September 1, 1987, is overdue on the 31<sup>st</sup> day after the later of:

- ◆ the date the governmental entity receives the goods under the contract;
- ◆ the date the performance of the service under the contract is completed; or
- ◆ the date the governmental entity receives an invoice for the goods or service.

A payment begins to accrue interest on the date the payment becomes overdue.

Therefore, it is imperative that the ROW Program Office, Real Estate Services Section of ROW Division, and ROWAPs make every effort to process appraisal payments in a timely manner, and thereby avoid incursion of interest.

## Section 2 — The Review Appraiser

### Qualifications of the Review Appraiser

Contract (PREAS) appraisers and staff appraisers that are credentialed as certified general real estate appraisers or certified residential appraisers by TALCB perform all appraisal review assignments for TxDOT that involve an opinion of value for real estate. The review appraiser also occupies the unique position of arbiter of the many issues presented in the appraisals. Since the appraisals provide the main basis upon which the state endeavors to determine adequate (just) compensation to acquire property, it follows that nothing less than the best possible effort is acceptable.

The appraisal reflects the appraiser's:

- ◆ professional opinion of value;
- ◆ appraisal skills and abilities;
- ◆ knowledge of a specific property;
- ◆ professional judgment in application of recognized methods and techniques that apply to the appraisal assignment, knowledge of local financing, market conditions, market trends and other criteria.

### Functions of Review Appraisers

The functions of the review appraisers are comparable in responsibility to other major functions of fieldwork. Review appraisers are responsible for:

- ◆ appraisal work that is commensurate with the types of assignments permitted by the appraiser's state credential,
- ◆ advising fee appraisers, administrative reviews or technical reviews that involve an opinion of value must be prepared by appraisers that are credentialed as certified general or certified residential real estate appraisers,
- ◆ recommending reports to be released for negotiation,
- ◆ determining retention values,
- ◆ assisting in eminent domain cases, and
- ◆ furnishing appraisal support for acceptance of Special Commissioners' Awards and recommended settlements of eminent domain lawsuits.

In addition, ROW PD:

- ◆ assists the engineering staff in highway location work,

- ◆ prepares estimated right of way costs on possible alternate routes and for programming purposes,
- ◆ acts in an advisory capacity where right of way costs relate to engineering matters,
- ◆ collects basic data on the costs of new construction, fences, and advertising signs,
- ◆ maintains a file of comparable sales information on each right of way project, and
- ◆ assigns parcels to be appraised and creates work authorizations.

### ROW Program Office Review Appraisers

The Appraisal Branch of the ROW Program Office is concerned with the review and processing of appraisals, management of Professional Real Estate Appraisal Service contracts, appointment of staff appraisers submitted and recommended for approval by the ROW PD offices. This branch is responsible for:

- ◆ reviewing special case appraisal reports;
- ◆ reviewing the ROW PD analysis of the appraisals and their recommended values;
- ◆ preparing review comments;
- ◆ maintaining the statewide list of Department Certified Appraisers on TxDOT's ["Department certification for professional real estate appraisers"](#) web page;
- ◆ recommending for the ROW Division Director's approval all retention values and the values of all properties to be acquired for:
  - highway right of way purposes (Districts approve acquisition values. The ROW Program Office approves the sales value of surplus right of way.),
  - building and warehouse sites,
  - storage and other maintenance uses, or
  - borrow sources;
- ◆ assuring receipt of adequate documentation of appraised and approved values.

## Section 3 — Preparing Right of Way Acquisition Estimates for New Projects

### Overview

During advance planning for a new project, the estimated cost of right of way must be accurately developed. Alignment selection and overall project financial feasibility may be critically impacted by right of way cost estimates; therefore, the estimates must be as accurate as timing and circumstances permit.

Contemplated projects usually fall into two categories:

- ◆ a completely new right of way, or
- ◆ a widening of an existing highway.

The completely new right of way is usually more economical because the design avoids the more expensive improvements. The greatest challenge encountered here is in estimating the value of the remainder.

The area of economic influence will be the same unit values for the land indicated by the market data for the area. To this, the appraiser adds the contributory value of the improvements within the acquisition, and the element of damage or enhancement to the remainder, if any.

Sketches of certain improvements, including their size, nature of construction, probable interior installations, degree of depreciation, etc. are essential to substantiate the estimate and make proper adjustments, especially when right of way width may change.

Therefore, the value of the land areas with the same economic influences, plus the depreciated value of the improvements within that area, plus or minus damage or enhancement to the remainder, if any, equals the estimated cost of acquiring right of way for a particular segment.

The number of parcels and classification of properties involved are also essential for a determination of the cost of appraisal fees, as well as estimated eminent domain costs consistent with similar experiences in the area. These items are essential costs of right of way acquisition and must be included.

Other items that ultimately must be included are:

- ◆ cost of title work,
- ◆ acquisition expenses,
- ◆ utility adjustments, and
- ◆ relocation assistance expenses.

## Preparing Project Data Information

Every new project has physical and economic challenges unique to it, which must be understood before an acceptable estimate is accomplished. Without this preparation, the review appraiser is usually limited in his/her value recommendation to a value indicated by one of two appraisals. The appraisal information relative to any project is too diversified for proper retention, particularly if the project is of any consequence. Therefore, the accumulation of the following information in advance will be helpful in subsequent project development:

- ◆ a general description of the type of facility contemplated, whether full or partial access control, facility length, including whether the project is a new location or widening of an existing right of way;
- ◆ a brief outline of the area to be traversed;
- ◆ classification of properties involved;
- ◆ physical and economic areas of similarity;
- ◆ areas with and without utilities;
- ◆ areas in transition from one classification to another;
- ◆ areas of special characteristics; and
- ◆ highest and best use.

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## Section 4 — Cost Estimates for Design Purposes

### Procedure

Contract appraisers and qualified ROW staff may accomplish cost estimates for preliminary design purposes. Appraiser services are contracted in the same manner as right of way appraisal services by execution of a work authorization. The fee for cost estimates used for design purposes is a pre-determined lump sum fee based upon the established hourly rate for "appraisal consulting" located in the appraiser's fee schedule, multiplied by the number of hours requested by the appraiser to complete the assignment. Cost estimates for design purposes are project- or job-specific, rather than parcel-specific. Requests for cost estimating services for design purposes originate with R/W-PD which forwards them to the Design Division with complete information regarding the need for the proposed services. ROW PD then contacts the ROW Program Office to obtain a work authorization for the appraiser selected to perform the cost estimate.

Since these cost estimates are for design purposes only, they need not be as detailed as an appraisal report for right of way acquisition. The scope of work used in a cost estimate for design purposes will be reflective of the intended use of the assignment. These reports will be made in narrative format, including the appraiser's transmittal letter, a listing of comparable sales, and a brief narrative discussion for each property affected.

To provide needed documentation and facilitate the review of the cost estimate, that portion of a city or county map necessary to show the subject parcels and comparable sales should be made a part of the report. The location of the comparable sales should be identified in a manner that they may be correlated with the sales described in other parts of the report.

Considerable time passes before schematics are approved and the project released for right of way acquisition, so data obtained normally will be of little value for actual right of way purchases. Therefore, an appraisal report prepared by a contract appraiser or an appropriately credentialed staff appraiser will be required to determine the current market value for right of way acquisition.

Payment to the appraiser for cost estimating services will be in accordance with the appraiser's work authorization.

## Chapter 2 — Operating Procedures

### Contents:

[Section 1 — Introduction](#)

[Section 2 — Appraiser Qualifications & Evaluations](#)

[Section 3 — Certified Appraiser Process](#)

[Section 4 — Other Services](#)

[Section 5 — Assigning Appraisals](#)

[Section 6 — Independent Appraisals](#)

[Section 7 — Confidentiality of Appraisals](#)

[Section 8 — Working with Property Owners](#)

[Section 9 — Reappraisals](#)

[Section 10 — Property Adjustment Work](#)

[Section 11 — Economic Adjustments](#)



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## Section 1 — Introduction

### Overview

This chapter covers the operational procedures in determining what type of appraisal is needed and appraiser qualifications.

### Type of Appraisals

- ◆ Acquisition related:
  - Appraisals: initial appraisals, second or additional appraisals, update appraisals, second or additional update appraisals, date of take appraisals, second or additional date of take appraisals, preparation & testimony appraisals
  - Review Appraisals: initial appraisals, second or additional appraisals, update appraisals, second or additional update appraisals, date of take appraisals, second or additional date of take appraisals, preparation & testimony appraisals
- ◆ Appraisal Consulting, a variety of services: acquisition related services, preparing right of way acquisition estimates for new projects, appraisals for design purposes
- ◆ Real Property Disposition Appraisals: initial appraisals, second or additional appraisals, update appraisals, second or additional update appraisals

### Number of Appraisals

Within the process of assigning and contracting with fee appraisers to appraise parcels on acquisition projects, ROW PD shall obtain the initial appraisal report by assigning a work authorization to a Department Certified Appraiser. If it is determined that controversial or complex appraisal issues exist, or if the parcel value is in excess of \$1 million dollars, a second appraiser work authorization **can be** assigned and a second appraisal completed.

Likewise, a third or additional appraisal report can be obtained when two appraisals obtained on a parcel reflect honest differences in opinion that prevent TxDOT ROW from conscientiously recommending a value for approval. ROW PD may want to consult with the ROW Program Office in deciding to obtain a third or additional appraisal.

NOTE: An update by the original appraiser on a parcel in eminent domain will be paid based on the appraiser's PREAS contract fee schedule. The time required to complete an update appraisal report may be less than the time required to complete the initial report; therefore, the appraisal fee for an update report is frequently lower than the fee charged for the initial appraisal report.

All approved values for parcels must be established by one of the following five methods:

- ◆ Form [ROW-A-5 Real Estate Appraisal Report](#), used for improved and comprehensive parcels.
- ◆ Form [ROW-A-5-OAS Real Estate Appraisal Report - OAS](#), used for improved and comprehensive parcels with Commercial Signs (formerly known as Outdoor Advertising Signs) affected by the acquisition.
- ◆ Form [ROW-A-6 Real Estate Appraisal Report](#), used primarily to value vacant land when minor improvements are valued on a depreciated cost basis, and with minor cost to cure items, such as re-fencing the remainder, and for simple land acquisitions and site improvements.
- ◆ Form [ROW-A-7 Real Estate Value Finding](#), used when the compensation centers on land value, and the expected acquisition is \$25,000.00 or less, or when there are minor cost to cure items.
- ◆ Form [ROW-A-8 Memorandum of Value Determination](#), used when a total compensation does not exceed \$10,000.00.

NOTE: Only qualified TxDOT ROW personnel may use forms *ROW-A-7 Real Estate Value Finding* or *ROW-A-8 Memorandum of Value Determination*, which are classified as waiver valuations. A waiver valuation is not an appraisal and is not subject to an appraisal review; moreover, the waiver valuation is not subject to the Uniform Standards of Professional Appraisal Practice. In addition, because a waiver is not an appraisal, the landowner must waive their rights to an appraisal in order for these forms to be used.

## Market Data Files

Although not required, ROW PD may find it helpful to develop data files of all recent real property sales in or near the subject project before pre-appraisal contact or appraising begins. Such files need not be elaborate but should indicate the location and date of sale so during appraisal review it may be determined that the appraiser considered adequate sales. In addition, accumulate information regarding building costs, fencing costs, etc. for the area of each project under development.

## Section 2 — Appraiser Qualifications & Evaluations

### Selecting Appraisers

Regulation requires that qualified appraisers perform appraisal functions.

By regulation, anyone performing an appraisal, or appraisal related services in determining an opinion of value, or the act or process of developing an opinion of value, shall be competent and qualified to perform these functions per [49 CFR 24.103\(d\)](#); 43 TAC Chapter 9 Subchapter F.

All real estate appraisers performing appraisals for TxDOT must be licensed by the Texas Appraiser Licensing and Certification Board, as provided in the Texas Appraiser Licensing and Certification Act ([Texas Occupation Code, Chapter 1103.003](#)). Title 7, Section 1103.03, defines appraisal “as an opinion of value; or the act or process of developing an opinion of value”. This licensing requirement also applies to federally related transactions.

49 CFR 24.103(d)(2) requires an agency to utilize a state licensed or certified real estate appraiser when an appraisal is prepared by a fee contractor. TxDOT requires individuals to be TxDOT Department-Certified before they can perform any appraisal or appraisal related function.

### Types of Appraisers

The types of appraisers are:

- ◆ TxDOT Department Certified Appraiser
- ◆ TxDOT PREAS contract appraiser
- ◆ TxDOT staff appraiser
- ◆ TxDOT ROWAPS appraiser
- ◆ LPA appraiser

### Assignment Type by Appraiser Classification

Assignment Type	Department Certified Appraiser	PREAS Contract Appraiser	TxDOT Staff Appraiser
<b>ROWAPS-</b> Appraisal functions: Appraisal, Review Appraisal, Consulting, and Prep & Testimony	X	X	
<b>LPA *</b> Appraisal functions: Appraisal, Review Appraisal, Consulting, and Prep & Testimony **	X	X	
<b>ROW Acquisitions-</b> Appraisal functions: Appraisal, Review Appraisal, Consulting, and Prep & Testimony		X	X
<b>Real Property Disposition-</b> Appraisal functions: Appraisal, Review Appraisal	X	X	X

\*If on-system the LPA will select an appraiser from the TxDOT Department Certified Appraiser list. If off-system the LPA will select an appraiser according to their approved process. On-system means on TxDOT's designated highway system. Off-system means off the TxDOT designated highway system.\*\*LPAs may use staff appraisers to perform all appraisal functions as long as they are licensed as certified residential or certified general appraisers by the Texas Appraiser Licensing and Certification Board.

TxDOT appraisal assignments are prepared by Department Certified Appraisers, PREAS contract appraisers, and TxDOT staff appraisers. The chart above illustrates the type of assignment each classification of appraiser is authorized to perform.

Department Certified Appraisers are eligible to perform appraisal functions for ROWAPS providers, LPAs, and real property disposition on behalf of the property owner, but cannot be the signing appraiser for any appraisal assignment under a PREAS contract.

PREAS Contract appraisers are eligible to perform appraisal functions for ROWAPS providers, LPAs, ROW acquisitions, and real property dispositions.

TxDOT staff appraisers may perform all ROW acquisition and real property disposition appraisal functions, and there is no limitation placed on the value or type of parcel on which the staff appraiser may be used, except for the restrictions placed on the appraiser by their state appraisal credential.

### Fee Appraiser Qualification Process

TxDOT certifies all real estate appraisers before they can perform any appraisal or appraisal related function.

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## Becoming a TxDOT Department Certified Appraiser

Access [www.txdot.gov](http://www.txdot.gov):

- ◆ Select the “Do Business” link,
- ◆ Under “Right of Way” select the link titled “Department Certification for Professional Real Estate Appraisers”,
- ◆ Select the form [ROW-A-1 Application for Department Certification as a Professional Real Estate Appraiser](#),
- ◆ Return the completed application to: TxDOT, ROW Program Office - Appraiser Application, PO Box 5075, Austin, TX 78763-5075, or email to [ROW\\_Appraiser-DepartmentCertification@txdot.gov](mailto:ROW_Appraiser-DepartmentCertification@txdot.gov).

## Becoming a TxDOT PREAS Contract Appraiser

Follow the instructions above to become a Department Certified Appraiser.

Once confirmation is received that TxDOT certification has been accomplished, access [www.txdot.gov](http://www.txdot.gov):

- ◆ Select the “Do Business” link,
- ◆ Under “Right of Way” select the link titled “Department Certification for Professional Real Estate Appraisers”,
- ◆ Under the section “Requests for Proposals”, select the “Contracts” link.

If there is an active RFP process, an RFP may be submitted as instructed on the link. If all qualifications and experience is met the appraiser will be contacted for contract opportunities.

## PREAS Appraiser Qualification Process

As outlined above, PREAS contract appraisers are qualified by answering an RFP for Statewide Professional Real Estate Appraisal Services (PREAS), which has been posted to TxDOT's website. Senior TxDOT appraisal staff grade the RFP submissions and qualify contract appraisers based on a scoring system.

Evaluation criteria include:

- ◆ certification by TxDOT;
- ◆ experience of the individual real estate appraiser and demonstrated understanding of the scope of services to be provided; and,

- ◆ references demonstrating the ability to meet deadlines over the past three years and the ability to meet TxDOT scheduling requirements.

If an appraiser applicant is successful in scoring the minimum threshold points for the RFP and a contract is executed for appraisal services, standard general contract terms and conditions will be used. The terms of the contract are not negotiable.

### PREAS Contract Terms

Contract fee appraisers that have an executed Right of Way Professional Real Estate Appraisal Services Contract (PREAS) with TxDOT may be asked to provide:

- ◆ appraisals;
- ◆ appraisal reviews;
- ◆ appraisal consulting;
- ◆ appraisal preparation and testimony for eminent domain, and other forms of valuation in connection with the right of way necessary for highway projects.

### Appraiser's Compensation

The state will compensate the appraiser for actual work performed and authorized by a specific work authorization Attachment E, and the hourly rates set forth in Attachment D-1. Payment is authorized on a per work authorization basis, and for listed expense items as specified in the appraiser's fee schedule. The appraiser's fee schedule Attachment D-1, is broken down into six assignment categories (Appraisal Services Eminent Domain, Review Appraisal Services Eminent Domain, Real Property Disposition, Review of Real Property Disposition, Appraisal Preparation and Testimony for Eminent Domain Proceedings, Real Property Consulting rendering no opinion of value).

### Work Authorizations

As provided in the contract, all appraisal assignments will be authorized by individual work authorizations. A work authorization is a written authorization to begin work, issued to an individual appraiser by ROW PD. The work authorization includes a detailed scope of work, as well as a contract period and maximum amount payable that does not exceed the time or money restrictions specified in the appraiser's contract. Note: It is the appraiser's responsibility to deliver completed appraisal assignments to ROW Program Office prior to the expiration of the work authorization.

**ROW Program Office does not have the authority to pay for work that is worked on after the expiration of a work authorization.**

Where an easement and a fee parcel are out of the same parent tract, they will be included in the same work authorization.

**Additional Work**

If the appraiser believes that any work he/she has been directed to perform is beyond the scope of the contract or individual work authorization and constitutes extra work, the appraiser shall notify TxDOT in writing. If TxDOT finds that such work does constitute extra work and the cost of such increase in work would cause the maximum amount payable under the contract to be exceeded, TxDOT shall advise the appraiser. A written supplemental authorization will be executed between the parties, so long as the cumulative total of all work authorizations combined does not exceed the contract cap. The appraiser shall not perform any proposed additional work or incur any additional costs prior to both parties executing a supplemental work authorization.

**Changes in Work Due to Errors**

The appraiser shall be responsible for the accuracy of his or her work, and shall promptly make necessary revisions or corrections resulting from any errors, omissions, or negligent acts without compensation.

**Supplemental Agreements / Work Authorizations**

The terms of a contract or any work authorization may be modified with a supplemental agreement/work authorization if the ROW Program Office determines that there has been a significant change in (1) the scope, complexity or character of the service to be performed; or (2) the duration of the work. Additional compensation, if appropriate, shall be paid as specified in Attachment D. The cumulative total of all work authorizations combined shall not exceed the contract's maximum amount total, which will vary based upon the ROW Program Office requirements at the time the contract is awarded. Any supplemental agreement must be executed by both parties within the work authorization and contract periods.

The appraiser may not modify the scope of work or extend the expiration date on a work authorization without the execution of a supplemental agreement and authorization to proceed by the ROW Program Office.

All work authorizations must be issued within two years of the date of final execution of the work authorization, unless modified by a supplemental work authorization. No work authorization may extend beyond the contract period.

**Suspension of a Work Authorization**

Should TxDOT desire to suspend a work authorization, but not terminate the contract, this may be done by 30 calendar days' verbal notification followed by written confirmation from the ROW Program Office to that effect. The 30 day notice may be waived in writing by both parties. The work

may be reinstated and resumed in full force and effect within 60 days of receipt of written notice from the state to resume the work. The 60 day notice may be waived in writing by both parties.

If the ROW Program Office suspends the work, the contract period is not affected, and the contract will terminate on the date specified unless the contract is otherwise amended.

TxDOT assumes no liability for work performed or costs incurred prior to the date authorized by the ROW Program Office to begin work, during periods when work is suspended, or subsequent to the contract completion date.

### **Subcontracting**

The appraiser shall not assign, subcontract or transfer any portion of the work under his or her contract without written approval of the ROW Program Office. However, this does not prevent the contract appraiser from using other qualified appraisers to provide appraisal assistance. The PREAS contract appraiser's signature will be sole signature on the report. By signing the certification, the contract appraiser accepts responsibility for the entirety of the analyses and conclusion in the appraisal report. Other appraisers providing significant assistance must be named in the certification, and the nature of their assistance must be reported, but this does not have to appear in the certification.

### **Fee Appraiser Contract Termination**

If it is determined that an appraiser's contract should be terminated, ROW PD shall report and provide documentation to the ROW Program Office for investigation and possible termination of the contract. Termination of the appraiser's contract may be based on, but not limited to, the following situations:

- ◆ by mutual agreement and consent, evidenced in writing by both parties;
- ◆ by the ROW Program Office, with notice in writing to the appraiser, as a consequence of failure by the appraiser to perform the services set forth in the contract;
- ◆ by either party, upon the failure of the other party to fulfill its obligations as set forth in the contract;
- ◆ by the ROW Program Office for reasons of its own, and not subject to the mutual consent of the appraiser, upon not less than 30 days' notice to the appraiser; or,
- ◆ by satisfactory completion of all services and obligations described within the appraiser's contract.



## Evaluation of PREAS Contract Appraisers

The ROW Program Office will establish procedures for the continuing evaluation of PREAS contract appraisers' qualifications and performance. A **closeout evaluation** will be used as a minimum guide for evaluating the appraiser's work product at the end of each work authorization. The closeout evaluation is not parcel specific, but for the work authorization in its entirety. Aside from the closeout evaluation, an **interim evaluation** of appraiser's work product is required with every supplement to a work authorization. ROW PD may expand these forms in more detail if necessary. ROW PD should maintain sufficient information to ensure adequate qualifications of the assigned appraiser and the appraiser's capability to perform the proposed services efficiently without overload.

## Staff Appraiser Qualifications

Staff appraisers performing valuation services for TxDOT that involve an opinion of value must be credentialed as a certified residential or certified general appraiser by the Texas Appraiser Licensing and Certification Board, as provided by the Texas Appraiser Licensing and Certification Act. Though state licensing and certification is recommended for all staff appraisers, currently it is not a requirement for those that hold Right of Way Appraiser I and Right of Way Appraiser II positions. However, the activities of those staff members are limited to appraisal functions that do not require a state appraisal credential.

Qualifications and training for non-credentialed ROW staff appraisers that are primarily involved with administrative functions and appraisal reviews that do not involve the development of an opinion of value, should include, but are not limited to:

- ◆ Basic Appraisal Principles (30 hours), Basis Appraisal Procedures (30 hours), 15-hour National USPAP or Equivalent (15 Hours), General Appraiser Market Analysis and Highest and Best Use (30 hours), General Appraiser Site Valuation and Cost Approach (30 hours), General Appraiser Sales Comparison Approach (30 hours);
- ◆ Course 421 (The Valuations of Partial Acquisitions), 403 (Easement Valuation), 417 (The Valuation of Environmentally Contaminated Real Estate), 804 (Skills of Expert Testimony), 803 (Eminent Domain Law Basics for Right of Way Professionals), 409 (Integrating Appraisal Standards), and 410 (Reviewing Appraisals in Eminent Domain) of the International Right of Way Association.

Completion of Basic Appraisal Principles (30 hours), IRWA course 421, and National USPAP or Equivalent (15 hours) are the minimum requirements for **all** staff appraisers performing appraisal reviews for the agency for the first time.

The ROW Program Office will establish procedures for the evaluation of ROW PD's review appraisers. It will also recommend continuing education, training, and other assistance for ROW PD staff and review appraisers.

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## Section 3 — Certified Appraiser Process

### General

The ROW Program Office will:

- ◆ maintain a list of Department Certified Appraisers, contracted, and staff appraisers, including their license and certification status;
- ◆ provide legal and technical assistance and support to ROW PD;
- ◆ maintain communication with contract appraisers;
- ◆ maintain current contact information for Department Certified Appraisers and PREAS contract appraisers;
- ◆ process payments;
- ◆ act as the office of record for all contracts, work authorizations, appraisal reports, and payments with supporting documentation; and
- ◆ issue work authorizations to TxDOT staff members for Contract Appraisers.

### Legal Guidance

All appraisers will encounter legal issues involved in the appraisal process and procedures. Care must be exercised to see that legal opinions are clearly defined and resolved. Appraisers should contact TxDOT ROW PD when such problems are first encountered. ROW PD personnel may provide the appraiser with copies of case law so the appraiser can develop their own opinion. ROW PD personnel may need to request legal advice from the Office of the Attorney General or the ROW Program Office legal staff. It may be desirable to obtain legal advice for matters concerning general and special benefits, compensable damages, extent of the larger parcel, personal property versus real property, valuations of dedications, and encroachments.

### Creating a Work Authorization

ROW PD recommends a PREAS contract appraiser for appointment to an appraisal assignment by submitting a completed work authorization to the ROW Program Office, after checking with the ROW Program Office for the availability of funds under the appraiser's PREAS contract. The ROW Program Office will assign an Oracle® PeopleSoft PO number to the work authorization. The ROW Program Office will use DocuSign® to circulate the work authorization for signatures. After the work authorization is completely executed, all parties will receive an executed copy of the work authorization. The ROW Program Office is the office of permanent record for all real property transactions generated in the right of way process. The execution date of the work authorization is the date the work authorization is signed by TxDOT's representative with signatory authority.

The preparation and execution of work authorization must precede any work by the appraiser on the parcel involved; otherwise, the appraiser will not be entitled to payment.

### Receipt of Appraisal

Upon receipt of an acceptable appraisal report, and its accompanying invoice, ROW PD shall:

- ◆ date-stamp the invoice the actual date the invoice received by ROW District Office (which starts the 30-day prompt payment process, see [Texas Government Code, Chapter 2251.001\(a\)](#));
- ◆ enter its contents into TxC ([ROW-A-10 Tabulation of Values](#)) as appropriate; and
- ◆ generate the payment request through TxC.

The payment request will then be processed by the ROW Program Office.

Should the appraisal report be deemed unacceptable by the review appraiser, the review appraiser will document the deficiencies and request that the original appraiser rectify the deficiencies. The original appraiser shall make the appropriate corrections and resubmit the report to ROW PD. In the event of an address or telephone change for an appraiser, the ROW PD office using that appraiser will send such change notification electronically to the ROW Program Office.

## Section 4 — Other Services

### Overview

The ROW Program Office contracts for other types of services to assist the appraiser and Assistant Attorney General in the acquisition of property and eminent domain proceedings. These services may provide reports and information on issues that may be beyond the expertise of the appraiser. Their services are often required for testimony in eminent domain proceedings and assisting the OAG in trial preparation.

There are many kinds of services and the following list provides some examples used by TxDOT:

- ◆ Acoustic Experts
- ◆ Aerial Photographers
- ◆ Builder
- ◆ Business Specialists
- ◆ Construction Contractors
- ◆ Computer Estimating Services
- ◆ Cost Estimators
- ◆ Demographers
- ◆ Development Specialists
- ◆ Industry Experts
- ◆ Land Planners
- ◆ Marketing Specialists
- ◆ Petroleum Engineers
- ◆ Real Estate Economists
- ◆ Septic System Specialists
- ◆ Structural Engineers
- ◆ Traffic Experts

After a report is received and reviewed by ROW PD, the report must be submitted to the ROW Program Office. In addition, ROW PD should furnish the report to the appraisers.

## Mandatory Data

It will be necessary for the reports to contain the following:

- ◆ statement of purpose;
- ◆ definition and estimates of costs reported;
- ◆ data and analysis to explain, substantiate, and document the estimate of costs;
- ◆ identification of the property and ownership;
- ◆ statement of appropriate contingent and limiting conditions, if any;
- ◆ identification of technical and significant issues;
- ◆ date(s) on which and/or as of which the estimate of costs is made;
- ◆ signature, and date the report is signed;
- ◆ sufficient information to substantiate the individual's qualifications, such as a statement of education or experience;
- ◆ other descriptive material (i.e., maps, charts, plans, and photographs); and
- ◆ federal-aid project number, parcel identification, and Right of Way CSJ.

Contracts will be executed **before** any work is performed. They are prepared on a per hour basis using the Eminent Domain Expert Witness Contract. Such contract is to be signed by the Right of Way Division Director, or designee. The original copy will be submitted to the ROW Program Office when submitting for payment.

## Fees

Each ROW PD office is expected to determine the appropriate hourly fee as befitting the economy of the project, county, or district locality. When an assignment is made, ROW PD is to reach agreement with the expert as to the maximum time considered adequate to complete the report, if applicable, and to establish a maximum limit on the expert's fee. Time in excess of the time limit without prior written approval by ROW PD will not be allowed. Should additional time be requested by the expert, ROW PD will review the request and amend the contract if warranted, have the amended contract executed by all parties, and document this approval in the ROW Program Office's files for audit purposes.

In those isolated cases where, as the work progresses, it is found that the authorized hours initially determined are not equitable to the state or the expert, the contract will be amended to reflect a new or expanded scope of work. This will establish a revised fee and document the reason(s) requiring the revisions. ROW PD will document this approval in its files for audit purposes.

For eminent domain proceedings, it is necessary to reach an agreement with the expert as to the maximum time considered adequate for preparation and testimony. If the OAG has requested the

use of an expert, ROW PD shall provide the written request from the OAG to ROW PD by attaching it to the expert witness contract submission. ROW PD, in conjunction with the OAG, should maintain adequate documentation to assure that services have been rendered as charged and that only needed services have been performed.

## Section 5 — Assigning Appraisals

### General

In making assignments to contract appraisers, it is ROW PD's responsibility to determine that the appraiser is qualified, as per USPAP requirement, to appraise the particular type of property or properties to be appraised. In determining the number of appraisers to be used on a project and the number of parcels to be assigned to each appraiser, the following should be given careful consideration:

- ◆ the complexities of the appraisal challenges,
- ◆ the time which may be allowed for obtaining appraisals in keeping with the ROW PD's acquisition schedule, and
- ◆ the work volume of the appraisers to be used.

Evenly distributing the number and types of properties on a project among the multiple appraisers is preferred. For additional information when making assignments to contract appraisers, refer to [Chapter 2, Section 1, Introduction](#) and [Chapter 3, Section 2, Legal Instructions - Personality and Realty](#).

When a parcel is located in more than one project, the parcel is appraised as one single parcel and the values entered on a single report in order to avoid duplication.

### Scope of Work Development

The development of the scope of work for the appraisal assignment must involve participation by the acquiring agency (49 CFR 24.103 (a) (1)). In the assignment and negotiation of a work authorization with the appraiser, the staff reviewer will discuss with the appraiser the expected and reasonable scope of work for the property to be appraised. The agreed upon scope of work shall be included in the work authorization under number 9, Additional Requirements, and shall become the minimum requirements for the appraisal assignment. The appraiser may add additional tasks in the scope of work to be disclosed in the appraisal report during the performance of the appraisal process. If any of the items within the scope of work in the work authorization become unnecessary or unattainable, the appraiser should notify ROW PD of its exclusion.

### Instructions and Materials Furnished to the Appraiser

The appraiser should be instructed **not** to express opinions of value to the property owner, but should make all inquiries necessary to ensure no items of value are overlooked.

When items of questionable classification are involved, such as machinery, equipment, appliances, etc., it is necessary to have positive assurance that any such questionable items included in the appraisal have been determined to be realty, not personalty. Therefore, the appraiser should be instructed regarding the proper classification of any item considered questionable and should be furnished with a copy of the [ROW-A-9 Property Classification Agreement](#), where applicable. The appraisal report should be prepared so that the appraisal reviewer, negotiator, and Assistant Attorney General (if applicable), can easily determine those items included as realty.

Information found on the [ROW-A-PAC Pre-Appraisal Contact with Property Owners](#) form should be provided to the appraiser by ROW PD, such as:

- ◆ age of improvements,
- ◆ monthly rental or lease payments and terms,
- ◆ easements,
- ◆ improvement encroachments,
- ◆ hidden wells, and
- ◆ separate ownership of improvements.

The extent of the information furnished to the appraiser will vary according to the complexity of the appraisal challenge and any facts of the situation concerning the property involved. It is the general practice to furnish appraisers with:

- ◆ appraisal forms;
- ◆ right of way maps;
- ◆ property descriptions and plats;
- ◆ sections of schematic layouts or construction plans as needed;
- ◆ legal descriptions of the properties to be acquired;
- ◆ owners' and occupants' names;
- ◆ copy of lease(s);
- ◆ legal instructions as to compensable and non-compensable items;
- ◆ type of interest to be appraised;
- ◆ preliminary [“Five-Year Sales History”](#) data (especially for federal-aid parcels in conformance with [49 CFR 24.103\(a\)\(2\)](#));
- ◆ copy of any available owner's title commitment report or Attorney Certificate; and
- ◆ copy of any available technical expert's report ([Chapter 2, Section 4, Other Services](#)).



For partial acquisitions, the appraiser must receive full instructions on the proposed design, in both plan and profile, if and to the extent available, the rights of access remaining to abutting properties. The appraiser should also be informed of and instructed in TxDOT's policies regarding:

- ◆ replacement of existing driveways;
- ◆ placement of future private entrances;
- ◆ special situations, such as permits for private and public utility installations across or within the right of way limits;
- ◆ compatible private usage of land acquired for channel easements;
- ◆ irrigation facility replacement; and
- ◆ stock pass and other pass privileges.

The appraiser should be given the complete picture concerning the future intent, responsibilities, and limitations to be imposed by the design, construction, and maintenance of the highway facility. The appraiser will need detailed information regarding where the right of way line severs the improvements, the area being acquired, and the area of each remainder. When maps cannot accurately furnish this information, it is recommended practice for the district to stake the property to show clearly the location of the right of way line.

### Five-Year Sales History

TxDOT **requires** five years' sales history on all appraisals of subject properties on every type of project. The five-year sales history should show the parties to the transaction, date of purchase, recording data, and consideration, which should be verified if possible. In order to fulfill the requirements, the needed information will be obtained under one of the procedures outlined below:

- ◆ When title insurance is to be purchased, ROW PD will obtain the five-year sales history from the title company.
- ◆ When title insurance is not being purchased, ROW PD will obtain the five-year sales history either from the county records or by contract with a local abstractor.

The five-year sales history will be furnished to the appraisers at the time they are ready to make the appraisal. This information will be incorporated into the appraisal reports. The purchase price should be verified. When there have been no sales, this should be stated on the data sheet.

## Section 6 — Independent Appraisals

### General

When the same parcel is assigned to more than one appraiser, TxDOT should furnish each appraiser identical material and legal instructions. It is of primary importance that each appraiser should make an independent inspection of the property being appraised and a finding of values without knowledge of the opinions of value of other appraisers working on the parcel. The only deviation from this requirement is that joint inspection may be permitted if specifically requested by the property owner and approved by the ROW Program Office.

Where two or more appraisers have formed a partnership, ROW PD should exercise due diligence in making appraisal assignments to see that such partners are not working on the same parcel or parcels having comparable characteristics to avoid conflict of interest. This should hold true regardless of the parcel location on one or more projects. If a partnership has not been formed, but the appraisers are working out of the same office, the same requirements prevail.

It is the responsibility of ROW PD to see that appraisal reports and the values estimated therein are completely independent, and that each appraiser works independently in the assembly of any information needed and not furnished by TxDOT including individual verification of comparable sales.

NOTE: An appraisal assignment made to a staff appraiser should also be an independent appraisal.

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## Section 7 — Confidentiality of Appraisals

### General

**The appraisal report is not to be shown to, read to, permitted to be read by, or lent to any person other than employees of TxDOT, its providers and review appraisers, the OAG and the FHWA, and only then in the discharge of the official business of TxDOT. “Official business” includes supplying the property owner with his or her copy of the report, pursuant to *Texas Property Code, Section 21.0111*. The appraisal report is for use by TxDOT in determining just compensation, for study and review by the negotiator and, when applicable, for use by the OAG in eminent domain proceedings, and for review by the FHWA for federal cost participation.**

From the OAG’s viewpoint, the purpose of the appraisal report is for the state’s use in connection with the investigation and defense of the claims of the property owner for compensation and damages, if any, arising out of the property acquisition by TxDOT. **Appraisal reports, therefore, must be considered confidential.** This should not be construed to mean that review of such reports should be denied to authorized personnel engaged in a legal audit of TxDOT.

**Subject to Open Records Act requirements, which may require disclosure, appraisal reports may only be disclosed after all parcels on a project have been acquired. Any request for disclosure received under the Open Records Act before that time, should be handled as open record requests within its timelines.**

TxDOT requires that all fee appraisers hold either a Texas certified residential or certified general appraiser license. Therefore, in those instances where an appraiser must make his/her reports or work files available for audit by the Texas Appraiser Licensing and Certification Board or a recognized appraisal organization, there is no violation of confidentiality with TxDOT concerning reports on parcels that have already been acquired by the state. This also holds true for such audits of named individuals providing significant real property assistance who do not sign the appraisal certification but who are named in the certification.

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## Section 8 — Working with Property Owners

### Contacting Property Owners

It is good practice for ROW PD personnel to make the initial contact with the property owner and secure permission for appraisers to appraise the property. Where fee appraisers are utilized, this is particularly good practice since staff personnel can answer questions about TxDOT policies and procedures with which the fee appraiser may not be completely familiar. In addition to setting a pattern for good relations with the owner, this practice also conserves the appraiser's time when making the appraisal. A complete discussion of the procedures to be followed in the pre-appraisal contact is given in Appendix A, [Pre-Appraisal Contract/Interview Procedures](#).

In all cases, the appraiser in his/her position as a representative of TxDOT must be considerate and courteous in dealing with the owner. Good public relations in the appraisal stage definitely aid in subsequent negotiations. Before being released to make specific appraisals, the appraiser should be instructed to:

- ◆ Always contact the owner of the property or his/her agent, if possible, unless instructed otherwise by TxDOT, and offer him/her the opportunity to accompany the appraiser in the inspection of the property.
- ◆ Always make an independent and separate investigation and inspection of the parcel unless joint inspection is approved by ROW PD as outlined in [“Independent Appraisals.”](#) The parcel inspection should include a thorough inspection of the premises and improvements in a deliberate and methodical manner.
- ◆ Be courteous and considerate of the owner or tenant in answering his/her questions, but **under no circumstances** discuss valuation in any form with the owner. Questions regarding the acquisition or relocation assistance processes shall be referred to the ROW PD office.

### Refusal to Permit Entry for Appraisal Purposes

If a property owner refuses to permit appraisers employed by TxDOT to enter the property in order to view it, take measurements and photographs, or make other necessary inspections, legal means are available by which such entry can be gained. However, in the interest of expediting the acquisition of right of way, it has been determined that court proceedings to merely gain right of entry will not be resorted to in the first instance. The initial procedure in such instances will be as follows:

**The appraiser will not enter the property but will endeavor to view it from as many viewpoints as possible.** The appraiser should make a careful study of all available records from the available sources, including but not limited to:

- ◆ Satellite, aerial, and other publicly available imagery of the property;

- ◆ U. S. Geodetic Contour maps, if available;
- ◆ Appraisal District records;
- ◆ records in Building Inspector's Office if inside a city; and
- ◆ prior sales and marketing information.

The appraiser may take distant photographs and resort to any other sources of information to use as a basis for their report. The appraisal report will clearly indicate that the appraiser was not permitted to enter upon the property and that the report is predicated on certain assumptions that should be detailed. The appraiser should also clearly set forth what sources of information were used as a basis for their assumptions.

When it is necessary to appraise properties by this method and eminent domain proceedings become necessary, entry by court order can be obtained as a part of the proceedings, and the usual complete appraisal will then be performed.

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## Section 9 — Reappraisals

### Procedure

Before or during negotiations, it may be found that a market change has occurred, indicating a need for revising or updating existing appraisals. Such action is not considered a new (additional) appraisal, but would require that a new work authorization be created to compensate the appraiser for the additional work.

However, conditions may arise that did not exist at the time of the original appraisal, resulting in a change in values, i.e., a change in design, a parcel split, or a combination into new ownerships, all of which would require a new appraisal. When such changes occur, it is usually necessary to reappraise the property to determine new values for negotiation purposes. A new work authorization is required for the assignment of a new appraisal. A statement should be made in the new work authorization to identify the need for the updated appraisal (for example, "reappraisal due to change in design" or "update for Special Commissioners' Hearings"). NOTE: A reappraisal by the original appraiser on a parcel in eminent domain will be paid based on the appraiser's PREAS contract Attachment D-1 fee schedule. The time required to complete a reappraisal report may be less than the time required to complete the initial report; therefore, the complexity level of a reappraisal is frequently but not always lower than the complexity level of the initial appraisal report.

In each of the above situations, the applicable recommended value entered into TxC will be necessary to show any change in the parcel or its value. Care should be taken to ensure that TxDOT's position is adequately supported by appraisal information.

When changes in design or access control occur after appraisals have been obtained, all work previously completed must be reviewed to determine if the valuation is consistent with the revised design or if the appraiser should be requested to make a reappraisal. If the parcel has been acquired and the revised design constitutes an additional acquisition, ROW PD should notify the ROW Program Office. After coordination with the appropriate divisions, ROW PD will be advised as to appropriate procedure.

## Section 10 — Property Adjustment Work

### Policy

As a general policy, TxDOT will not perform any work in the adjustment of improvements or curative work on the remainder property. The preferred procedure is to compensate the owner so that he or she can perform any adjustments needed, or retain and move any improvement under his or her own supervision and direction. Adjustments or moving improvements as a TxDOT responsibility is avoided because of the inherent liabilities involved in agreeing to cure and restore an owner's property and the legal risk of working on private property. Property adjustment work should also be avoided by TxDOT in order to avoid double compensation and arguments for claims in the eminent domain process.

Adjustments are performed by TxDOT only in exceptional cases, such as in the acquisition of land from federal or state agencies, in emergencies, or acquisition of utility lines having a private function not discovered until uncovered by construction operations.

When minor compensation and cost to cure values need to be estimated for property adjustment work in connection with state, federal and other governmental agencies, ROW PD may utilize abbreviated appraisal report forms and/or the [ROW-A-10 Tabulation of Values](#) to document that the property adjustment work is needed as a result of the right of way acquisition and that the estimated cost of such work is not more than the market value. In instances when extensive property adjustment work is required, complete appraisals will be made according to required procedures.

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## Section 11 — Economic Adjustments

### Policy

For minor acquisitions, the appraised value may be rounded up to a maximum of \$1,000 at the discretion of ROW PD. This procedure will eliminate many of the challenges encountered in attempting to negotiate such parcels and the resultant need to condemn and incur the relatively high costs of condemnation proceedings. In those instances, however, when one parcel is broken into more than one part, such as 2 and 2E, the minimum figure will apply to the sum of the total. A value, equal to or less than the \$1,000 maximum, may be rounded to an appropriate amount. This should be considered, especially on inexpensive properties if such rounding might appear to create inequities when there are variations in the sizes of the parcels required, i.e., a 10 square-foot parcel versus a 500 square-foot parcel.

It should be noted that any economic adjustment should be made by TxDOT personnel only. Justification for the economic adjustment should be made as an added comment in Section X, in the Approved Values section, in the [ROW-A-10 Tabulation of Values](#). After the economic adjustment is made by ROW PD, the adjustment must be entered into TxC as its own dollar amount under the acquisition “approved values” section. Notification should be given to the Project Negotiator/ROWAPS Provider of the adjustment so the appropriate verbiage can be reflected in the offer letter. If the parcel goes to eminent domain proceedings, the economic adjustment value shall revert to the original appraised value.



## Chapter 3 — Valuation - Legal Aspects & Policy

### Contents:

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[Section 2 — Legal Instructions - Personalty and Realty](#)

[Section 3 — Legal Instructions - Noncompensable Items](#)

[Section 4 — Legal Instructions - Damages and Enhancements](#)

[Section 5 — Procedures on Appraisals of Specific Types & Situations](#)

## Section 1 — General

### Overview

The legal appraising instructions set forth in this chapter represent federal laws and regulations, laws of the State of Texas and legal instructions by the OAG. These interpretations of the law must be understood and followed in **all** appraisal reports. The appraiser must not substitute his/her own interpretation of these laws, since this would place him or her in the position of acting as both judge and appraiser. The appraiser must exercise the type of thinking necessary to produce an objective opinion of value, not an attorney's opinion.

### Purpose of Appraisals

The Texas Constitution permits the acquisition of private property for public use, but it requires that any such acquisition entitles the owner to adequate compensation. The Legislature has prescribed the judicial procedure to be followed when private property is acquired for a public purpose.

The purpose of appraising land needed for transportation purposes is to establish with reasonable certainty the amount of money the property owner is entitled to receive. While the property owner should receive all of the money he/she is entitled to receive, the state should not pay more than it is obligated to pay under the law.

### Market Value Defined

The generally accepted opinion of market value as defined by the courts of Texas may be stated as follows:

“Market Value is the price which the property would bring when it is offered for sale by one who desires, but is not obliged to sell, and is bought by one who is under no necessity of buying it, taking into consideration all of the uses to which it is reasonably adaptable and for which it either is or in all reasonable probability will become available within the reasonable future.”

*[City of Austin v. Cannizzo, 267 S.W.2d 808 (Tex. 1954)]*

This definition of “market value” is based on both the buyer and seller being willing, but not obliged to buy or sell. While this is not always the situation in right of way transactions, the courts have stated that this must be assumed in making right of way appraisals. An appraisal made on any other assumption will not be correct.

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## Appraisal and Appraisal Review Standards

The authorities for appraisal and appraisal review standards and requirements are found in state and federal laws, the Code of Federal Regulations, TxDOT *Appraisal and Review Manual*, Uniform Appraisal Standards for Federal Land Acquisition (UASFLA) and Uniform Appraisal Standards for Professional Appraisal Practice (USPAP). With the exception of state and federal laws and differences between the above authorities, it is the intention of 49 CFR 24.103(a)(a) that the appraisal and appraisal review standards be consistent as much as possible with the requirements of USPAP.

However, 49 CFR 24.103 (a) requires that the federal requirements, which have the standing of standards, cannot be supplanted by USPAP. The relationship of federal standards and USPAP was addressed in OMB Bulletin 92-06 and is further explained in the 2005 changes to the Uniform Act:

**“While these requirements (49 CFR 24.103(a)) are considered consistent with USPAP, neither can supplant the other, nor interchangeable. Appraisals performed for federal and federally-assisted real property acquisition must follow the requirements in this regulation.”**

Fortunately, USPAP has provisions to permit it to be flexible and interact with other appraisal standards. By the use of the Jurisdictional Exception Rule and the Scope of Work Rule in USPAP, appraisers should be able to perform appraisal and review services and comply with the various appraisal and review standards and requirements. In the situations where the appraiser and reviewer are required to follow standards other than USPAP and which are established by law or public policy and require a lesser standard, the appraiser or reviewer can comply by invoking the Jurisdictional Exception Rule. The appraiser or reviewer can also comply with appraisal standards which are authorized by law or public policy and exceed the requirements of USPAP by expanding the extent of research performed, or the assistance that was provided by an expert under the Scope of Work Rule.

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## Section 2 — Legal Instructions - Personalty and Realty

### Policy

Under the law, the state is required to compensate a property owner only for the real property acquired and for damages, if any, caused to remaining real property. No payment can be made for personal property; hence, proper legal classification of a particular item must often be decided. Generally, the challenge of identifying an item as personalty or realty requires determining whether it constitutes a “fixture,” as the laws of this state comprehend that term. The term “fixture” is generally used to denote an item of personal property that has become so annexed to land or buildings that it has become a **part** of the realty. Making this determination is often not an easy matter. The courts have no fixed rule classifying forever any certain item as a fixture. However, certain definite rules have been developed which are to be followed in determining whether an item is a fixture. For this reason, the determination must necessarily be made in the field. The ROW Program Office will assist in any way possible. Emphasis is placed on the investigation and study to be made, and the analysis should be as objective as possible. The conclusion reached should not be swayed or influenced by sympathy for or statements made by the property owner, nor should it be swayed or influenced by the desire to save money for the state. The appraiser must identify the items considered in the appraisal to be real property as well as those major items identified as personal property in the appraisal report (49 CFR 24.103(a)(2)(i)).

If the status of the item is not obvious to the appraiser, he/she should request legal instructions and should state in his/her report that the property has been appraised in accordance with such legal opinion. The appraiser’s personal opinion may not be in agreement with the legal opinion; however, this is a legal rather than an appraisal matter. The appraiser should follow such instructions, setting out in the report that the resulting value is “subject to the instructions” rather than an “instructed value.” When questionable items exist, the appraiser should be furnished with a copy of form [ROW-A-9 Property Classification Agreement](#) with the owner/tenant regarding items of personalty and realty.

### Criteria

The Texas Supreme Court specified the criteria for ascertaining whether personal property has become a fixture. The determination is made by the combined application of the following factors:

- ◆ Has there been a real or constructive annexation of the item to the realty?
- ◆ Has the item been fitted or adapted to the uses or purposes of the realty to which it is connected?
- ◆ Would a hypothetical owner of the unit-fee making the annexation have intended the item to become a permanent part of the realty?

Of these three factors, intention is the most important. In fact, the first and second factors listed above are considered merely evidence of the third factor, the party's intent. Caution should be exercised, for the “intention” which is determinative is not a secret intention, but is that which is expressly declared or has become apparent from the action, declarations, and purposes to be served.

If the item is so securely attached to a building that it cannot be removed without extensive damage to the building, consideration should be given to the idea that the intention was to make it a part of the realty. However, regardless of the mode of annexation or attachment, if an item was annexed for only a temporary purpose, it is not a fixture.

Attention should also be given to the second factor, because the purpose or use for which the item was annexed to the building also may demonstrate intent.

While the first two factors are evidenced in the third, all three should be considered. In order to do so, it readily becomes apparent that a detailed study of the factual situation surrounding the annexation of the item to the realty is necessary if a conclusion is to be reached which can be justified and sustained if questioned. Therefore, too much care cannot be exercised in ascertaining all of the facts relating to an item. In those instances where an expensive, but questionable, item is involved, it would be advisable to preserve the basis of the conclusion reached, whether as a fixture or not, through means of written memorandums, photographs, and/or other means.

To illustrate the importance of detailed information, an examination of an example would be helpful. Therefore, assume this limited-fact situation:

- ◆ An apartment house has window air-conditioning units with 220-volt wiring for each unit. All of the apartments are furnished and the halls and stairways have carpeting over finished hardwood floors.
  - Air-conditioning units: Ordinarily such units are not permanently affixed to a building and are designed to be easily removable without damage to the building. They are usually designed for installation in any type building rather than specific buildings. The purpose for such units is to provide temporary relief from the heat; therefore, the conclusion would be that these units are not fixtures. However, an opposite conclusion would be justified if the units were mounted in special spaces cut in the walls or if the window frames required considerable alteration in order to install the units.
  - Furniture: All items will be considered personal property, including gas stoves and electric refrigerators. However, under certain circumstances a different conclusion may be reached if some of the items of furniture are “built-in units.” i.e. dishwashers.
  - Carpeting: Under this limited fact situation, it appears that the carpet was merely put down to protect the finished floors as distinguished from making it a permanent part of the building. Therefore, it would be concluded that it has the nature of personal property even though it may be secured in certain spots by tacks or some other means to prevent slipping. However, if there were wall-to-wall carpeting on an unfinished floor of wood or concrete, then an opposite conclusion would be justified.

A further complication often arises in connection with machinery or equipment even after the three factors have been applied and the determination has been made that it is a fixture. This complication pertains to items or parts which are not in themselves physically annexed to the realty, but which are used in connection with or associated with machinery or equipment that is annexed to the realty. The answers to the following questions should be used in resolving this complication:

- ◆ Will the removal of such non-annexed part leave the principal part of the machinery (a fixture) unfit for use?
- ◆ Are such non-annexed parts capable of being put to general use elsewhere?

These two questions should be applied together and not separately.

If it is determined that a certain type of non-annexed item is an integral part of the annexed machinery, and as such is constructively annexed to the realty, then it must also be classified as a fixture. A distinction may be justified in classifying such parts as not being a fixture based on the condition or serviceability of such parts. The key to making this type of determination is the particular plan or scheme of operation. A non-annexed item may be the most important component in the entire operation; without it, valuable permanently annexed items may be rendered useless. Some examples are:

- ◆ exhaust vents for specialized machinery or equipment (i.e., commercial ovens, laundry equipment, painting facilities)
- ◆ exterior plumbing and electrical connections, conduit, piping servicing an item of personal property.
- ◆ heating and cooling systems installed specifically for use by an item of personal property (i.e. security system, computers, communications)
- ◆ specialized hoists, conveyors, lifts attached to the exterior of the wall, ceiling, floor.
- ◆ air and water filtration systems attached to the exterior of a structure utilized for a specific item(s) of personal property.

A further explanation of policy is necessary concerning the handling of items of service station equipment. If the fee owner does not solely own service station equipment, it is the practice of oil companies to furnish various units of equipment to the owner under a lease agreement. If a lease agreement exists, a copy should be attached to the appraisal report.

In many lease agreements, the oil company specifically designates certain items of equipment as personal property of the oil company. This agreement fixes the rights of, and is binding upon, the parties thereto. For TxDOT's acquisition, the characterization of the item as real or personal property in the lease agreement cannot be considered. Instead, the classification of the equipment as personalty or realty shall be based upon whether the equipment has become so annexed to the building or land that it becomes part of the realty. Underground tanks, hydraulic lift grease racks, and similar items integrated into the structures are to be treated as part of the realty, based on condi-

tion and ease of movement, and can be valued by the appraiser as such. Movable equipment, such as kerosene or oil dispensers on rollers, will be treated as personal property and will not be included in the appraisal process.

Other items are difficult to classify as personalty or realty, such as gasoline pumps or ATM machines. Even if there is a declared intent within a lease agreement that these and/or other items are to be considered as personal property, the determination still must be made in accordance with the criteria specified above.

When other questionable items such as machinery, equipment, appliances, etc. are involved, the appraiser should determine the classification of such items as personalty or realty to insure proper handling, and may seek assistance from TxDOT. Such documentation should be made a part of the report. When the report is submitted to the ROW Program Office for review, the reviewing appraiser should include a statement in their review comments, identifying which questionable items have been properly determined to be realty items.

Therefore, at pre-appraisal contact, TxDOT, the owner, and tenant-occupant(s) of the parcel should agree upon those improvements to be considered as personalty (using form [ROW-A-9 Property Classification Agreement](#)) releasing TxDOT from any payment for such items as realty. A copy of this agreement should be given to the appraiser and be made a part of the appraisal report.

There may be instances where TxDOT disagrees with the owner's/tenants decision to declare an item as personalty or realty. In this case, **and only then**, TxDOT may allow the appraiser's discretion in identifying the personalty/realty status of the item under disagreement. If the appraiser requires assistance in this, he or she may contact TxDOT.

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## Section 3 — Legal Instructions - Noncompensable Items

### Policy

On a proposed partial acquisition for transportation purposes, the appraiser is to be advised that his/her analysis and report shall give no consideration to any damaging element, such as the exercise of the state's police power, which may result in personal damages suffered by the owner. This is a sovereign power of the state, and resulting personal damages are classified as "damage without violation of a legal right". Examples of such personal damages are loss in traffic volume, loss of income, change in direction of traffic flow, circuitry of travel, and project influence. This also includes the denial of the right to cross an existing highway from one part of a property to another unless there is an existing retained right. Any one of such elements could result in a material loss to a business, but remain as a personal loss suffered by the owner. This loss in value is usually caused by the effect of the overall project on the neighborhood rather than by the acquisition of a portion of the property.

In addition, no damage shall be considered to result from any element creating an annoyance or inconvenience to the owner personally. Prime examples of such elements are the existence of noise, fumes, or dust or the loss of light, air, or view.

Damages attributable to noise, dust, increased traffic, or other temporary inconveniences incident to the **construction** of the highway are non-compensable [*Felts v. Harris County, 915 S.W.2d 482 (1996)*]. Generally, traffic noise from highway **operation** is considered to be a "community damage" therefore not constitutionally compensable [*Felts*].

The matter of whether an assessed damage is compensable presents a particular dilemma to the appraiser. Since this is a legal rather than an appraisal matter, the appraiser should request legal instructions. While his/her personal opinion may not be in agreement with such instructions, the report must be in accordance with them, and the resulting value is "subject to legal instructions" rather than an "instructed value."



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## Section 4 — Legal Instructions - Damages and Enhancements

### Policy

Both damages and enhancements fall into two general categories:

- ◆ general (or community); and
- ◆ special.

The state is not legally obligated to compensate a property owner for any damages that he/she may suffer which are shared in common with the community (see [Chapter 3, Section 3, Legal Instructions - Noncompensable Items](#)). Similarly, the state cannot legally claim as an offset any enhancement that may accrue to the property shared in common with the community. Consideration of damages or enhancements in the appraisal process becomes material only in cases in which they relate to and specifically depreciate or appreciate the market value of the property in question.

It is often difficult to determine whether enhancements or benefits are general or special because the courts have used the terms without adequate definition. Generally, it is said that benefits are special which will add anything to the convenience, accessibility, and use of one's property as distinguished from benefits arising incidentally out of the improvement and enjoyed by the public generally. However, some courts have held that the test of community benefits, as opposed to special benefits, to be that the property would have been benefited anyway regardless of whether the public work was located on it or entirely on neighboring property.

Regardless of criteria used for determining the character of damages or enhancements, it is evident that the controlling factor is whether the same specifically relates to a particular parcel as opposed to the public or community in general. A careful investigation and analysis will be necessary in order for an appraiser to be able to distinguish between special and general damages or enhancements. If there is any doubt in the appraiser's mind, he/she should request a legal opinion from the ROW Program Office. The appraiser may not agree with the legal opinion. However, in the final analysis, this is a legal rather than an appraisal matter. The appraiser must follow any legal instructions set out in his/her report with the resulting value being "subject to the instructions" rather than an "instructed value."

Current instructions from the Office of the Attorney General specify that appraised enhancements may be used to offset appraised damages to the remainder parcel, but may not be used to offset the value of the part acquired. However, refer to [Chapter 3, Section 5, Procedures on Appraisals of Specific Types and Situations](#) regarding treatment of re-fencing damages in negotiated settlements.

## Control of Access Rights

The Commission has designated the Interstate Highway System and other portions of the State Highway System as controlled access highways. Along certain sections of highways, this makes it necessary to either limit or completely deny access to the abutting property, including the:

- ◆ right of ingress,
- ◆ right of egress, and
- ◆ right of direct access to and from the abutting property to the highway facility.

Denial of access may result from design issues as well.

The right of access is always held subject to reasonable regulation and control by the state under its police power, an inherent right of sovereignty. However, the right of access to an existing public way is a part of the bundle of rights vested in the owner of abutting property. It is a legal right, though such right may be limited or completely denied in some instances under a valid exercise of the state's police power. Whether an impairment or denial of access is compensable is a question of law to be determined by a trial court. In order for the change in access to be compensable, a court must find a material impairment of direct access on or off the remaining property that affects the market value of the remaining property. Should it be determined that the change in access is compensable, the damages are to be measured by the market value of the owner's abutting property before, as compared with the market value of the same property after the denial or impairment of the access right. In the event that denial or impairment of access is a factor, the appraiser should seek a legal opinion from the district.

Under the provisions of the Transportation Code, [Section 203.034](#), the abutting owners are precluded from claiming damages for denial of a legal right of access to any controlled access highway on a new location (as part of the right of way acquisition), unless there is a specific grant of access by or through the Commission, and subsequently, such granted access is later denied. No damages may be claimed for the denial of access to the new facility, as the owner cannot be damaged by the loss of something that he/she never had.

If an existing road is converted into a controlled access facility, the design of which does not contemplate the initial construction of frontage roads, and the abutting owner is to be denied access to the facility pending frontage road construction, generally there is an acquisition of the owner's access right. If an existing road is converted into a controlled access facility, the design of which does contemplate frontage roads in the initial construction, and the abutting owner is not to be denied access to the frontage road, there is no acquisition or denial of his/her access rights. Access to a frontage road constitutes access to the facility. Further control of the abutting owner's movements, once he/she is upon the frontage road, such as one-way traffic, no U-turns, no left or right turns, denial of direct access to the through lanes, and circuitous routes are all affected under the state's police power. They impose no more control over the abutting owner than is imposed upon the public. Any loss in value due to any or all of these causes is non-compensable.

TxDOT ROW Program Office shall evaluate access management issues on appraisals of surplus property and may specify whether access is retained or not by the state. The appraiser shall consider the ROW Program Office's evaluation when appraising such surplus property.

### Impairment to Access-Damages

The Material Impairment of Direct Access Standard, Texas Property Code, Section 21.042, establishes a new access standard for determining whether a property owner is entitled to damages for impairment to access resulting from the acquisition of property for a highway improvement project.

**The statute provides that:** “(d) In estimating injury or benefits under Subsection (c), the special commissioners shall consider an injury or benefit that is peculiar to the property owner and that relates to the property owner's ownership, use, or enjoyment of the particular parcel of real property, **including a material impairment of direct access on or off the remaining property that affects the market value of the remaining property, but they may not consider** an injury or benefit the property owner experiences in common with the general community, including **circuity of travel and diversion of traffic.**” In this subsection, 'direct access' means ingress and egress on or off a public road, street, or highway at a location where the remaining property adjoins that road, street, or highway.

**Meaning of "Material Impairment":** Although the courts have clearly defined the prior standard of "material and substantial impairment of access", there is very little in the way of legal authority to assist with a definition of "material impairment of direct access". The prior standard focused on access to the entire remainder and asked whether there was still "reasonable access" to the remainder after the state's restriction of access. The new standard, however, focuses on direct access to the property from the state highway. The operative factors are whether the impairment to "direct access" (ingress and egress on and off the remaining property) is "material", and if so whether it "affects the market value of the remaining property."

#### Appraisal instruction:

- a. A "material impairment" is one that is significant or important in the context of how the property is or may be used. Although the change must be significant or important, it no longer must be "substantial" (meaning considerable or large).
- b. The appraiser should look at both the physical changes to ingress and egress on and off the remaining property and the anticipated impact on the use of the property to determine if the restriction is significant. Some of the factors to consider in the before and after scenario are:
  - ◆ the number, location, and width of the existing, permissible, or permitted driveways;
  - ◆ extent of difficulty for large trucks or other unique vehicles to enter the property (if that is the normal use of the property at the time of impairment);
  - ◆ the manner in which the access impairment affects the functionality of existing improvements;

- ◆ whether the remaining property has access to another public road(s) (This is now just one factor; it does not automatically prevent a finding of material impairment of ingress and egress on and off the remaining property from the state highway); and
  - ◆ whether it changes the highest and best use of the remainder (Again, this is not determinative of “materiality”, but is just one factor to be considered in making that determination.)
- c. “Circuitry of travel” and “diversion of traffic” are specifically excluded from the concept of material impairment of ingress and egress on and off the remaining property.

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## Section 5 — Procedures on Appraisals of Specific Types & Situations

### Advertising Sign Interests

Please read the detailed discussion in the *ROW Acquisition Manual*, [Chapter 7, Procedures Regarding Advertising Sign Interests](#) before beginning an appraisal of a parcel that includes an outdoor advertising sign structure.

The sign structure itself is to be treated and valued as a real property fixture unless it is movable and portable in accordance with *State v. Clear Channel Outdoor, Inc.*, 463 S.W.3d 488 (Tex. 2015). At the initial site visit, the appraiser should provide the property owner with form [ROW-N-120 Affidavit and Disclaimer - Owner](#) if it has been determined that the property owner does not own the sign structure. Appraisals involving advertising signs should be prepared on form [ROW-A-5-OAS Real Estate Appraisal Report - OAS](#).

### Advertising Sign Sites

Sign sites for off-premise advertising signs shall be valued for the present value of the land lease or by the analysis of comparable sign site sales. An advertising sign site becomes damaged as a property interest only if a legal advertising sign is unable to be relocated to the remaining property under the procedures discussed in the *ROW Acquisition Manual*, [Chapter 7, Procedures Regarding Advertising Sign Interests](#). The present value of the sign site may be found by the appraiser by discounting the remaining lease payments to the date of the appraisal using market-derived data. If TxDOT ROW PD has been able to verify that there is a valid ground lease associated with the sign structure currently in effect with a remaining term of more than a month to month time period, the lease document should be provided to the appraiser.

The valuation of sign sites utilizing discounted cash flow must be based on the economic or market rent derived from comparable sign site rentals. Discounting factors such as vacancy rates, expenses and discount rates are to be derived from market-derived data. As a guide and check, the value of a sign site should not exceed the capitalized value of the site. **The above information and observations apply to how such a ground lease may affect the overall valuation of the parcel itself, relating to the value for owner of such parcel.**

When an off-premise advertising sign structure is acquired by the State prior to the valuation date of the land on which it is located (whether the sign is owned by the fee owner or a sign site lessee or easement holder), any resulting changes in highest and best use or value of the land should be ignored, because they are a result of project influence. For example, to the extent the sign site contributes to the value of the land, the State's acquisition of the sign for the same project cannot be the sole basis of any change in highest and best use or value of the land.

## Americans with Disabilities Act (ADA)

Appraisers and review appraisers must remember that existing improvements on a parcel may not comply with ADA requirements, which could affect their market value. Appraisal reports contain statements on “Basic Assumptions” and/or “Contingent and Limiting Conditions” such as:

“It is assumed that there is full compliance with all applicable federal, state, and local land use laws and environmental regulations and unless non-compliance is noted, described, and considered herein.”

Some appraisers may comment:

“The Americans with Disabilities Act (ADA) became effective January 26, 1992. The appraiser has not made a specific compliance survey and /or analysis of this property to determine whether it is in conformity with the various detailed requirements of the ADA. It is possible that a compliance survey of the property together with a detailed analysis of the requirements of the ADA could reveal that the property does not comply with one or more elements of the ADA. If so, this fact could have a negative effect upon the value of the property. Since the appraiser has no direct evidence relating to this issue, the appraiser did not consider possible noncompliance with the requirements of the ADA in estimating the value of the subject property.”

Though the above-noted statements may be made in appraisal reports, if an improvement is being “Category II” bisected, and depending on local requirements, older improvements may need “cost to cure” measures to add ramps, elevators, and/or other special equipment to comply with ADA requirements. A technical expert’s report could be secured to help determine the adequate measures and costs for the improvement’s compliance with ADA.

For further information and study, a special federal [website](#) lists various publications and regulations on ADA.

## Bisected Improvements

A bisected improvement is a building or structure severed by the proposed right of way line. Special consideration must be given to bisected improvements in the appraisal process and in recommending values.

In order to classify each bisected improvement properly, as acquired in its entirety, (Category I), or partially acquired, (Category II), one of the following should be determined:

- ◆ Category I: If the part of the bisected improvement remaining outside of the right of way cannot be reconstructed to restore its use economically or if there is nothing but salvage left, the entire structure may be acquired by purchase or condemnation.

- ◆ Category II: If the part of the bisected improvement outside of the right of way can be reconstructed to restore its use economically, then it cannot be acquired by purchase or condemnation.

If the right of way line bisects an improvement, the appraiser should be instructed to make the appraisal on the basis that the bisection will occur. A technical expert may be contracted to assist the appraiser in determining if the use of the improvement has been destroyed and/or determine the costs that would have to be incurred in restoring its use to the bisected improvement.

The appraisal report will then include the information necessary for ROW PD in its review to determine if the use of the improvement has been destroyed. The appraisal report will include the information needed to arrive at a value based on acquiring either the entire improvement or only the part located within the right of way. If it becomes necessary later to acquire the parcel by eminent domain proceedings, and the whole improvement is to be acquired, the appraiser should be instructed to appraise the bisected improvement as a whole unit and as being located in the right of way acquisition.

The appraiser should also be instructed that TxDOT usually bears the demolition cost of a Category I bisected improvement within the state's right of way (unless it is retained/removed by the property owner). If a bisected improvement is Category II, TxDOT bears the demolition costs to remove the bisected portion within the state's right of way and the appraiser should include restorative costs as damages to the remainder.

ROW PD will review the appraisal reports and inspect the bisected improvement to make such determination and specifically recommend the Category into which the structure falls, (either I or II). This recommendation should be made in the reviewing appraiser's review comments for the parcel involved. This recommendation must identify the improvement and include a discussion of the appraisal data. If the structure is classified as Category II bisection in TxC, a supplemental paragraph will need to be added to the [ROW-A-10 Tabulation of Values](#). It will be signed by responsible engineering personnel stating that the **“cutting of the building is a design and location requirement and that any reduction in right of way would adversely affect requirements for transportation purposes.”** This recommendation will then bear the signature of the district engineer; however, the designated representative **must be a Texas Licensed Professional Engineer.**

If it is determined that the improvement is properly classified as Category I and therefore to be acquired in its entirety, the recommended value on the *ROW-A-10 Tabulation of Values* will show the value of the improvement as determined in the appraisal report, and no appraised damages will be shown to the remainder of the improvement. The indicated value for the whole improvement will be supported within the appraisal reports.

## Canals or Irrigation Lines in Private Ownership

If a privately owned irrigation line, irrigation canal, or drainage canal crosses the entire width of the proposed right of way, any adjustment or relocation will be considered as a construction item at state expense. This shall include required adjustment or relocation of any minor laterals and pumps, etc., leading off the main line or canal crossing being adjusted. Any costs for replacement property for the line or canal relocation shall be an appraisal item. The appraiser should be informed that this is a construction responsibility.

If the privately owned line or canal will not cross the right of way but is to be relocated as an improvement out of the way of the highway project, the relocation work will be handled as a right of way acquisition item. Such adjustments should be handled in the appraisal process as a part of the right of way parcel. In the appraisal process, it will be necessary to consider the size and general value of the remainder before making a decision about the irrigation line or canal. It will be necessary to estimate the value of the line or canal restored and unrestored in order to ascertain if restoration is the most economical procedure. After this determination, the appraiser should determine the estimated restored and unrestored cost rather than a value for the improvement plus damages, if any, to the remaining facility, since the state does not desire to take title to a line or canal facility as a part of the right of way parcel. The owner will be paid accordingly and will perform the adjustment work himself; refer to [Chapter 8, Section 1, General](#).

If a property remainder is of such a size and apparent value that the adjustment of the irrigation facility is unwarranted, the parcel should be appraised in the normal manner. This amount would be paid to the property owner. Refer to Irrigated Land for information on the appraisal of such property.

## Cemeteries

Under provisions of Transportation Code, [Section 203.051\(e\)](#), the Commission cannot condemn property used for or dedicated for cemetery purposes, as defined in *Health and Safety Code*, [Sections 711.034](#) and [711.035](#). In some situations, through cooperation of local officials, a dedication may be set aside, but generally, this will not be possible.

There are certain cemeteries such as private ones and those maintained by fraternal and religious organizations to which the provisions of Health and Safety Code, Sections 711.034 and 711.035, apparently do not apply. It is suggested, however, that the acquisition of any cemetery be undertaken only if it is definitely impractical to avoid such an acquisition.

For more information on TxDOT's acquisition policy on cemeteries, refer to the *ROW Acquisition Manual*, [Chapter 5, Section 26, Cemeteries \(For State\)](#).



## Channel, Private, and Temporary Easements

The appraisal of an easement constitutes a valuation of only part of the property rights of the fee interest. The appraisal process and support documentation are the same as for other types of property. However, since there is only a partial acquisition of property rights, there are five issues, rather than the normal three issues of valuation [*State v. Carpenter*, 55 S.W.2d 219 (1932)].

If the acquisition of an easement will apparently cause no resultant damage to the remainder of the parent tract, the appraisal should supply information to establish the following items 1 and 2. If it is possible that there will be damages or enhancements to the property remainder, form [ROW-A-5 Real Estate Appraisal Report](#) should be used with narrative support not only establishing the answers to items 1 & 2 below, but also establishing items 3, 4, and 5:

1. value of the fee interest of the easement area before the imposition of the easement;
2. value of the fee interest of the easement area after the imposition of the easement;
3. value of the remainder before the acquisition;
4. value of the remainder after the acquisition; and
5. value of the whole property before imposition of the easement.

Comparable sales may be limited and difficult to obtain. Sales of properties subject to easements having effects similar to those occurring in the appraised property should be used.

When a temporary easement secured by form [ROW-N-83 Temporary Easement](#) will deny the owner the use of the easement area for a given length of time, items 2 and 4 above may be the difference between the value of items 1 & 3 above and the present worth of the land value at the termination of the easement. This should be the same amount as the present worth of the annual rent value of the land for the term of the easement.

When an existing easement is privately owned by a third party and is to be acquired (extinguished) along with the property it crosses, a separate value should not be itemized on form [ROW-A-10 Tabulation of Values](#); however, the ownership of the easement should be noted on the form. Should the fee owner not be able to work out a release of the third party private easement and/or requests that TxDOT directly negotiate the release of the easement, a separate value should be determined for the private easement by the appraiser. This value would then be offered to the private easement holder for the easement's release by form [ROW-N-17 Release of Easement](#). If this offer is rejected, condemnation proceedings would be requested to secure both the fee and easement rights.

## Convenience Stores

Texas courts recognize the three traditional approaches to determining market value: the Sales Comparison Approach, the Cost Approach, and the Income Approach. *State v. Cent. Expressway Sign Assocs.*, 302 S.W.3d 866, 871 (Tex. 2009) (CESA); *City of Harlingen v. Estate of Sharnoneau*,

48 S.W.3d 177, 182 (Tex. 2001). The traditional Income Approach involves the capitalization of the net operating income of properties that produce rental income to arrive at a present value. *CESA*, 302 S.W.3d at 871; *Sharboneau*, 48 S.W.3d at 183.

Texas courts recognize that “income from a business operated on the property is not recoverable and should not be included in a condemnation award.” *CESA*, 302, S.W.3d at 871. This is true even when there is evidence that the business’s location is crucial to its success. *Id.* In *CESA*, the property owners argued that because revenue was derived from the intrinsic value of the land, the business revenue should be treated like rental income for purposes of the Income Approach. *Id.* The Supreme Court of Texas rejected this argument. *Id.* at 871-73.

Thus, TxDOT will not approve any appraisal of convenience stores or retail fuel properties that uses business income or revenue to value real property.

Appraisals that utilize the following methods to value a convenience store and/or retail fuel store will not be approved because of their reliance on business income:

- ◆ a Comparison Approach that utilizes a gross profit multiplier;
- ◆ an Income Approach that capitalizes Earnings Before Interest, Depreciation, Taxes, and Amortization (EBIDTA);
- ◆ any method that compares gallons sold or in-store merchandise sold.

Appraisals of convenience store properties should be carefully examined for methodologies that appear on the surface to be acceptable, but may still include noncompensable business income, goodwill, intangible assets, or furniture, fixtures and equipment (FF&E).

### County, City, State, or Federal Property

When county, city, state or federal lands that were acquired for other than highway, street, road or alley purposes are needed for the construction or operation of the State Highway System, such lands should be appraised in the same manner as lands under private ownership. For property adjustment work in the acquisition of Federal lands and in the acquisition of property from U.S. Forest Service, Corps of Engineers, Bureau of Land Management, U.S. Fish and Wildlife Service see the *ROW Acquisition Manual*, [Chapter 11, ROW Acquisition of Federal Lands](#).

For all the parcels to be purchased from a county or city, a note should be made on the form [ROW-A-10 Tabulation of Values](#) and right of way map stating that the parcel was not acquired by the county or city for public road purposes.

### Crop Allotments

The federal government, through county committees, grants crop allotments to farmers on such crops as cotton, peanuts, and soybeans. The farmer is allowed to grow only his allotment in order to

qualify for federal loans on these crops. The allotments are granted to the farmer and do not necessarily attach to the land. The owner, usually, can transfer his allotment to other land. In addition, he may be able to sell or lease the allotment.

Land appraised for right of way should be valued at its market value without an allotment, even though it is currently being farmed with a crop grown under an allotment. To appraise it considering its earnings under an allotment would produce a value for both the land and the allotment. Since the owner will retain the allotment, such a value is improper. The appraiser should use comparable sales that have been sold without the allotment being transferred as part of the purchase price, or the value of the allotment should be adjusted out of the sale price, such adjustment being supported by market data.

### **Crops, Timber, Orchards, and Nursery Stock**

Before appraisal assignments, it should be determined if the time schedule for right of way acquisition will allow harvesting of crops and nursery stock in the ground. If not, the appraiser should be instructed to consider the crops or nursery stock in the ground as improvements. If the factual situation changes during negotiation, and the appraisals and approved values do not reflect the true situation, they should be revised accordingly. Letters from the appraisers together with a ROW PD analysis and the proper recommended value forms may accomplish such changes.

When considering timberlands where marketable timber is grown for commercial purposes, the value of the timber should be established just as it is for any other improvements. Thus, a retention value may be established if the owner desires to retain the timber.

Orchard stock and cultivated trees should be treated as realty, and should not be valued separate and apart from the land but are to be valued insofar as they can be shown to contribute to the value of the land. Retention value may be ascribed to orchard stock and cultivated trees, assuming that they can be retained in a viable condition, economically feasible to the landowner.

Due to the specialized nature of appraising timber, orchard stock and cultivated trees it might be desirable for ROW PD to employ a technical expert for determining retention value.

### **Donated Parcels**

All parcels donated to the state must be appraised by acceptable appraisal standards. Forms [ROW-A-7 Real Estate Value Finding](#) and [ROW-A-8 Memorandum of Value Determination](#) may be used by qualified staff for uncomplicated parcels, and forms [ROW-A-5 Real Estate Appraisal Report](#) and [ROW-A-6 Real Estate Appraisal Report](#) for all other parcels. Parcels whose value is estimated in excess of \$10,000.00 must be appraised by a state-certified fee appraiser, unless the landowner waives his/her right, in writing, to an appraisal.

## Driveways and Entrances

With the increased volume of traffic on all traveled ways, entrances, and exits of adequate design must be provided for abutting properties, especially commercial properties, that make ingress and egress as safe as possible to the traveling public and to those who patronize roadside commercial establishments.

Under the provisions and policies of Texas Administrative Code, Title 43, Chapter 11, Subchapter C, TxDOT issues access driveway permits to owners of property abutting state highways. The permitting process on highways on the state highway system within the jurisdiction of a municipality or eligible county (as defined in the Texas Administrative Code) may be transferred to the municipality or eligible county at their request and with approval by TxDOT. Issuance of permits, construction, and maintenance of these driveways should be in accordance with the Design Division's [Access Management Manual](#) and Maintenance Division's [Use of Right of Way by Others Manual](#). The purpose of the rules and regulations is to accomplish a coordinated development between the highway and the abutting property it serves, rather than to restrict, unreasonably, access to abutting property.

## Environmental and Hazardous Material Issues

Anyone who has knowledge of any environmental hazards within the vicinity of the subject property should disclose such information to ROW PD so that proper acquisition may be made.

When the appraiser inspects the property to be acquired, he/she should report any conditions observed during inspection or discovered through appraisal research leading the appraiser/reviewer to believe that adverse environmental conditions affect the subject property, or is contrary with information or descriptions provided by others.

If the district and/or the appraiser are not qualified to determine the extent or impact suspected contamination might have on the parcel, the ROW Program Office should be notified in order that a professional consultant may be obtained to render an environmental evaluation. Environmental concerns include hazardous wastes/storage/materials, or manufacturing processes that pose a threat to the environment or human health and natural resources, such as wetlands, which may ultimately affect the appraisal process and the amount of compensation paid.

It must be noted that an environmental evaluation of a parcel is only possible when the property owner gives consent.

The Appraisals Standards Board has issued Advisory Opinion [A09](#), which addresses this issue.

## Exempt Damages (Cost to Cure)

Exempt damages are estimates of damages for the remainder property that the appraiser and reviewer determine should not be offset by enhancements or benefits. Typically, exempt damages are cost to cure estimates for curative work the appraiser believes to be necessary for the remainder property to function.

The following situations are especially applicable in the consideration and determination of exempt damages:

- ◆ where remainder properties must have curative work performed to restore functionality and the offsetting of enhancements will leave the property owner without the financial resources to perform the cure.
- ◆ for the state to avoid the exposure of greater claims for damages if the cost to cure cannot be performed by the owner due to offsetting of enhancements.
- ◆ to address safety and health issues that must be resolved for remainder properties.
- ◆ to comply with Minute Order [0872](#) of the Texas Transportation Commission that requires adequate compensation be paid to property owners to re-fence their remainder properties.

It is emphasized that appraisers and reviewers should consider each situation individually to decide if certain damages or curative values qualify as exempt damages, and therefore must be exempted from the offsetting of values found for enhancements and benefits.

## Fencing

Fencing falls into two categories: access fencing and property fencing. The first type is state-owned control of access fencing, which is a design and construction responsibility. Access fencing is built along or immediately inside the control of access lines as needed to act as a physical barrier to the through lanes. It may also be built along the right of way line as a necessary safeguard against traffic hazards caused by the intrusion of people, animals, vehicles, machines, etc. from outside the right of way. If control of access fences are to be provided, the appraiser should be advised about location and type of fence. Control of access fences may, as a secondary function, afford the property owner the benefits of a property fence. In this case, the appraiser should be instructed to recognize the benefits of the fence to eliminate damages otherwise resulting from an unfenced condition. The appraiser should consider the fencing in the acquisition as part of the land value. When parcels are submitted for condemnation, complete details regarding fencing plans should be included for the information of the OAG.

The second type is privately owned property fencing placed immediately outside and along the right of way line to serve the abutting property needs and will be provided by the owner. If the appraisal report(s) includes information on the estimated cost to re-fence, and such amount is considered adequate, this amount would be the extent of reduced value due to an unfenced condition.

TxDOT's formal finding of value will be based upon this appraisal procedure; refer to [Chapter 8, Section 1, General](#).

A sketch showing fence and gate locations together with the specifications and a letter size reduction of the fence and gate plans showing the design to be used may also be submitted with the appraisal report. Cattle guards located on public roads will be handled as construction items as a part of the highway facility; however, any relocation or construction of new cattle guards at private entrances will be considered a part of the property fence as a right of way item. The cost will be borne by the property owner and should be included as a part of the fencing plans and estimate. It is to be understood that these instructions concerning private entrances relate only to the portion that is an incremental part of the right of way line fence. TxDOT **will not perform** other entrance work on the property remainder. In addition, policy is not changed as to the property owner's and state's responsibilities in replacing existing entrances or building new entrances from the right of way line to connect with the highway facility.

When appraising a rural type property that is fenced, the value of the fencing normally should be included in the value of the land. Comparable sales that have fencing should be used to support the value of the subject without special reference to or adjustment for fences unless they are not comparable. For record purposes, when fencing is included in the land value, it will be necessary for the reviewer to subtract the fencing from the land value. Normally, the amount subtracted and shown as fencing value on form [ROW-A-10 Tabulation of Values](#) will be salvage value. When the subtracted value for fencing is salvage value, the retention value should be a like amount.

Particular attention should be directed to the highest and best use of the property and whether such usage is dependent upon a fenced condition. If the appraisal reports establish a different highest and best use, such as subdivision or commercial use, for fenced land being used for farm or ranch purposes, the appraiser should make allowance for the contributory value of the fence considering the highest and best use. In a partial acquisition from a property of this nature, normally the appraisal of the remainder will indicate no damage due to an unfenced condition. If the highest and best use is an interim use requiring fences, the appraisal of the remainder may indicate damages due to unfenced conditions depending on the fact situation in each case.

By Minute Order Number 80872, the Commission authorized the release of procedures whereby offers of payments in negotiated settlements for highway right of way would include amounts sufficient for the cost of adequately re-fencing of owners' property along the proposed right of way line. This actually affects only those properties for which the appraisal of the remainder indicates a reduction in value or for which at least some portion of the reduction in value due to an unfenced condition is offset by enhancements due to the remaining land after the acquisition. Therefore, the recommended value for a partial acquisition from property in this category should include a re-fencing adjustment in an amount to provide adequate re-fencing along the right of way. Fencing in kind will normally meet the requirement of being adequate re-fencing. It should be noted that cattle guards, ornate entrances, electric gates, etc. are not included in TxDOT's re-fencing policies and are considered improvements.



In rural areas, a determination cannot be made before the appraisals are completed as to whether a particular acquisition will have enhancements offsetting damages due to an unfenced condition. If, after the review of the appraisals, it is determined that a re-fencing adjustment is appropriate, an entry for the adjustment should be made under “Special Damages” when entering appraisal values into TxC. The source of the re-fencing costs should be shown in the reviewing appraiser’s review comments. The purpose of this procedure is to encourage and expedite acquisition by agreement with owners and to avoid litigation. If it becomes necessary to acquire a parcel through eminent domain, the appraisal process must support value testimony.

Federal regulations regarding compensation may be found in [23 CFR 710.203](#).

This procedure of including an adjustment to compensate for re-fencing properties when damages due to an unfenced condition are offset by land enhancement is applicable to all right of way projects having state participation in the acquisition costs. It also applies to right of way acquired with federal assistance, even though any amount greater than the approved values will be non-participating for federal reimbursement.

Abutting owners often jointly own fences between their properties and the value of the fractional interest held by each must be determined and included in the appraised value of the parcels. The ownership of fences on property lines usually cannot be determined without personal contact with the owners involved. The appraiser and ROW PD personnel should make careful investigations to establish correct ownership so that the proper party or parties will be compensated for the interests involved. The state cannot acquire the partial interest held by one owner and allow retention of the interest held by the other. To avoid complications, it is preferred procedure to negotiate simultaneously for both parcels, handling both interests in the jointly owned improvement in the same manner, either through total acquisition by the state or through total retention by the owners. In the exceptional instance requiring acquisition of one parcel in advance of the other, it will be the district’s responsibility to avoid putting the state in the indefensible position of having acquired only a fractional interest in the improvement.

## **Irrigated Land**

Land may be irrigated by a sprinkler system through a system of pipes or through a surface program of ditches or pipes. The source of water may be a well, spring, or pond located on the property or the water may be purchased from a source outside the property. Besides the soil, the value of irrigated land is affected by the cost to grade or bench level the surface and to provide a source for water. The cost of grading the surface for irrigation purposes may exceed the cost of acquiring water; therefore, land that is properly graded, thus irrigable, is usually more valuable than ungraded land even though water is available to both.

When appraising irrigated land, the value of the irrigation facilities, such as a well, pump, pipe, etc., should be appraised as improvements.

Regardless of whether a source of water or other irrigation facilities are on the part acquired, the remainder should be appraised as it stands, i.e., as irrigable land without regard to irrigation improvements. It will be appraised as ordinary dry land only if it is not possible to obtain water and if the land is comparable to the dry land comparables in other respects.

Refer to other subsections of [Chapter 3, Section 5, Procedures on Appraisals of Specific Types and Situations](#) for information on private ownership considerations.

### **Lessee-Owned Improvements**

In appraising properties under lease, the general practice is to offer the approved value to the fee owner, if the owner will secure a release from the lessee on terms mutually acceptable to both parties. Necessary appraisal information and recommendation for revision in the total approved value will be submitted to determine a separate approved value for each interest and separate offers will be made accordingly. Values for tenant-owned improvements shall be consistent with 49 CFR 24.105. If acceptable to the parties, both interests must ordinarily be closed simultaneously.

When the property is subject to a lease, the appraiser should make inquiry as to whether a lessee owns any of the improvements. If possible, the appraiser should obtain, or be furnished with, a copy of the lease under which the lessee occupies the property being appraised. In all cases, the appraiser should review the lease so that he/she is familiar with the terms and conditions contained therein. The findings of the inquiry should be indicated in the appraisal report.

On parcels with lessee-owned real property improvements where a valid lease exists, a separation of owner-lessee interests will be necessary, if the landowner will execute a form [ROW-N-120 Affidavit and Disclaimer - Owner](#) to the leasehold interests in such improvements. If none of the above conditions is met, the property will be appraised in the usual manner and the approved value will be offered to the fee owner if he will secure a release from his lessee. Additional information may be found in the *ROW Acquisition Manual*, [Chapter 5, Section 21, Acquisition of Leasehold Interest \(for State\)](#).

### **Lessor-Lessee Interests (Estates)**

The appraisal and negotiation of leased property should follow the prescribed procedure of offering the approved value to the fee owner with the requirement that the owner secure a release from the lessee. However, in the situation where the lessee has an ownership interest in the real estate that is being acquired or damaged in an acquisition project, the acquiring agency may separately negotiate and close with the fee owner and lessee.

The appraiser should inquire if the lessee owns any of the improvements of the leased property. If possible, the appraiser should obtain a copy of the lease for the property being appraised. In all cases, the appraiser will review the terms and conditions of the lease and disclose this information in the appraisal report. In the situation when the lessee is seeking compensation for owned



improvements, the owner must execute a disclaimer regarding the lessee's improvements. If the above requirements are not met, all the property will be appraised and the total value will be offered to the fee owner.

The situation of leased estates such as a leased fee estate and leasehold estate may exist in leased property and be compensable in the acquisition of property. These estates are created by favorable rent requirements in lease agreements that benefit the lessor or lessee. The leased fee estate may exist when the lessor has a lease that provides for contract rent that is greater than the market rent of a property. The leasehold estate is the opposite situation, when a lessee has a lease with contract rent that is less than the market rent for the leased property. If the acquisition of a property extinguishes or damages these estates, the fee owner or lessor, or the lessee may be entitled to compensation for their loss.

The valuation of lease estates of a property is a procedure of separating the market value of the real estate into a value for the leased fee estate and a value for the leasehold estate. As the appraisal of lease estates is a common procedure for appraisers, the appraisal should utilize recognized methods and techniques that meet industry standards. However, the total value for the real estate and lease estates must not exceed the market value of the parcel being appraised.

For additional information on lessor-lessee interests, please refer to the *ROW Acquisition Manual*, [Chapter 5, Section 21, Acquisition of Leasehold Interest \(for State\)](#).

## Minerals

The appraiser should be advised that in eminent domain proceedings TxDOT, by law, is limited to acquisition of fee title excluding oil, gas and sulfur, and that the limitation of this law has been applied by TxDOT policy to acquisition of rights of way by negotiation.

On a partial acquisition involving a separate ownership of minerals which includes hard minerals, special handling is required if the hard minerals have or appear to have some economic value and if production thereof would require surface operations. Gravel, sand, caliche, and iron ore gravel, useful only for building and road construction purposes, are not regarded as minerals within the generally accepted meaning of that word. When the grantor reserves title to minerals, the reservation does not include these road-building items unless the grantor has expressly indicated such intent by specific reference to these items in the reservation.

Whenever possible the appraiser should use comparable sales that have transferred only the surface rights, rather than adjusting sales that include minerals. However, if it is necessary to use sales that require such adjustments, the appraiser should compare sales that included minerals with sales that excluded minerals in order to measure the adjustment by market data.

## Mobile Homes as Realty

In addition to the guidelines for determining whether improvements are personal or realty in [Chapter 3, Section 2, Legal Instructions - Personalty and Realty](#), the appraiser and reviewer may also consider requirements established in the mobile home industry to determine if mobile and manufactured homes are personal property or real estate. Typical requirements of lending institutions and mobile home industry for manufactured and mobile homes to qualify as realty are that the:

- ◆ a Statement of Ownership and Location (SOL) is affixed to the mobile home;
- ◆ personal Property Title must be cancelled with TDHCA;
- ◆ registered as Real Property with TDHCA;
- ◆ tongue of the home must be removed; and
- ◆ axles of the home must be removed.

The appraiser or reviewer may also consider if the mobile home has permanent underpinning or attached to a permanent foundation in addition to the above requirements.

In situations where a manufactured or mobile home may be unable to qualify for relocation benefits due to its age and structural deterioration, or be unable to relocate to a mobile home park because of age restrictions, the home may be designated as realty for compensation purposes.

## Multiple Remainders

In some instances, the acquisition of a portion of a tract of land will cause the remaining property to be left in two or more parts. This may be because of a special feature in the design of the highway or because the original tract was already divided into two or more parts by existing roads but is being used as one property.

If the property is already divided before the acquisition, this fact may indicate a highest and best use, both before and after the acquisition, as separate tracts indicating no loss in value due to additional selling expenses. The fact that the parts are being used together in the operation of one business does not mean that the parts have plottage value, unless the value of each part is greater when used with the other parts than its value would be as a separate tract with no relationship to any other property.

## Oil Wells

In right of way acquisition, the state does not acquire oil, gas, or sulfur. However, it may be necessary to purchase the improvements used to remove such minerals from under the surface, such as an oil well, pumping equipment, gathering lines, etc.

If a parcel acquisition will impact active mineral production, the key challenge becomes estimating the value of the remaining oil reserves. This usually involves the services of a technical expert.

In some instances, it will be found that the market value of the remaining oil reserve is less than the cost to re-drill a well. Since oil reserves are gradually depleted, an older field may have little value in comparison to the cost to drill a similar well. If the value of the remaining oil is less than the cost to drill a new well, the approved value will be limited to the lower amount. If the oil reserves indicate a value more than the cost of a new well, then the approved value will usually be limited to the cost to drill a new well.

While it is not the most appropriate way of estimating value, some technical experts may use the method of estimating overall net value by estimating total production and total expenses. If this method is used, the appraiser should be careful to discount the net income for the remaining life of the well located within the acquisition. Included in the expenses should be the cost to plug the well at the end of production and an investment management expense in addition to an expense for supervising the pumping facilities.

In most cases, oil well pumping equipment is considered personal property and has a definite value when removed from the site. Whether it is classified as personal property or realty will depend on what is done in the subject's market area. If it were customary for a well to be sold with the pumping equipment left in place, then it would probably be considered as a realty item.

Since it is necessary for a portion of the well casing to remain in place for plugging the well, the seller should not be permitted to retain this part of the casing, in conformance with Texas Railroad Commission regulations.

### **Partial Acquisitions**

A partial acquisition will always be considered as severed land and appraised with the same basis as the whole property or as a separate economic unit. The appraiser shall ascertain in the appraisal of the property if the part to be acquired constitutes a separate economic unit or whether the acquisition area should be appraised in conjunction with the parent tract. The conclusion of the appraiser in this process must be supported with market and sales data.

When the part to be acquired is not considered as a separate tract or as an economic unit, it will be valued with the same basis of value as the whole property, or parent tract. The basis of value is the value per square foot or acre that was used to value the whole property.

However, the appraiser may conclude that the part to be acquired may be considered an economic unit or part of a larger economic unit. An economic unit may be defined as the smallest, marketable, and sustainable portion of a property. The existence of an economic unit should be justified by market sales of similar properties that defines the size and shape of the subject parcel and have the same highest and best use. The existence of economic units may also be justified by the presence of

similar tracts in the market area and by physical divisions in the property such as roads, streets, creeks, rivers, and topographical differences. It must be remembered that in the valuation of a property with separate economic units, that the sum of the values of the parts of a property cannot exceed the market value of the whole property.

With the exception of the appraisal of small and vacant uncomplicated parcels that are valued with abbreviated appraisal report forms other than [ROW-A-5 Real Estate Appraisal Report](#), the value of the remainder after the acquisition must be found by the appraisal process. The valuation of the remainder after the acquisition cannot be valued by a mathematical process of deducting the value of the part acquired from the whole property. In the valuation of the remainder property, the appraiser should consider the remainder in the most probable circumstances in accordance with the highest and best use analysis of the remainder tract. The difference in value between the remainder before the acquisition and remainder after the acquisition is the amount of damages or enhancements.

The improvements in the part to be acquired are to be valued by accepted appraisal methods and techniques. The appraiser will value only the improvements in the acquisition area for the part to be acquired in the initial appraisal report. This is also applicable to the valuation of bisected improvements such as buildings and structures. If the parcel should proceed to eminent domain, ROW PD will provide instructions to the appraiser on the valuation of bisected improvements; refer to that subsection of [Chapter 3, Section 5, Procedures on Appraisals of Specific Types and Situations](#).

## Passes

There are three principal types of passes constructed and maintained by TxDOT:

- ◆ the stock pass, usually used to permit livestock to cross under the traveled lanes of traffic;
- ◆ the vehicular pass, sometimes needed to permit trucks, farm machinery, etc., to cross a controlled access highway; and
- ◆ the pedestrian pass, needed over an access-controlled highway such as the Interstate System.

The Commission policy for passes on controlled access highways is 43 TAC 21.81.

If the transportation project will create large severance damages by splitting the owner's land, Design Division should be consulted for possible design changes to create a pass, thereby reducing right of way costs.

Assumption of pass facilities should be offered to the landowner **before** any appraisal of the property.

Prior to appraisal, various division and district offices (Construction, Design, and Maintenance Divisions) will provide appraiser instructions regarding passes on a project.

### **Potential Subdivision**

A subdivision that has received final plat approval but has not been developed physically, (i.e. utilities, streets, etc.), should be valued by comparable sales of similar subdivisions. However, undeveloped subdivisions should not be appraised for acquisition purposes by the use of the Developmental or Subdivision appraisal method, as these approaches may not provide credible results.

The lots within a subdivision that have been physically developed with their infrastructure in place should be appraised individually.

### **Project Influence**

Appraisals should attempt to factor out any increase or decrease in value caused by project influence. Since the property to be acquired basically will no longer exist after the new facility has been provided, any increase in value which would have accrued to the property were it not a part of the facility should not be reflected in the estimate of value for the property. In other words, any increase in value because of the new facility should be disregarded in valuing the property before the acquisition, whether the whole or only a part is to be acquired. Likewise, except for the owner's neglect, any decrease in value because the property is to be acquired for public use should be disregarded. The appraisers should be specifically instructed regarding such circumstances at the time the assignment is made.

This concept should also be applied to comparable sales. A number of sales on or near the project may occur which may include the influence of the project as reflected by an increase or decrease in value. The sale properties may have been comparable and may still "appear" to be comparable before construction; however, if the value has changed significantly, this is usually an indication that the highest and best use has changed because of the project. If this is true, the subject and the sales may not be truly comparable, even though they are physically similar, since they are or will be influenced by different outside factors.

The market before and after the project influenced the sales will need to be researched to estimate the extent of the adjustment. It should be noted, however, that it is very undesirable to use this type of sale in a condemnation trial to establish the value of the part being acquired. Therefore, every effort should be made to support the appraisal by sales not been influenced by the highway project.

### **Public Roads, Streets, and Alleyways**

Where an existing public way abuts or passes through a proposed right of way parcel and the existing public way is held in fee by the governmental unit, it should not be appraised as a part of the new acquisition. Since the state intends to continue the road use, payment should not be made for a right already existing in law.

However, if the existing public way is held as an easement, and an abutting parcel is being acquired in fee, the State's parcel should include the area encumbered by existing right of way so that the easement can be converted into fee. In most cases this is calculated as a nominal percentage of the fee value, reflecting the almost complete loss of utility to the realty resulting from the public way.

### **Public Utility Easements**

It is the customary practice to request the appraiser to appraise the value of fee simple title excluding oil, gas, and sulfur; however, in many instances there may be easements for public utility purposes on the property acquired. In such cases, TxDOT will acquire fee title subject to whatever public utility easements are in the area acquired. The appraiser should receive complete instructions regarding easements not to be acquired in the purchase of the fee title.

### **School Properties**

Every acquisition from public school properties can represent an entirely different challenge with possibly a different solution in each case. Therefore, when the proposed right of way affects a public school property, the appraiser should inspect the property and determine whether the acquisition causes a loss in utility to the public school facility. If there is only a minor acquisition and it appears obvious there will be no loss in use, appraisals will be obtained in the usual manner. If a loss of use appears likely, ROW PD should obtain a technical expert report.

The technical expert employed should be an architect or other expert in the field of public school requirements qualified to determine the loss of use that the public school may suffer due to the right of way acquisition. TxDOT will contract with the technical expert to determine if the public school facility suffers a loss of use because of the acquisition.

If the finding is in the affirmative, the technical expert shall submit a narrative report to establish what is required to restore the public school facility to the same or reasonably equal use that it enjoyed prior to right of way acquisition. It should be noted that the substitute facility must be a building that the public school district is legally required to construct and maintain, regardless of whether this facility is more expensive or efficient than the one acquired. If replacement land is required, the report should establish the amount needed and the general area in which such land must be acquired. If reconstruction and/or replacement of the public school facilities are necessary, the extent of the required work should be described. The report should explain the basis for the expert's conclusions, and the approximate cost data should be included for the guidance of the appraiser. If replacement land is required, the appraiser can supply approximate cost information. Of course, if the expert finds that the public school has not suffered a loss in use, the report should establish the basis for this conclusion.

If there is no loss of use to the public school or no need for replacement land, the matter resolves to simply appraising the value of the land acquired with no damages allowed to the remainder.

No further acquisition work should be performed until the expert's report has been received and analyzed by ROW PD and a course of action has been determined.

In preparing for condemnation of any public school property, regardless of whether loss of use is involved, both the usual appraisals and the alternate appraisals are to be obtained as discussed in [Chapter 8, Section 1, Subsection on Values for School Properties on 90-10 Projects](#). If both types of appraisals are required, they may be obtained concurrently when justified.

### Utility Lines Having a Private Function

Private utility lines shall be valued by accepted appraisal techniques by the appraiser with the assistance of ROW PD upon request. Upon the discovery of utilities that are acquired or impacted by the acquisition of property, the appraiser's initial task is to determine whether the utilities are privately or publicly utilized. A public utility is a publicly, or cooperatively functioning line, facility, or system for producing, transmitting, or distributing products or services directly or indirectly for public use. Private utilities do not provide products or services for the use of the public, but rather serve or benefit the private use of a small selected group. The acquisition and/or adjustment of publicly or privately utilized utilities will be addressed in the following process:

- ◆ Public utilities impacted by the acquisition of property will be adjusted by TxDOT's utility adjustment/accommodation program.
- ◆ The owners of privately utilized utilities acquired or impacted by the acquisition of right of way will be compensated by the acquisition policy of TxDOT.

The valuation of private utilities should follow the typical appraisal process of appraising the contributory value of the improvements in the part to be acquired and the cost to cure adjustment value as damages to the remainder property. However, in the situation of a parcel that requires an adjustment value for further curative work outside of a parcel that does not have a remainder property, such as a whole acquisition, the cost to cure of adjusting the private lines may be included as an improvement value. Privately utilized lines that are owned by parties other than the fee owner of a parcel may be appraised by typical methods with the appropriate values distributed to the different ownership interests of the property.

In the consideration of damages to the remainder property for utility issues, the appraiser should remember the legal requirement the potential damages of remainder properties should be compared as cured and uncured. The appraiser is to use the valuation of the remainder property that will produce the least amount of damages. However, the appraiser and ROW PD are advised to exercise discretion in the consideration of offsetting the damages of remainder properties with utility curative work by the enhancements of the remainder property. It is not the policy of TxDOT to leave remainder properties without the resources to reconnect their utilities. If health and safety issues are involved, cost to cure values for the adjustments of private utility lines are normally a special damage and should not be offset by enhancements for the remainder property.

ROW PD will assist the appraiser and provide information concerning the location and reconnection of private utility lines. This assistance will be especially helpful to the appraiser when permits and licenses are issued for utilities that may identify or restrict a new location for private utilities. If a curative adjustment is complicated, or if the appraiser requests assistance, it may be necessary to obtain the services of a technical expert.

If a parcel **has been acquired** and there is an overlooked private utility line requiring adjustment, the overlooked improvement shall be designated as a new X-parcel and added to T×C by the ROW Program Office. A new appraisal will be performed for the missed improvement, and the owner of the improvement will be compensated. Form [ROW-N-30 Quitclaim Deed](#) is executed to eliminate any property interest on the parcel being acquired. ROW PD should contact the ROW Program Office to have an X-parcel added to T×C.

**However**, if the original parcel **has not been** acquired and there is an overlooked private utility line requiring adjustment, the appraisal will be updated to reflect the missed improvement at no cost to TxDOT.

The cost to adjust the utility may be determined by staff appraisals, bids, estimates, or actual costs incurred, and/or with concurrence of the ROW Program Office.

### Utility- and Railroad- Owned Land

Occasionally the proposed right of way will cross land owned in fee by a utility or railroad company. Utility-owned fee property may be vacant or it may be used for a pipeline, power poles, etc., or for an equipment-building site. When TxDOT is acquiring a portion of the real property and the utility is retaining an interest in the property for its continued joint use, the part to be acquired may be valued by the "Carve Out Method" whereby the value of the interest in land necessary to accommodate the utility's facility is determined. The balance of the land not being used or that land which would normally not be used for the company's facilities should be appraised like any other property.

Railroad parcels at crossings should be investigated to determine if the railroad possesses fee title or only an easement interest. If the railroad is active and owns the land in fee, only a license will be executed as specified in agreements between the railroad companies and TxDOT. This license is processed through TxDOT's Traffic Operations Division. If the active railroad possesses only an easement interest, TxDOT must execute a license agreement with the railroad, and then, if possible, acquire the fee from the record title owner or adjacent landowner through the acquisition process. The railroad easement would be an encumbrance and considered in the appraised value of the parcel.

Where parallel right of way is being acquired from an active railroad, the railroad's interest, whether fee or easement, should be acquired. Exceptions to acquiring fee title may be considered on a case-by-case basis for reasons such as environmental problems, economic, or other extenuat-



ing circumstances. Moreover, if there are lessee-owned improvements on railroad-owned land that are to be removed off of the state's proposed right of way, these should also be acquired as discussed above in [Chapter 3, Section 5, Subsection on Lessee-Owned Improvements](#).

A railroad parcel may have an overlooked improvement, which shall be handled in the same manner as discussed above in [Chapter 3, Section 5, Subsection on Utility Lines Having a Private Function](#).

## Water Wells

There are three types of water wells encountered in right of way appraising:

- ◆ irrigation wells, used to irrigate land;
- ◆ stock wells, used to provide water for livestock; and
- ◆ domestic wells, supplying water to a household and other household improvements.

Irrigation wells are discussed above in [Chapter 3, Section 5, Subsection on Irrigated Land](#).

Stock wells and their equipment may be appraised as improvements. The land value should reflect that water is available. When the watering facilities are on the part acquired, the remainder should be appraised as it will be after the acquisition, which will probably be as grazing land. Any watering facilities are appraised as improvements.

Domestic wells are valued as improvements. In partial acquisitions, the domestic well is acquired like any other improvement.

## Chapter 4 — Appraisal & Evaluation Forms

### Contents:

[Section 1 — General](#)

[Section 2 — Form ROW-A-6, Real Estate Appraisal Report](#)

[Section 3 — Form ROW-A-5, Real Estate Appraisal Report](#)

[Section 4 — Form ROW-A-7, Real Estate Value Finding Report](#)

[Section 5 — Form ROW-A-8, Memorandum of Value Determination](#)

[Section 6 — Miscellaneous Forms for Use in Appraisal and Evaluation](#)

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## Section 1 — General

### Forms

TxDOT has standard forms for the appraisal and valuation of right of way parcels. All forms are permitted on all right of way projects. For appraisals of properties other than for right of way parcels, see Chapter 9 of this manual.

- ◆ Form [ROW-A-5 Real Estate Appraisal Report](#)
- ◆ Form [ROW-A-5-OAS Real Estate Appraisal Report - OAS](#)
- ◆ Form [ROW-A-6 Real Estate Appraisal Report](#)
- ◆ Form [ROW-A-7 Real Estate Value Finding](#), and
- ◆ Form [ROW-A-8 Memorandum of Value Determination](#).

Selection of the appropriate form is based on the appraisal problem. If the assigned appraiser discovers that a more detailed form is necessary, that appraiser should notify ROW PD. Should ROW PD find that the Memorandum of Value Determination or Real Estate Value Finding Report is inadequate for the appraisal problem, ROWPD should contract with a fee appraiser. When a contracted fee appraiser is using form [ROW-A-6 Real Estate Appraisal Report](#) and finds that [ROW-A-5 Real Estate Appraisal Report](#) is more applicable to the appraisal problem, then the review appraiser should be consulted. If a new form is justified, ROW PD or ROWAPS Provider may negotiate the appraisal hours/fees based on the use of the new form.

As stated in the “Certificate of Appraiser” section of the first page of forms *ROW-A-5* and *ROW-A-6*, the appraisal “... is prepared in conformity with appropriate state laws, regulations, and policies and procedures applicable to the appraisal of right of way...” Adherence to such state laws may result in the appraiser’s need to invoke the Jurisdictional Exception of the Uniform Standards of Professional Appraisal Practice (USPAP). If so, the appraiser should state this exception on an attachment. Appraisal forms *ROW-A-7* and *ROW-A-8* are waiver evaluations and not appraisals as defined by Uniform Act and, therefore, are not required to comply with appraisal standards and requirements regardless of their source ([49 CFR 24.102\(c\)\(2\)](#)).

Pursuant to the Texas Property Code, [Section 21.0111](#), TxDOT is required to furnish a copy of any appraisal report(s) (used to establish an approved value(s) for a parcel/parcels) to the property owner. This includes “any and all appraisal reports produced or acquired by the entity relating specifically to the owner’s property and prepared in the 10 years preceding the date of the offer” and not limited to appraisals that form the basis of the offer. However, form [ROW-A-10 Tabulation of Values](#) is not included in this amendment, and shall not be furnished to the property owner.

When furnishing the property owner with a copy of the appraisal report(s), TxDOT personnel should have the property owner sign form [ROW-A-RA Receipt of Appraisal Report](#).

## Section 2 — Form ROW-A-6, Real Estate Appraisal Report

### Usage

Form [ROW-A-6 Real Estate Appraisal Report](#) consists of five pages. This form is useful in the following situations:

- ◆ when improvements are not substantially impacted by the acquisition in a manner other than the minor replacement or reestablishment of items measurable by cost to cure;
- ◆ for residential properties;
- ◆ when value is based on market data comparable sales only;
- ◆ for rural properties where damages are limited; and
- ◆ in instances where arbitrary values are used to value improvements, e.g., assessed values.

Form *ROW-A-6 Real Estate Appraisal Report* may be inadequate for commercial properties, partial acquisitions where remainder enhancements may offset damages, or where the acquisition has substantial impact on the value of the remainder. In such cases, form [ROW-A-5 Real Estate Appraisal Report](#) should be used.

### Instructions

- ◆ Page 1 - This page identifies the parcel and classifies it as a whole or partial acquisition. The Federal-Aid Project Number is required on this page, when it is applicable. It should follow the Right of Way CSJ (RCSJ). The “Purpose of the Appraisal” is stated, “Market Value” is defined, and the “Certificate of Appraiser”, including the appraiser’s estimate of value as of a specific date, are shown on Page 1. It also includes the dates the subject and the comparables were inspected.

It is the appraiser’s obligation to provide the property owner or their representative the opportunity to accompany the appraiser during the property inspection. The individual who accompanies the appraiser must be identified.

A new page 1 of this form must be submitted to ROW PD when a report is revised, supplemented or the date of valuation changes. Data must be provided when the revision affects the final estimate of value. A transmittal letter must accompany the submission in all cases.

The appraiser’s name should appear in print followed by their certification number. The appraiser is required to sign and date the appraisal report. **The review appraiser is required to sign the report.**

Compliance with USPAP requirements should follow page 1. If it is appropriate and the appraiser feels it is necessary to invoke a jurisdictional exception, specific comments and discussion should be developed on an attached page 1.1.

- ◆ Page 2 - Photographs of Subject Property- In the case of vacant land, one or two photographs will be sufficient; however, on improved properties, a photograph identifying each significant improvement is required. It is essential that a photograph, clearly depicting each improvement within the area to be acquired, be featured in the report and specifically identified. Each photograph of an improvement should provide support of the appraiser's assessment of the improvement's condition. This page may be repeated to accommodate additional photographs. These additional pages will be numbered sequentially (i.e., 2.1, 2.2, etc.).
- ◆ Page 3 - Area or Neighborhood Analysis, Site Analysis, Highest and Best Use Analysis & Land Valuation - At the top of this page, the appraiser should provide a short summary of the area or neighborhood. The site analysis should include a five-year sales history if the project is one where there is federal aid in the acquisition of right of way or construction. A copy of the parcel plat and property description are to be attached. This section of the report should also include the subject's legal description and description of the improvements on the parcel. The appraiser's statement as to which improvements, if any, have been declared as personal property should be noted in this section ([see Chapter 3, Section 2, Legal Instructions – Personalty and Realty](#)).

If the parcel being appraised is a partial acquisition, a complete discussion of the part to be acquired should also be attached. A summary of the subject's highest and best use is also required.

Since the basis of this report is the market data approach, it is important that the appraiser complete the adjustment grid provided in the form in accurate detail and furnish adequate comparable sales data on form [ROW-A-5S Comparable Data Supplement](#) and a comparable sales map.

The adjustment grid can be used for vacant land or improved sales. Cost estimate sources should be identified for the valuation of improvements.

- ◆ Page 4 - Explanation of Adjustments with Reconciliation - This is a page designed to report and summarize the sales comparison approach for land and improved properties. It allows the appraiser to identify, outline, and discuss (reconcile) the adjustments to the remainder comparables.
- ◆ Page 5 - Estimated Value of Acquisition - This page is a summary of compensation due the property owner as a result of the state's acquisition, including land value, improvements, and cost to cure. An explanation supporting the cost to cure value should be presented at the bottom of this page. The total compensation shown on this page is the same as the compensation figure reflected on Page 1. The bottom of this page may be used for additional documentation.

## Section 3 — Form ROW-A-5, Real Estate Appraisal Report

### Usage

Form [ROW-A-5 Real Estate Appraisal Report](#) is designed for appraising all right of way parcels, both whole and partial acquisitions. It may be used to estimate values for maintenance sites, aviation, and other TxDOT uses as necessary. This form meets Federal Highway Administration requirements and is designed to comply with current industry standards. It is the appraisers' responsibility to ensure that each report complies with federal, state, and USPAP requirements.

This form is distinguished from the other three types of valuation formats in that it documents the value of the whole property, the value of the part to be acquired and the values of the remainders before and after the acquisition. It provides for the utilization of all three approaches to value. If a particular approach to value is considered not applicable, the appraiser will state the reason why that approach does not apply. This form should be utilized in complex acquisitions involving significant improvements, damages, or enhancements and is recommended for eminent domain proceedings or where the other valuation formats are not appropriate.

NOTE: An electronic copy of the appraisal report is to be submitted to the ROW Program Office by ROW PD.

This form is created to value properties in a simple, flexible format. The whole, part to be acquired, and remainder after will be separated into sections. Each section will carry an assigned standardized page indicator. For whole property acquisitions, sections four, five and six should be omitted.

This form includes four multiple-use pages. They are Property Valuation Summary (PVS), Sale Comparison Approach (SCA), Cost Approach (CA), and Income Approach (IA). The specific numbering of these multiple-use pages is developed in the table below and further discussed within each section and will be used on all *ROW-A-5 Real Estate Appraisal Reports*.

### Page Numbering

TxDOT developed a specific numbering system for form [ROW-A-5 Real Estate Appraisal Report](#) and requires the use of this numbering system as outlined below in Table 4-1 below.

The narrative discussion, maps, and supportive information should be numbered in a progressive sequence following this format. Supportive information will follow the stated page and be numbered sequentially (i.e., PVS 3.1, PVS 3.2, PVS 3.3, etc.). See the next page for an explanatory page-numbering chart.

NOTE: Throughout the following instructions, the bold letter “X” inserted at a page reference is used to denote the need for sequential sub-numbering of pages by the appraiser, i.e., PVS-2.

**ROW-A-5 Numbering System**

Section	Title of Page	Report Page Number
ONE	Property Identification and Certification	1
	USPAP Requirements/Salient Facts Page	1.1
TWO	Photographs of Subject Property	2
	Additional Photographs of Subject Property	2.X
	Area and Neighborhood Analysis	2.X
	Site Analysis	2.X
	Improvement Analysis	2.X
THREE	Whole Property Valuation Summary	3.1
	Additional Highest and Best Use Discussion	3.X
	Sales Comparison Approach (Land), Documentation & Form ROW-A-5S	3.X
	Cost Approach (Whole) & Documentation	3.X
	Sales Comparison Approach (Improved), Documentation & Form ROW-A-5S	3.X
	Income Approach & Documentation	3.X
FOUR (If required)	Part to be Acquired and Remainder Before the Acquisition	4.A
	Economic Unit Analysis (if not discussed in the Whole)	4.B
FOUR	Part to be Acquired Property Valuation Summary	4.1
	Additional Highest and Best Use Discussion	4.X
	Sales Comparison Approach (Land), Documentation & Form ROW-A-5S	4.X
	Cost Approach & Documentation	4.X
	Sales Comparison Approach (Improved), Documentation & Form ROW-A-5S	4.X
	Income Approach & Documentation	4.X

## ROW-A-5 Numbering System

Section	Title of Page	Report Page Number
FIVE	Remainder Property Valuation Summary	5.1
	Additional Highest and Best Use Discussion	5.X
	Sales Comparison Approach (Land), Documentation & Form ROW-A-5S	5.X
	Cost Approach (Remainder) & Documentation	5.X
	Sales Comparison Approach (Improved), Documentation & Form ROW-A-5S	5.X
	Income Approach & Documentation	5.X
SIX	Compensation Summary	6
SEVEN	Addendum	

Table 4-1: ROW-A-5 Numbering System Chart

**Section One: Identification, Definitions, and Certification**

Page 1 - This page identifies the parcel, RCSJ, property address, and other pertinent items. It also classifies the property as a whole or partial acquisition. The Federal Project Number, when applicable, and the RCSJ are required on page 1. The “Purpose of the Appraisal” is stated, and “Market Value” is defined. The “Certificate of Appraiser” includes the appraiser’s estimate of value as of a given date, and the dates the subject and the comparables were inspected.

It is the appraiser’s obligation to provide the property owner or their representative the opportunity to accompany the appraiser during the property inspection. The individual who accompanies the appraiser must be identified.

A new page 1 of this form must be submitted to ROW PD when a report is revised, supplemented or the date of valuation changes. Data must be provided when the revision affects the final estimate of value.

The appraiser’s name should appear in print followed by their certification number. The appraiser is required to sign and date the appraisal report. **The appraisal reviewer is required to sign the report.**

Compliance with USPAP requirements should follow page 1. If it is appropriate and the appraiser feels it is necessary to invoke a jurisdictional exception, specific comments and discussion should be developed on an attached page 1.1.



## Section Two: Photographs, Neighborhood, Site, and Improvement Analysis

Page 2 - Photographs of the Subject Property: One or two color photographs will be sufficient when appraising vacant land. On improved properties, a color photograph identifying each significant improvement will be included. Items in the part acquired or bisected by the new right of way line must be photographed. It is essential that photographs clearly show each improvement within the area to be acquired. Each photograph of an improvement should provide support of the appraiser's assessment of the improvement's condition. This page may be repeated to accommodate additional photographs. These additional pages will be numbered sequentially (i.e., 2.1, 2.2, etc.).

The description of the whole property should follow the picture pages and be numbered according to the instructions. The subject property should be discussed in a narrative manner. Analysis of the whole property will include area, neighborhood, site, improvement, maps, and sketches.

- ◆ Area and Neighborhood Analysis: Neighborhood boundaries may be identified by significant arterial or geographical limitations shown in a boundary map. A brief narrative discussion may be included.
  - The following is an example of how the information may be presented. The tables are included to assist in visualization of the required information. The format may vary but the content must remain unabridged.

**Table 4-2. Economic Trends**

Location	Urban	Suburban	Rural
Development Stage	Over 75%	25 - 75%	Under 25%
Growth Rate	Rapid	Steady	Slow
Property Values	Increasing	Stable	Declining

- A brief narrative discussion should include social, economic, governmental, and environmental factors and provide support for the information presented.
- ◆ Site Analysis: The description of the site should follow the area map and be numbered according to the instructions. The site may be presented in a table format or discussed in a narrative manner. The following features should be discussed.
  - Size: Square feet, acres, or typical units.
  - Drainage: Adequacy of current site drainage.
  - Frontage: Approximate frontages in linear feet and the street name. Frontages and street names should be listed in order of significance.
  - Topography: Slope, direction, and desirability for use.
  - Shape: Identify geometric configuration and desirability.
  - Zoning: Type of zoning and description.
  - Taxes & Year: Current tax amount due and year.

- Assessed Value: Assessed value for year previously identified.
- ◆ Utility Services:
  - Type of Service: Available to site or distance to nearest service access point.
  - Provider: Name(s) of the service provider.
  - Location of service connections (gas, water, sewer, septic, electricity).
- ◆ Give a description of each item:
  - Legal Description: A general description of the whole property should include information as contained in the most recent conveyance. Examples are lot and block, grant and township, or abstract identification.
  - Five-Year Sales History: Identify any transactions involving the subject property during the previous five years. Identification should include county record page, date of sale and parties involved.
  - Location: Arterial linkage, distance to schools, shopping, employment centers, etc.
  - Current Roadway Design: Existing surface type, lane delineation, drainage, and existing access.
  - Soil/Subsoil Conditions: Type of soil, desirability for development, suitability for use.
  - Flood Plain: Flood zone determination, F.E.M.A. map (number), date of the map, and effect on development.
  - Easements: Discussion of all easements including those having an adverse effect on development or use.
  - Encroachments/Restrictions: Identify and describe each item including deed restrictions.
  - Surrounding Land Usage: Identify and describe surrounding land uses and any effect on the subject property.
  - A whole property sketch showing perimeters and approximate improvement location must be included. This page should follow the narrative discussion and be numbered sequentially.
- ◆ Improvement Analysis: This portion is designed to provide a clear and detailed description of each improvement on the subject parcel. Improvements not effected by the acquisition may be discussed in a brief narrative format. Those improvements effected by the proposed right of way line should be discussed in detail and have a separate analysis page and be numbered sequentially. This page may be treated as an “Appraiser’s Checklist” with concise comments rather than a lengthy narrative format. The appraiser is required to identify and describe the type, condition and functional use of each of the following items:
  - Improvement being described: Identify by name, type, design, or characteristics.
  - Square Footage/Size: Approximate square footage of this improvement
  - Year Built: Year improvement was built and discussion of any renovations.
  - Foundation: Type and material.

- Frame: Type and material.
- Exterior Walls: Type and material.
- Roofing: Type, material, age, and condition.
- Interior Partitions: Type and material.
- Ceilings: Type and material.
- Floor Coverings: Type, material, age, and condition.
- Fire Protection: Type of installed devices and actuated systems.
- Plumbing: Sufficiency and adequacy (location of meter connection)
- Electrical: Sufficiency and adequacy (location of meter connection)
- AC/Heating: Number of units, design, capacity, age, and condition.
- Doors: Type and material.
- Windows: Type and material.
- Kitchen Features: Typical and atypical features.
- Restroom/Bath Features: Typical and atypical features.
- Additional/Special Features or Amenities: Amenities within this improvement.
- Project Amenities: Amenities enjoyed by the whole property, such as a walk-in cooler.
- Security: Type of installed devices and actuated systems.
- Detailed Unit Breakdown: For multi-unit building, list unit configuration and counts.
- Parking Area: Type, construction, space count, type of parking space and ratio.
- Site Improvements: Appurtenances to this improvement.
- Physical Condition: Overall appearance of improvement including deferred maintenance.
- Functional Use: Overall desirability of improvement including super-adequacy, if any.
- Utilities: Location on or to the property; sufficiency of utilities for highest and best use (location of septic tank / lines).

The appraiser's statement as to which improvements, if any, are not being appraised because they have been declared as personal property should be noted in this section (see discussion in [Chapter 3, Section 2, Legal Instructions - Personalty and Realty](#)).

The conformity of the improvements to the current Americans with Disabilities Act (ADA) should be discussed.

- ◆ Attach Improvements Sketch with Dimensions. An interior floor plan sketch is required for any improvement located in the proposed right of way line or bisected by the proposed right of way line. In the case of improvements affected by the acquisition, distances from both the existing and new right of way lines must be detailed in the sketch. In the case of bisected improvements, the right of way line must be shown at the point of bisection.

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**Section Three: Analysis of Whole Property**

Page 3 - Property Valuation Summary (PVS): This “PVS” page is a multiple-use page designed to report and summarize the applicable valuation approaches and develop the reconciliation of value. Within this section, the “PVS” page will be used for the whole property. The appraiser is to check-mark the “Whole” property box at the top of this page.

Description of easements and their effect(s) on the value of the whole property should be explained.

- ◆ **Highest and Best Use Analysis:** This section requires that the appraiser define, identify and address the four tests of highest and best use:
  - what type of development is legally permissible;
  - the physically possible uses of the subject parcel;
  - the uses that are financially feasible as of the effective date of the appraisal; and finally
  - the use that maximizes the subject’s productivity. The appraiser analyzes the subject’s highest and best use as vacant and then, if applicable, as improved. If it is determined that the subject parcel improvement(s) represent an interim use, this should be fully discussed.
- ◆ **Valuation Approaches:** Insert the value estimate for each approach used after the dollar sign. Briefly describe, analyze, and support each approach. Briefly describe the reasoning for any approach not developed.
- ◆ **Reconciliation of Approaches:** This portion of the page is for the discussion of the reconciliation and the justification of the final value conclusion.
- ◆ **Contributory Value of Improvements:** The contributory value of the improvements should be itemized in such a manner that a summation of the component parts will equal the total improvement value. Any depreciation and/or obsolescence should be applied individually to each component item. If rounding is necessary, the parts should be rounded separately rather than rounding the total.
- ◆ **Land Valuation:** Land size in acres, square feet, or typical units is multiplied by the unit value to arrive at the total land value.
- ◆ **Reconciled Value.** The reconciled value is the summation of the total improvement value and the land value.

NOTE: Enter the actual page number you have assigned to the TxDOT multiple-use page for each approach developed. All supporting documentation should follow each promulgated page and be numbered sequentially using the structured page numbering system.

- ◆ **Cost Approach:** In developing the cost approach, the appraiser will use the “SCA” page to develop and support the vacant land value. The comparables should be thoroughly screened. It is suggested that at least three comparables be utilized in developing the valuation grid. A full explanation is appropriate when fewer sales are utilized.

**Page 3.X Land as Vacant:** This “SCA” page is a multiple-use page designed to report and summarize the sales comparison approach for land. It enables the appraiser to identify, outline, and discuss the adjustments to the comparables. The use of the SCA page in the cost approach will require the appraiser to checkmark the “Whole” property and “Land” boxes provided at the top of this page.

The comparable land sales must be adjusted to the subject property. Use one word to describe the characteristic of the comparable followed by plus (+) or minus (-) and the adjustment amount. All adjustments of comparable sales must be made either on a dollar or percentage basis. The indicated unit value is the culmination of the adjustments to each sale. Adjustments for physical characteristics should be made in a composite format.

All characteristics dissimilar to the **subject** should be noted on the form and explained in the discussion portion of the report. A lengthy explanation is not required; however, the appraiser should explain the factual basis for the adjustment. If there is a question of comparability due to large adjustments, the appraiser should fully explain the reasoning for the use of that comparable. The explanation of the appraiser’s reasoning for the various elements of adjustment must be in sufficient detail to allow the reviewing appraiser to make a sound judgment as to the validity and acceptability of the appraiser’s adjustments. After completing the adjustment, the appraiser should arrive at an indicated value for each comparable. The estimated unit value is a reconciliation of the indicated unit values of the comparable sales. The appraiser will conclude the reconciliation explanation with a total value calculation.

Form [ROW-A-5S Comparable Data Supplement](#): At the top of this form, the appraiser should designate that this is a comparable **land** sale. This form is used to describe the essential facts regarding each comparable transaction. A color photograph clearly depicting the comparable is required. The appraiser and reviewing appraiser must personally inspect each comparable. The appraiser must verify all sales information, and identify the person with whom the sale information was verified. Information about each transaction must include the names of the grantor and grantee, total land area, current use, intended use, zoning, consideration paid, financing, and conditions of sale. A statement by the appraiser to the effect that the financing of the comparable sale did not affect its validity as a market value indicator is acceptable. If, however, the validity of the sale is affected by the financing, then an explanation is required of the effects of the financing on the sale as a market value indicator. For additional information, the appraiser may attach another sheet to this form. All spaces must be considered and any not applicable should be marked as N/A.

**Page 3.X Cost Approach:** This “CA” page is a multiple-use page designed to report the cost approach for **improved** properties. It enables the appraiser to identify, outline, and discuss the cost approach. In this section, this page is utilized for developing value estimates for the whole property. The appraiser is to checkmark the “Whole” property box at the top of this page.

This table is designed to document the individual improvements to the land. The space within the table denoting main building is designed to reflect the most prominent improvement. In all cases involving bisection or damages to that improvement, diagrams detailing the perimeter dimensions

must support its size. Accessory improvements should include buildings that function in association with the main building. Site improvements should be itemized in the area provided.

The contributory value of all improvements is the summation of the depreciated value of the buildings, accessory, and site improvements. The land value as derived on the SCA page should be added to the contributory value of all improvements to arrive at the estimated value by the Cost Approach.

The specific sources of cost data will be shown, including volume and page numbers in case of local costs, and section and page numbers when using a valuation service. The depreciation factors and any obsolescence should be adequately documented, supported, and explained. Each type of depreciation or obsolescence must include discussion of the appraiser's reasoning. The discussion should be in sufficient detail to allow a review appraiser to make a sound judgment regarding its validity and acceptability.

NOTE: When an appraiser refers to a building cost service in supporting the new cost of an improvement, the appraiser must cite the page number within the cost manual where the support for that type of improvement is found.

All supporting documentation should follow each promulgated page and be numbered sequentially using the structured page numbering system.

◆ Sales Comparison Approach (Improved)

Page 3.X - **As Improved:** This “SCA” page is a multiple-use page designed to report and summarize the sales comparison approach for improved properties. It enables the appraiser to identify, outline, and discuss the adjustments to the comparables.

The comparable improved sales must be adjusted to the subject property. Use one word to describe the characteristic of the comparable followed by +/- and the adjustment amount. All adjustments of comparable sales must be made either on a dollar or percentage basis. The indicated unit value is the culmination of the adjustments to each sale. Adjustments for physical characteristics should be made in a composite format. The use of the SCA page in the sales comparison approach will require the appraiser to checkmark both the “Whole” and “Improved” boxes at the top of this page.

Use one word to describe the characteristic of the comparable followed by plus (+) or minus (-) and the adjustment amount. All adjustments of comparable improved sales must be made either on a dollar or percentage basis. The indicated unit value is the culmination of the adjustments to each sale. Adjustments for physical characteristics should be made in a composite format.

Comparables should be thoroughly screened before using them in this grid. It is suggested that at least three comparables be utilized in developing the valuation grid. A full explanation is appropriate when fewer sales are utilized.

All characteristics dissimilar to the subject should be noted on the form and explained in the discussion portion of the report. A lengthy explanation is not required; however, the appraiser should explain the basis for each adjustment. If there is a question of comparability due to large adjustments, the appraiser should fully explain the reasoning for the use of that comparable. The explanation of the appraiser's reasoning for the various elements of adjustment must be in sufficient detail to allow the reviewing appraiser to make a sound judgment as to the validity and acceptability of the appraiser's adjustments. A reconciliation of the comparable improved sales to an indicated value must be given. The appraiser will conclude the reconciliation explanation with a mathematical calculation. The estimated value is a reconciliation of the indicated unit values of the comparable improved sales.

**ROW-A-5S Comparable Data Supplement:** At the top of this form, the appraiser should designate that this is a comparable **improved** sale. This form is used to describe the essential facts regarding each comparable transaction. A color photograph clearly depicting the comparable is required. The appraiser and reviewing appraiser must personally inspect each comparable. The appraiser must verify the sales information, and identify the person with whom the sale information was verified. Information about each sale is to include the names of the buyer and seller, total land area, gross building area, net rentable area, complete improvement description, current use, intended use, zoning/restriction, consideration paid, financing, and conditions of sale.

If the validity of the sale is affected by the financing, then an explanation is required. If additional information is required, the appraiser may attach a separate sheet to this form. All supporting documentation should follow each promulgated page and be numbered sequentially using the structured page numbering system.

◆ **Income Approach**

**Page 3.X - Income Approach:** This "IA" page is a multiple-use page designed to report and summarize the income approach. It allows the appraiser to identify, outline, and discuss the income stream and expenses to the property. The use of this page will require the appraiser to checkmark the "Whole" property box at the top of this page.

This income approach to value is based on the valuation of the real property involved and not the business being conducted on the property. Income attributable to the personal equipment of a business should not be included in the valuation of the real property. However, non-equipment related income to the property must be explained. If this type of income approach is not used, a thorough explanation must be included. Questions pertaining to personalty versus real property should be directed to the ROW Program Office. The appraiser must furnish full documentation and explanation of the income, vacancy, and expense assumptions. Capitalization rate methodology used to derive the estimate of value must also be supported. Such support and explanation should be shown on the lower portion of this page. All supporting documentation should follow each promulgated page and be numbered sequentially using the structured page numbering system.

The appraiser is not limited to the use of the direct capitalization methodology in estimating value. If a discounted cash flow (DCF) analysis, building residual technique, or other technique is more appropriate to the valuation of the subject, then that technique should be presented on the lower portion of this page. It may be appropriate to provide more than one technique to support a value conclusion.

For residential properties, the gross rent multiplier (rather than the direct capitalization technique) will perhaps better reflect the reactions of the market. If the gross rent multiplier is used, sales establishing the multiplier should be included in the report using the Comparable Data Supplement pages.

In some instances, it may be necessary for the appraiser to include factors not accounted for in the typical direct capitalization calculation. If supported by the market, the value of excess land should also be reflected on the line provided on this page.

**ROW-A-5S Comparable Data Supplement:** At the top of this form, the appraiser should designate that this is a comparable **rental**. This form is used to describe the essential facts regarding each comparable transaction. A color photograph clearly depicting the comparable is required. The appraiser and reviewing appraiser must personally inspect each comparable. The appraiser must verify the lease information on each comparable rental property, and verify the person with whom the lease information is verified. Information about each rental is to include the rental rate, lease term, occupancy and tenant information, operating expenses, any special lease terms, and the parties named in the lease. If additional information is required, the appraiser may attach another sheet to this form.

#### **Section Four: Analysis of The Part To Be Acquired**

- ◆ Page 4 - Part to be Acquired & Remainder Before the Acquisition: This page is required for partial acquisitions. The top portion of the page is a summary of the valuation of the part to be acquired. If rounding is necessary, the parts should be rounded separately rather than rounding the total. If the part to be acquired derives its value from the whole property, then the appraiser may estimate the value of the part to be acquired based on the whole property analysis. A separate Page 4.A could be prepared by the appraiser to describe the part to be acquired, its highest and best use and whether it is or not a separate economic unit.
- ◆ Page 4 - Remainder Before the Acquisition: The bottom portion of this page is a summary of the component parts of the remainder before the acquisition. The value indicated in this section of the report is based on a mathematical calculation wherein the part to be acquired is deducted from the whole property. This amount sets the basis for the calculation of any damages or enhancements to the remainder after the acquisition.
- ◆ Page 4.1 - Property Valuation Summary of the Part to be Acquired (if applicable): This “PVS” page is a multiple-use page designed to report and summarize the applicable valuation approaches and develop the reconciliation of value. A PVS page will be used if the part to be



acquired is determined to be a separate economic unit, with its own separate components of land valuation, cost approach, and/or income approaches. All supporting documentation should follow each promulgated page and be numbered sequentially using the structured page numbering system.

This portion of the report is considered a new appraisal. Some of the data previously used may be utilized in the valuation of the part to be acquired. The appraiser should explain any changes in the character of the subject. This applies to changes in the site, improvement, and highest and best use analyses in the part to be acquired. The appraiser is to checkmark the “Part to be Acquired” box at the top of the form.

- ◆ Highest and Best Use Analysis: A change in the Highest and Best Use in the Part to be Acquired condition requires a detailed discussion. When the Highest and Best Use differs from that of the whole property, the comparable sales chosen should reflect the different use. This section requires that the appraiser define, identify, and address the four tests of highest and best use:
  - what type of development is legally permissible;
  - the physically possible uses of the subject parcel;
  - the uses that are financially feasible as of the effective date of the appraisal; and finally,
  - the use that maximizes the subject’s productivity. The appraiser analyzes the subject’s highest and best use as vacant and then, if applicable, as improved. If it is determined that the subject parcel improvement(s) represent an interim use, this should be fully discussed.
- ◆ Approaches to Value: Insert the value estimate after the dollar sign and then briefly describe the analysis and support that approach. If not applicable, then briefly describe the reasoning. Each approach will be handled in a similar manner.
- ◆ Reconciliation: This section is for the discussion of the reconciliation and the justification of the final value conclusion. The reconciled value is the summation of the total improvement value and the land value.
- ◆ Contributory Value of Improvements: The contributory value of the improvements should be itemized in such a manner that a summation of the component parts will equal the total improvement value. Any depreciation and/or obsolescence should be applied individually to each component item. If rounding is necessary, the parts should be rounded separately rather than rounding the total.
- ◆ Land Valuation: The land size of the part to be acquired in acres, square feet, or typical units is multiplied by the unit value to arrive at the total contributory land value.

NOTE: Enter the actual page number (4.2, 4.3, etc.) you have assigned to the TxDOT multiple-use page for each approach developed. All supporting documentation should follow each promulgated page and be numbered sequentially using the structured page numbering system. The “Part Acquired” boxes should also be check marked at the top of each page in this section.

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**Section Five: Analysis Of Remainder Property**

- ◆ Page 5 - Property Valuation Summary of the Remainder After: This “PVS” page is a multiple-use page designed to report and summarize the applicable valuation approaches and develop the reconciliation of value. A separate PVS page will be used for the **remainder after property**. All supporting documentation should follow each promulgated page and be numbered sequentially using the structured page numbering system (Pages 5.1, 5.2, etc).

This portion of the report is considered a new appraisal. Some of the data previously used may be utilized in the valuation of the remainder after property. The appraiser should explain any changes in the character of the subject. This applies to changes in the site, improvement, and highest and best use analyses in the remainder after the acquisition. In the appraisal of the remainder after the acquisition, the appraiser will be faced with possible damages and/or “cost to cure.” The matter of whether damage is compensable or non-compensable is a legal matter rather than an appraisal issue. If there is a question regarding compensability, ROW PD should be contacted.

The appraiser is to checkmark the “Remainder After” box at the top of each of the pages in this section.

- ◆ Highest and Best Use Analysis: A change in the Highest and Best Use in the remainder after condition requires a detailed discussion. When the Highest and Best Use differs from that of the whole property (and/or of the Part to be Acquired), the sales comparables chosen should reflect the different use. This section requires that the appraiser define, identify, and address the four tests of highest and best use:
  - what type of development is legally permissible;
  - the physically possible uses of the subject parcel;
  - the uses that are financially feasible as of the effective date of the appraisal; and finally,
  - the use that maximizes the subject’s productivity. The appraiser analyzes the subject’s highest and best use as vacant and then, if applicable, as improved. If it is determined that the subject parcel improvement(s) represent an interim use, this should be fully discussed.
- ◆ Approaches to Value: Insert the value estimate for each approach used after the dollar sign. Briefly describe the analysis and support that approach. If not applicable, then briefly describe the reasoning. Each approach will be handled in a similar manner.
- ◆ Reconciliation: This section is for the discussion of the reconciliation and the justification of the final value conclusion. The reconciled value is the summation of the total improvement value and the land value.
- ◆ Contributory Value of Improvements: The contributory value of the improvements should be itemized in such a manner that a summation of the component parts will equal the total improvement’s value in the remainder after. Any depreciation and/or obsolescence should be applied individually to each component item. If rounding is necessary, the parts should be rounded separately rather than rounding the total. If there is NO contributory value of an

improvement(s) because of the state's acquisition, the improvement should be shown and given a \$0 value, and be fully explained (proximity, bisected improvement, loss of use, etc).

- ◆ Land Valuation: The remainder after land size in acres, square feet, or typical units is multiplied by the unit value to arrive at the total contributory land value.

NOTE: Enter the actual page number you have assigned to the TxDOT multiple-use page for each approach developed. All supporting documentation should follow each promulgated page and be numbered sequentially using the structured page numbering system (Pages 5.1, 5.2, etc).

- ◆ Page 5.X - Land As Vacant: This “SCA” page is a multiple-use page designed to report and summarize the sales comparison approach for land and improved properties. It allows the appraiser to identify, outline, and discuss the adjustments to the remainder after comparables.

The comparable sales must be adjusted to the subject remainder after property. Use one word to describe the characteristic of the comparable followed by plus (+) or minus (-) and the adjustment amount. All adjustments of comparable sales must be made either on a dollar or percentage basis. The Indicated Unit Value is the culmination of the adjustments to each sale. Adjustments for physical characteristics should be made in a composite format.

In developing the cost approach, the appraiser will use the SCA page to develop and support the vacant land value of the remainder after. The use of the SCA page in the cost approach will require the appraiser to checkmark the “Remainder After” and “Land” boxes at the top of this page.

The remainder after comparables should be thoroughly screened before using them in this grid. It is suggested that at least three comparables be utilized in developing the valuation grid. A full explanation is appropriate when fewer sales are utilized.

All characteristics dissimilar to the subject should be noted on the form and explained in the discussion portion of the report. A lengthy explanation is not required; however, the appraiser should explain the basis for the adjustment. If there is a question of comparability due to large adjustments, the appraiser should fully explain the reasoning for the use of that comparable. The explanation of the appraiser's reasoning for the various elements of adjustment must be in sufficient detail to allow the reviewing appraiser to make a sound judgment as to the validity and acceptability of the appraiser's adjustments. A reconciliation of the sales to an indicated value must be given. The appraiser will conclude the reconciliation explanation with a mathematical calculation. The estimated value is a reconciliation of the indicated unit values of the comparable sales.

Form [ROW-A-5S Comparable Data Supplement](#): At the top of this form, the appraiser should designate that this is a comparable **land** sale. This form is used to describe the essential facts regarding each comparable transaction. A color photograph clearly depicting the comparable is required. The appraiser and reviewing appraiser must personally inspect each comparable. The appraiser must verify all sales information, and identify the person with whom the sale information was verified. Information about each transaction must include the names of the grantor

and grantee, total land area, current use, intended use, zoning, consideration paid, financing, and conditions of sale. A statement by the appraiser to the effect that the financing of the comparable sale did not affect its validity as a market value indicator is acceptable. If, however, the validity of the sale is affected by the financing, then an explanation is required of the effects of the financing on the sale as a market value indicator. For additional information, the appraiser may attach another sheet to this form. All spaces must be considered and any not applicable should be marked as N/A.

- ◆ Page 5.X - Cost Approach: This “CA” page is a multiple-use page designed to report the cost approach for improved properties. It allows the appraiser to identify, outline, and discuss the cost approach. This page may be utilized for developing value estimates for the remainder after. The appraiser is to checkmark the “Remainder After” box at the top of this page.

This table is designed to document the individual improvements on the remainder after land. The space within the table denoting main building is designed to reflect the most prominent improvement on the remainder after. The remaining accessory improvements should include buildings that continue to function. Site improvements with contributory value should be itemized in the area provided.

The contributory value of all improvements is the summation of the depreciated value of the buildings, accessory, and site improvements. If there is NO contributory value of an improvement(s) because of the state’s acquisition, this should be fully explained (proximity, bisected improvement, loss of use, etc). The remainder after land value as derived on the SCA page should be added to the contributory value of all improvements to arrive at the estimated value by the Cost Approach.

The specific sources of cost data will be shown, including volume and page numbers if appropriate. The depreciation factors and any obsolescence should be adequately documented, supported, and explained. Each type of depreciation or obsolescence must include discussion of the appraiser’s reasoning. The discussion should be in sufficient detail to allow a review appraiser to make a sound judgment regarding its validity and acceptability.

If there is a reduction in value, that reduction must be explained and supported by market information, if applicable.

All supporting documentation should follow each promulgated page and be numbered sequentially using the structured page numbering system.

- ◆ Page 5.X - Sales Comparison Approach - As Improved: This “SCA” page is a multiple-use page designed to report and summarize the sales comparison approach for **improved** properties. It allows the appraiser to identify, outline, and discuss the adjustments to the comparables.

The comparable improved sales must be adjusted to the remainder after property. Use one word to describe the characteristic of the comparable followed by plus (+) or minus (-) and the adjustment amount. All adjustments of comparable sales must be made either on a dollar or percentage basis. The Indicated Unit Value is the culmination of the adjustments to each sale. Adjustments for physical characteristics should be made in a composite format. The use of the

SCA page in the sales comparison approach will require the appraiser to checkmark the “Remainder After” and “Improved” boxes at the top of this page.

The comparables should be thoroughly screened before using them in this grid. It is suggested that at least three comparables be utilized in developing the valuation grid. A full explanation is appropriate when fewer sales are utilized.

All characteristics dissimilar to the subject should be noted on the form and explained in the discussion portion of the report. A lengthy explanation is not required; however, the appraiser should explain the basis for the adjustment. If there is a question of comparability due to large adjustments, the appraiser should fully explain the reasoning for the use of that comparable. The explanation of the appraiser’s reasoning for the various elements of adjustment must be in sufficient detail to allow the reviewing appraiser to make a sound judgment as to the validity and acceptability of the appraiser’s adjustments. A reconciliation of the sales to an indicated value must be given. The appraiser will conclude the reconciliation explanation with a mathematical calculation. The estimated value is a reconciliation of the indicated unit values of the comparable sales.

Form [ROW-A-5S Comparable Data Supplement](#): At the top of this form, the appraiser should designate that this is a comparable **improved** sale. This supplement is used to describe the essential facts regarding each comparable transaction. A photograph clearly depicting the comparable is required. The appraiser and reviewing appraiser must personally inspect each comparable. The appraiser is to verify the sales information of each sale. The person with whom the sale is verified will be identified on the form. Information about each sale is to include the names of the buyer and seller, total land area, gross building area, net rentable area, complete improvement description, current use, intended use, zoning/restriction, consideration paid, financing, and conditions of sale.

If the validity of the sale is affected by the financing, then an explanation is required. If additional information is required, the appraiser may attach a separate sheet to this form. All supporting documentation should follow each promulgated page and be numbered sequentially using the structured page numbering system.

- ◆ **Page 5.X - Income Approach:** This “IA” page is a multiple-use page designed to report and summarize the income approach for the **remainder** after. It allows the appraiser to identify, outline, and discuss the income stream and expenses to the property. The use of this page will require the appraiser to mark the “Remainder After” box at the top of this page.

If the income stream is impacted by the acquisition, it should be reflected in this approach. New rental comparables may be selected. Other factors affecting the income stream such as, reduced rental income, vacancy, or expenses should also be considered.

The appraiser is not limited to the use of the direct capitalization methodology in estimating value. If a discounted cash flow (DCF) analysis, building residual technique, or other technique is more appropriate to the valuation of the subject, then that technique should be presented on the lower portion of this page. It may be appropriate to provide more than one technique to support a value conclusion.

For residential properties, the gross rent multiplier (rather than direct capitalization technique) will perhaps better reflect the reactions of the market. If the gross rent multiplier is used, sales establishing the multiplier should be included in the report using the Comparable Data Supplement pages.

In some instances, it may be necessary for the appraiser to include factors not accounted for in the typical direct capitalization calculation. If supported by the market, the value of excess land should be reflected on the line provided.

Form [ROW-A-5S Comparable Data Supplement](#): At the top of this form, the appraiser should designate that this is a comparable **rental**. This form is used to describe the essential facts regarding each comparable transaction. A color photograph clearly depicting the comparable is required. The appraiser and reviewing appraiser must personally inspect each comparable. The appraiser must verify the lease information on each comparable rental property, and identify the person with whom the lease information is verified. Information about each rental is to include the rental rate, lease term, occupancy and tenant information, operating expenses, any special lease terms, and the parties named in the lease. If additional information is required, the appraiser may attach another sheet to this form.

## Section Six: Compensation Summary

- ◆ Page 6: Compensation Summary The top portion of this page has a section for an explanation of Damages and/or Cost to Cure Estimates. According to *The Dictionary of Real Estate Appraisal*, “cost to cure” may be defined as “The cost to restore an item of deferred maintenance to new or reasonably new condition.” The Appraisal Institute, *Real Estate Valuation in Litigation* (1995 publication) defines cost to cure as the method “used in situations where a property has suffered a damage which can be physically and economically corrected, e.g., correction of drainage, replacement of fencing, reestablishment of physical access, and replacement of sewage or water systems. Under no circumstances, however, can the cost to cure measure of damage be applied if the cost to cure exceeds the diminution in value if such cure were not undertaken.” The appraiser should discuss the cost to cure analysis and its feasibility.

This section is the appropriate place for the appraiser to reference a technical expert’s report(s) relied upon to arrive at a cost to cure. The technical expert’s report(s) should be included in an addendum in or to the appraisal report.

Care must be exercised to avoid any double compensation. An example would be the payment of a private water line or fence as an improvement and a “cost to cure” payment for replacing it (the double compensation would occur if the improvement’s depreciated value was not deducted from the cost of replacing it to determine its “net” cost to cure).

- ◆ Compensation Summary: The bottom portion of this page is a summary of the compensation due the property owner because of the state’s acquisition. This table will show the value of the whole property, the value of the part to be acquired, the value of the remainder before the acquisition, the value of the remainder after the acquisition, and any damages or enhancements

resulting from the acquisition. If it is necessary to include a separate cost to cure, the amount should be inserted below Net Damages or Enhancement. This item may be included in the Total Compensation. The total compensation shown on this page is the same as the compensation figure reflected on page 1.

- ◆ Access Damages: The appraiser is to consider access damages in accordance with Texas Property Code Section 21.042(d) of the Texas Property Code and find as follows:
  1. Is there a denial of direct access on this parcel?
  2. If so, is the denial of direct access material?
  3. The lack of any access denial or the material impairment of direct access on or off the remaining property affects the market value of the remaining property in the sum of \$XXX.

### Section Seven: Addendum

Items in the addendum should be sequenced as they appear. Some appraisers prefer to insert all of their comparable sales forms and maps in the addendum rather than within the body of the appraisal report.

Other items in the Addendum can include the appraiser's "Certificate of Value"; "Contingent and Limiting Conditions"; "Basic Assumptions"; and his/her list of Qualifications such as educational background, work experience, professional affiliations/designations, and partial list of clientele, etc.

As stated beforehand, technical expert's reports can be included in the Addendum or furnished by separate cover.

Form [ROW-A-9 Property Classification Agreement](#) should also be included in the Addendum if it was secured to declare personalty items that were not appraised as realty items within the appraisal report (see [Chapter 3, Section 2, Legal Instructions - Personalty and Realty](#)).

## Section 4 — Form ROW-A-7, Real Estate Value Finding Report

### Usage

On parcels having a value of \$25,000 or less, Form [ROW-A-7 Real Estate Value Finding](#), rather than a formal appraisal report will be acceptable, provided the compensation does not include damages to the remaining property other than for items measurable by cost to cure. Should there be any damages that cannot be simply documented as cost to cure, a form [ROW-A-6 Real Estate Appraisal Report](#), rather than a form *ROW-A-7 Real Estate Value Finding*, will be necessary.

The valuation process of using form *ROW-A-7 Real Estate Value Finding* is defined as a non-appraisal valuation. The property owner must be informed this method of valuation is not a formal appraisal and does not produce an appraisal report.

The form *ROW-A-7 Real Estate Value Finding* is used for waiver valuations and not an appraisal as defined by Uniform Act and, therefore, is not required to comply with appraisal standards and requirements regardless of their source (49 CFR 24.102(c)(2)). A staff appraiser, not certified by TALCB usually completes this form. In the event the staff appraiser is unable to complete the *ROW-A-7 Real Estate Value Finding*, it is permissible that a ROW PD staff representative, knowledgeable of the parcel's area and familiar with land values complete the memorandum. Waiver valuation forms are not designed for use by Department Certified Appraisers.

If the use of the *ROW-A-7 Real Estate Value Finding* is being considered to value a parcel and if the parcel to be acquired is known to be more than \$10,000 in value, the owner must also approve of its use instead of an appraisal report. It is recommended that the use of this valuation process be considered and discussed during the pre-appraisal contact with the owner.

**CAVEAT:** [Texas Property Code Section 21.0113\(b\)\(4\)](#) requires that, as part of the making of a bona fide offer to the property owner, a condemning authority must “before making a final offer, the entity obtains a written appraisal from a Department Certified Appraiser of the value of the property being acquired and the damages, if any, to any of the property owner's remaining property”. Since the *ROW-A-7 Real Estate Value Finding* is not an appraisal, is to be prepared by a non-Department Certified Appraiser, and assumes no remainder damages other than possible cost to cure damages, it **must not be used as the basis of any final offer**.

### Instructions

- ◆ Page 1 - This page identifies the parcel, RCSJ, property address, and other pertinent items. It also classifies the property as a whole or partial acquisition. The Federal Project Number, when applicable and the ROW CSJ are required on page 1. The “Purpose of the Appraisal” is stated and “Market Value” is defined. The “Certificate of Appraiser” includes the appraiser's estimate of value as of a given date, and the dates the subject and the comparables were



inspected. It is the appraiser's obligation to provide the property owner or their representative the opportunity to accompany the appraiser during the property inspection. The individual who accompanies the appraiser must be identified.

- ◆ A new page 1 of this form must be submitted to ROW PD when a report is revised, supplemented or the date of valuation changes. Data must be provided when the revision affects the final estimate of value.
- ◆ Page 2 - Pertinent Photographs of the Subject & Estimated Value of Acquisition - At the top of this page, one color photograph will be sufficient and should provide support for the appraiser's conclusion of value.
- ◆ At the bottom of the page, the table shows the value of the part to be acquired, the contributory value of any improvements located within the area to be acquired, and a summary of any cost to cure. The resulting value is the estimated total compensation. If needed, the staff appraiser can attach additional information. The plat map and field notes should also be included in this report.

Form [ROW-A-7 Real Estate Value Finding](#) provides for adequate analysis of the information considered in making the "Value Finding," including reference to comparable sales and circumstances. Comparable sales data are available to the staff appraiser through previously approved project appraisals and other public sources of information. Form [ROW-A-5S Comparable Data Supplement](#) should be attached for each comparable used to achieve the value conclusion. Additionally, form *ROW-A-7 Real Estate Value Finding* should include at least a minimum description of the site and improvements to be acquired, along with field notes and plat map. If minor improvements are located within the area to be acquired, cost estimate sources should be identified.

Upon completion of the form *ROW-A-7 Real Estate Value Finding*, a staff review appraiser will conduct an administrative review of the *ROW-A-7*, and prepare the [ROW-A-10 Tabulation of Values](#) in the normal manner. If the staff appraiser preparing the form *ROW-A-7* is located in a district which does not employ a staff review appraiser, the form *ROW-A-7* can be reviewed by either a ROW PD review appraiser or neighboring district review appraiser.

## Section 5 — Form ROW-A-8, Memorandum of Value Determination

### Usage

This form is designed for uncomplicated properties where the right of way acquisition will not result in enhancement or damage to the remainder. When form [ROW-A-8 Memorandum of Value Determination](#) is used, compensation should not exceed \$10,000.

The appraisal form *ROW-A-8 Memorandum of Value Determination* is a waiver valuation form and not an appraisal as defined by the Uniform Act and, therefore, is not required to comply with appraisal standards and requirements regardless of their source (49 CFR 24.102(c)(2)). A staff appraiser, not certified by TALCB, usually completes this form. In the event the staff appraiser is unable to complete the Memorandum of Value Determination, it is permissible that a ROW PD Staff Representative, knowledgeable of the parcel's area and familiar with land values complete the memorandum. Waiver valuation forms are not designed for use by Department Certified Appraisers.

This format has been developed to expedite the valuation process and to minimize the appraisal cost. Sources of land value data could be public sources of information. A discussion of the steps taken to arrive at the final compensation value should be provided in the area of the memorandum designated Summary of Comments, Conclusions, and Recommendation. An explanation of where to find sales should be included. On rural widening projects, it may be possible to use the Memorandum of Value Determination form for several of the required parcels. A parcel sketch, photograph and field notes are to be attached to this form.

The valuation process of using form *ROW-A-8 Memorandum of Value Determination* is defined as a non-appraisal valuation. The property owner must be informed this method of valuation is not a formal appraisal and does not produce an appraisal report.

**CAVEAT:** [Texas Property Code Section 21.0113\(b\)\(4\)](#) requires that, as part of the making of a bona fide offer to the property owner, a condemning authority must “before making a final offer, the entity obtains a written appraisal from a Department Certified Appraiser of the value of the property being acquired and the damages, if any, to any of the property owner's remaining property”. Since *ROW-A-8 Memorandum of Value Determination* is not an appraisal, is to be prepared by a non-Department Certified Appraiser, and assumes no remainder damages other than possible cost to cure damages, **it must not be used as the basis of any final offer.**

## Section 6 — Miscellaneous Forms for Use in Appraisal and Evaluation

### Form ROW-A-9, Property Classification Agreement

Form [ROW-A-9 Property Classification Agreement](#) is used to classify property as realty or personalty for the purposes of relocation assistance. See [Chapter 3, Section 2, Legal Instructions - Personalty and Realty](#). As stated in that section, this form should ideally be completed before making the appraisal assignment and shall be included in the appraisal report.

### Form ROW-A-10D, Tabulation of Values (Value Determination)

Form [ROW-A-10D Tabulation of Values - Memorandum of Value Determination](#) is used in conjunction with form [ROW-A-8 Memorandum of Value Determination](#) to demonstrate recommended value for an uncomplicated parcel.

### Form ROW-A-13, Declaration as to Method of Handling of Mobile Home

Form [ROW-A-13 Declaration as to Method of Handling Mobile Home](#) is used to certify a mobile home on the property to be acquired as personal property and that it is easily transportable.

### Form ROW-A-PVD, Parcel Value Determination for LPA's

Form [ROW-A-PVD Parcel Value Determination Form for LPAs](#) is an optional waiver valuation form that may be used by LPAs, at their discretion, to determine parcel value. It is similar to the form [ROW-A-8 Memorandum of Value Determination](#), but designed for an LPA's use.

## Chapter 5 — Appraisal Review

### Contents:

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[Section 5 — Consistency in Land Values](#)

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[Section 10 — Reviewing the Appraisal of Lessee Interests](#)

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## Section 1 — Appraisal Review Requirements

The review appraiser shall review appraisal reports for the purposes of establishing compensation and eminent domain purposes for TxDOT. The appraiser then will recommend the appraisal reports for approval or acceptance to ROW PD, by use of the form [ROW-A-10 Tabulation of Values](#) which serves as the appraisal review report for the reviewer.

The appraisal reviews of appraisal reports for TxDOT will be performed within the requirements of the appraisal standards stated in [Chapter 3 Valuation - Legal Aspects & Policy](#); Standard 3: Appraisal Review, Development and Reporting of USPAP and Standard C of Standards of Valuation Practice (Uniform Appraisal Standards for Federal Land Acquisitions). Recognized methods and techniques of credible appraisal reports and reviews which are taught in appraisal courses and found in texts and publications should also be a reference for the review appraiser. Appraisal reviews performed within or for TxDOT that require a conclusion, approval, agreement or release of a value shall constitute a “technical review” and will comply with the related requirements. Appraisal reviews which do not result in the consideration of values and are more related to business decisions are “administrative reviews” which do not require compliance with the above appraisal standards.

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## Section 2 — Reviewing Personnel

### Procedure

All appraisals will be verified by ROW PD and entered into TxC before the establishment of an approved value.

ROW PD will approve all parcel values for:

- ◆ Form [ROW-A-5 Real Estate Appraisal Report](#),
- ◆ Form [ROW-A-6 Real Estate Appraisal Report](#),
- ◆ Form [ROW-A-7 Real Estate Value Finding](#),
- ◆ Form [ROW-A-8 Memorandum of Value Determination](#),
- ◆ Form [ROW-A-10 Tabulation of Values](#),
- ◆ Form [ROW-A-10D Tabulation of Values - Memorandum of Value Determination](#), and
- ◆ any appraisal updates for negotiations or eminent domain (jury trial or date of taking).

ROW PD reviewing personnel must be state certified general review appraisers. They will conduct all technical reviews on appraisal reports and recommend for approval all parcel values in accordance with the *ROW Appraisal and Review Manual*, Chapters 3, 5, and 6. The review appraiser will complete the form *ROW-A-10 Tabulation of Values* in TxC. The review appraiser will sign and forward the form *ROW-A-10* for approval to ROW PD or their ROWAPS Provider.

After approval, ROW PD will upload to OnBase the signed *ROW-A-10 Tabulation of Values* along with the appraisal report for records retention.

Although ROW PD reviewing personnel must be approved appraisers, the reviewer and the appraiser of a parcel must **never** be the same person.

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## Section 3 — Reviewing and the Property Description

### Procedure

The reviewing process begins with the property description, which should be compared in detail with the appraisal report. In addition, the review appraisers should be familiar with all items shown on the plat map or on the property that may influence the value of the parcel. If a visual inspection of the property reveals the omission or removal of a certain improvement originally noted on the plat map, this must be resolved before the appraisal report is approved.

The parcel owner's name on Page 1 of the appraisal report should be the same name on the title commitment. The areas considered by the appraiser for the whole property, part acquired, and remainder should be the same areas as those shown on the right of way map. As verification, the review appraiser should be sure that the sum of all the areas of the remainder and the part acquired equal the area of the whole property. In addition, the right of way map and the appraisal report(s) should agree on the length of the fencing in the acquisition and that to be placed on the remainder.

Of special importance is the location of the access denial line in relationship to the remainder. This should be compared carefully with the appraisal. The presence and location of existing and proposed passes should be carefully noted.

Both public and private utility lines should be considered and a distinction made between them. The appraiser should consider the effect on value of public utility lines, whether they cross the property or are adjacent to it. A large high-pressure pipeline on or near the property may have a detrimental effect on value. On the other hand, water, gas, and sewer lines may have a beneficial effect, provided they are not located in a manner that prevents proper utilization of the property.

Awareness of private utility lines is important since they are used with improvements and must be handled at the time of negotiation. If a utility line is noted either in the appraisal or on the plat map, but not the other, it should be called to the attention of the appropriate personnel and additional review work should be suspended until the effects on value have been determined. Other considerations regarding private utility lines should be made regarding bisected improvements, such as apartment buildings that will necessitate cost to cure measures in capping some utility lines, replacing them, or redesigning some of the lines to service the remaining improvement(s).

The number, general size, and shape of improvements outlined on the plat map should be compared to those shown in the appraisal, and the map or report should be corrected as necessary. Any encroachment(s) by an improvement(s) should be recognized both in the report and on the map and should be resolved with title and legal personnel.

Easements, whether they are vacant or occupied, should be identified on both the plat map and appraisal and their effect on the property should be reflected in the estimate of value. The size, purpose, occupancy, and ownership (public or private) should be described.

The location of all canals and public roads that may affect value should be shown on the plat map and checked against the appraisal. No public roadway or dedicated alley, etc. should be valued within the appraisal.

The approximate location of all outdoor advertising signs should be shown on the plat map and, if a compensable interest exists, they should be evaluated in accordance with [Chapter 3, Section 5, Procedures on Appraisals of Specific Types and Situations](#).

It is recommended that all review appraisers are made aware of the approved land values on the project. By comparing subsequent appraised land values to the values on the map, the review appraiser can readily see any unusual differences between land values that may not be explained in the appraisal report(s) and make appropriate review comments in TxC.



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## Section 4 — Reviewing for Completeness of Reports

### Procedure

The initial review of the appraisal report and/or technical expert's report should determine the report's completeness, including documentation and the detection of any errors or omissions. Review appraisers should confirm that each appraisal or evaluation report prepared by a technical expert is sufficiently comprehensive to support the recommended values. Accordingly, the review appraiser must be thoroughly familiar with the appraised property, the surrounding neighborhood, and the comparable sales used by the appraiser, together with the comparable data that have previously been developed by ROW PD in its economic study for the project. The review appraiser should personally verify sale prices of as many of the comparable sales as possible.

If an appraisal report is incomplete due to overlooked improvements, or if additional information is needed to support its value conclusions, the appraiser is expected to revise and supplement the report as necessary without additional compensation. Any report that is not sufficiently complete and properly documented should be held, and the fee for the report should not be recommended for payment until information is received to properly explain and support the final estimate of value.

Should the appraisal report be deemed unacceptable by ROW PD, ROW PD will document the deficiencies and return the report and its accompanying invoice to the appraiser, requesting that the deficiencies be rectified. The appraiser shall make the appropriate corrections and resubmit the report with a new invoice.

Upon receipt of the corrected report, ROW PD shall date-stamp the report, restarting the 30-day prompt payment process.

ROW PD shall retain a record copy of all appraisal and technical expert reports. If a correction or revision is necessary, the appraiser shall furnish corrected, revised, or supplemental pages or portions of the report for attachment to the copy. All copies except the record copy of the report may be returned to the appraiser for necessary corrections or revisions. Any request for a substantive correction or revision of an appraisal or specialty report shall be documented in the ROW PD's files.

If two appraisal reports are needed on a parcel, a coordinated review of the reports should be made to determine if there are omissions or overlooked improvements in either report. This initial review should determine if there are any major differences in the findings of values, either in total values or in major component parts (land improvements, damages, or enhancements). If so, an additional appraisal report may be recommended.

The review appraiser may have valuation information not included in the appraisal reports that will help to reach decisions regarding the recommended value. Such information should be included in the comments on form [ROW-A-10 Tabulation of Values](#). However, if the review appraiser has rea-

son to question the values estimated by the appraiser(s), and if the review appraiser cannot conscientiously recommend a value conclusion from the existing appraisal(s), an additional appraisal report should be ordered.

The review appraiser should analyze reports with particular attention to completeness and accuracy of research, full explanations of reasoning, substantiation of facts, and the appropriate application of appraisal methodology. The analysis may determine that an approved value should be based upon the existing appraisal report(s) if it is not practical to obtain an additional report. A value developed in this manner by the review appraiser will generally fall within the range of value indicated by the appraisal reports.

## **Section 5 — Consistency in Land Values**

### **Policy**

Consistency in land values for similar parcels must be maintained in order to assure fair and equal treatment for all parcel owners. Consequently, the review appraiser should determine that the land value being recommended for any one parcel is consistent with values previously recommended for similar parcels, not only on the subject project, but also on adjoining projects.

In keeping with this objective, new appraisals indicating an increase in land values (including those for eminent domain proceedings and revised values for similar parcels not negotiated) are to be considered.

## **Section 6 — Variances in Component Values**

### **Policy**

Major differences between appraisal reports on a parcel, either as to the total value or in the major component values for land, improvements, damages or enhancements, will tend to contradict a value recommendation based on such appraisal reports. These differences will also weaken the state's position, not only concerning values for negotiation purposes, but also in eminent domain proceedings. A property owner could use the highest component values from each appraisal report and add them together in order to request an award considerably in excess of the total value indicated by any of the appraisal reports.

For those reasons, the review appraiser should attempt to reconcile major variances between the appraisal reports with their respective appraisers once the appraisal reports are first received by ROW PD. However, in order to permit the appraisers to make their independent finding of value (without knowledge of the opinions of value of other appraisers working on the same parcel), such attempts should be confined to pointing out errors or omissions in the reports. When it is not possible to reconcile the appraisal reports with the appraisers, an additional appraisal report(s) by another appraiser(s) may be necessary to reconcile the variance(s).

## Section 7 — “Uneconomic Remainders”

### Policy

Normally there will be no acquisition of property that is not needed for state right of way, except in the case of an "uneconomic remainder" as provided for by the Transportation Code Section 203.0521 and in accordance with procedures in the *Right of Way Acquisition Manual* [Chapter 5, Section 13 Policy on "Uneconomic Remainders" \(Excess Takings\) \(for State\)](#) and [Chapter 5, Section 14 Policy on "Uneconomic Remainders" \(Excess Takings\) \(for LPA\)](#).

### Procedure

An uneconomic remainder will be valued apart from the parcel. It will be valued as the remainder after value noted in the original appraisal report for the acquired parcel.

## Section 8 — Reviewing the Appraisal of the Remainder After

### Procedure

The review appraiser's analysis should include the appraiser's support for the value of the remainder after acquisition. The appraiser should make use of the market, cost, and income approaches to value and consider the remainder as a separate and distinct property. The review appraiser should also disregard its previous joinder with the part to be acquired, but give due consideration to the highest and best use of the part acquired.

Ordinarily the appraiser should not use the same market data that was used in evaluating the whole property by simply making additional adjustments, but should rely on sales that are actually comparable to the remainder after the part acquired. **No comparison of the “remainder after” to the “remainder before” will be made for determining the “remainder after’s” value.** Before a value is recommended or approved for a partial acquisition, the review appraiser should be sure that the appraisal of the whole property, the part to be acquired, and the remainder after are adequately supported as if each were a separate property.

In reviewing the appraiser's opinion of value for the remainder after, it is necessary to ensure that all probable changes in its highest and best use have been considered. If there are any changes, these must be supported with adequate data. Further, an appraiser must consider the possibility of a change in the highest and best use, including the possibility of change in the highest and best use caused by the new facility. An appraiser may assume that there is no change, unless there is a decline in the quality of the same use (along with loss in value), which will necessitate the payment of damages. If the same use is assumed to continue, then a loss in value would occur only if the overall quality of its use has declined. However, if the highest and best use changes to a more valuable use, there would probably be no damages but would indicate some type of enhancement(s).

The review appraiser should also be alert to the possibility of illogical reasoning in measuring a reduction in value to the remainder after by using the cost to cure method. It must be remembered that the cost to cure method measures the maximum loss in value that is possible for a given cause, but the reduction in value may be less than the total cost to cure. As a check, the review appraiser should consider what the value of the remainder after would be with the addition of the curable item.

If the value of the remainder after “as cured” exceeds the value of the remainder before, then the reviewer knows that the cost to cure method has been applied improperly. This situation may occur if there is an improvement that contributes value to both the part to be acquired and the remainder after. For example, the appraiser may have properly valued this item as it contributes value to the whole property or just to the part to be acquired. In addition to this contributory value, the appraiser may then consider the remainder after to be of less value due to the loss of the improvement on the

part to be acquired as measured by the cost to cure method. This may result in an error from two different causes.

The more frequent error is double compensation, caused by including a value for the improvement on the part to be acquired and allowing a reduction in value to the remainder after for its absence. An example would be the inclusion of a water well in the value of the part acquired and showing a lesser value for the remainder after for not having the water well. The remainder after, of course, should not suffer a loss more than the improvement's contributory value to the whole property. If all of the water well's value is attributed to the part to be acquired, then the remainder after should have no damages or loss in value due to its absence. The contribution of an item to the various parts of a property should not exceed the total property value.

Secondly, an error may occur when a depreciated improvement, with little or no contributory value, is located on the part to be acquired; the loss to the remainder after is measured by the cost to replace the improvement with one that is new. Since the existing improvement is not new, the reduction in value should not exceed the total contributory value of the improvement.

As a means of checking the appraiser's method for accuracy, the reviewer should add together the value of the part to be acquired, the value of the remainder after, plus the estimated loss in value (damages) as determined by the cost to cure method. If the total does not equal the whole property value, an error probably exists. One of these three elements has not been considered properly. Assuming that the part to be acquired has been valued correctly and the remainder after has been properly appraised, then the error must be in the cost to cure method. If these three parts equal more than the whole property value, then in all likelihood the cost to cure method as a measure of damages exceeds the actual loss in value.

Another cause for a reduction in value of the remainder after that is difficult for the appraiser to support (and for the review appraiser to analyze) is a loss in value due to the proximity of a new road to the improvements on the remainder after. The tendency of some appraisers is to furnish no market analysis or support, but merely to state their opinion on "proximity damages" based on a description of the effect of the acquisition upon the remainder after. Unless this opinion of value is supported with appraisal data, the review appraiser has little on which to base conclusions. A generally logical, but otherwise unsupported, opinion on proximity damages should not be acceptable to the review appraiser.

Relevant market data is usually available to the appraiser. The essential problem is to find comparable sales (or rentals) that have a similar proximity to a comparable roadway. It is true that comparables may not be found in the subject's neighborhood; however, there should be some past governmental right of way acquisitions of a property on a relatively similar roadway that was affected by proximity in a comparable way. The market data available may not be ideal, but the appraiser should be able to offer something more than just an opinion.

However, the review appraiser should be cautious when the appraiser uses a comparable sale of a remainder after as a basis for proximity damages by establishing a percentage loss in value for the

sale property and then applying this same percentage to the subject property. While the degree of proximity may be similar between the two properties, they may not suffer the same percentage loss in value unless they are also very comparable. For example, a large estate type home that is normally located far away from a high traffic roadway may suffer a greater percentage decline in value due to proximity to a traffic artery than a small house with very few amenities. Moreover, the small and less expensive house is usually located in a less desirable location. Even though it may have the same physical proximity to the roadway as the estate house, the degree of change is usually less for the smaller house.

In reviewing an appraisal of the remainder after, the review appraiser should never become so engrossed in the details that he/she loses sight of the overall valuation methodologies. As an illustration, a matter that is frequently overlooked by the appraiser is enhancements to the remainder after. Some appraisers tend to be “damage oriented” when estimating the value of the remainder after; that is, they just naturally assume, because of the acquisition, the remainder after will be of less value. Some appraisers may consider enhancements speculative. Moreover, even though the appraiser does not include damages to the remainder after, but enhancements are indicated, the appraiser will not include any enhancements in his/her report. This will indicate that the remainder after has not been properly appraised.

One such example of an incorrect appraisal technique is seen when the size unit value (per square foot/acre) of the part acquired is estimated to be **more valuable** than the whole property’s size unit value. This may occur if the part to be acquired involves the more valuable street frontage of the whole property, but the remainder after will continue to have frontage on an equal or better facility. The remainder after, or at least part of the remainder in this instance, may assume a unit value equal to or less than the unit value of the part acquired when the new road is completed. If the unit value of the remainder after is valued at less than the unit value of the part acquired, it would reflect an enhancement. Note the following example:

**Table 5-1. Illustration of Incorrect Appraisal Technique**

Valuation Area	Calculation
Whole Property	20 acres @ \$5,000/ac = \$100,000
Part to be Acquired	5 acres @ \$7,500/ac = - 37,500
Remainder Before	15 acres @ \$4,166/ac = 62,500
Remainder After	15 acres @ \$5,000/ac = 75,000
Enhancement	\$12,500
Compensation (Part to be Acquired less Enhancement)	\$25,000

The above illustration is incorrect because the enhancement of \$12,500 in the remainder value was deducted from the part to be acquired. Such enhancements may **only** be offset against any damages found to the remainder.



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## Section 9 — Reviewing for Compensability

### Procedure

The appraiser and review appraiser should have knowledge of the several elements of value in an appraisal report that may be non-compensable under the law, both concerning the part acquired and the remainder after. In Texas, the loss of business, circuitry of travel, loss of direct access to main lanes, the introduction of center medians, etc. are considered non-compensable (see [Chapter 3, Section 3, Legal Instructions - Noncompensable Items](#)).

A review appraiser needs to determine if the appraiser permitted subjective thoughts and feelings to influence the exercise of an objective appraisal judgment (particularly if the appraisal is of a partial acquisition). For example, at the property inspection, the property owner will express his/her feelings about the acquisition, including the possible negative effects it will have on the remaining property. Appraisers should not have their objective judgment influenced by these emotional pleas. What might result would be the appraiser first valuing the remainder after, rather than first valuing the part to be acquired and then how the acquisition will affect the value of the remainder after.

Whenever streets and highways are realigned (or the direction of traffic on an existing roadway is changed or restricted), a loss in value to the properties abutting the road could occur. However, under existing state law, this loss in value caused by circuitry of travel is not considered compensable. The basis for this reasoning is that the state cannot guarantee to property owners (or the traveling public) that they will always travel the same route on the abutting roadway. Some appraisers may wish to include a loss in value due to circuitry of travel because they do not understand the law regarding it or do not believe the law to be just and fair. Often, this “damage” is actually the anticipated “inconvenience” of the abutting property owners, instead of an actual damage to the real estate. In some of these cases, the real estate is actually enhanced in the general market, though not under the specific use desired by the present property owner. The review appraiser should determine if an appraiser has valued the remainder after based on the owner’s preferred use, rather than its highest and best use.

Another element that may appear in an appraisal report that is not compensable is a value for personal property. Due to the legal nature of all types of property, it is not always easy to make a determination between what is real estate and what is personal property (see [Chapter 3, Section 2, Legal Instructions - Personalty and Realty](#)). Many items are of questionable classification such as machinery, equipment, appliances, etc. When such questionable items are included in the appraisal report, the review appraiser must have positive assurance that they have been determined by ROW PD personnel to constitute a part of the realty, preferably with a signed form [ROW-A-9 Property Classification Agreement](#). The review appraiser is expected to include a listing of such items in the review comments of form [ROW-A-10 Tabulation of Values](#) or make such other identification as may be appropriate.

## Section 10 — Reviewing the Appraisal of Lessee Interests

### Procedure

The proper consideration of lessee interests by the appraiser should be carefully checked by the review appraiser since an appraisal of these interests will usually involve knowledge of the applicable laws, current administrative policy, as well as complicated appraisal techniques. A lessee's interest may be in the form of ownership of an improvement(s), agricultural crops, minerals, a rent advantage, access roads, water lines, an advertising sign, or some other type of interest. All lease agreements should be made a part of the appraisal report. In most of the above cases, an appraisal will be prepared as though the lessee's interests were all under the ownership of the fee holder.

Several of these lessee interests may require special handling and observation by the appraiser and review appraiser. For example, when mineral interests are involved, current state policy is not to purchase the oil, gas or sulfur that lie under the surface of the right of way. However, when an oil well is located on the part to be acquired, a study by a technical expert of the well and realty equipment in relationship to the value of the estimated oil reserves may be required (see [Chapter 2, Section 4, Other Services](#)). If the value of the oil reserves is less than the cost of a new oil well, then the value of the old oil well would not exceed the value of the reserves, since it would not be economically feasible to drill a new oil well outside the right of way to recover the remaining oil.

It is especially important for all concerned to have a clear understanding of the lease agreement, as well as the "intent" of the lessor and lessee. For example, the lessee may own the improvements on a special purpose property. However, the terms of the lease agreement may prevent both the whole property and remainder after from being used for their highest and best use, thereby reducing the value of the lessee's interest. This reduction in value would not occur if the lessee were permitted, under the lease terms, to use the remainder after for its highest and best use. The matter would be complicated further if the remainder after were enhanced by the new facility, because then the lessor's interest would be enhanced while the lessee's interest is damaged.

It is also important to note that certain lease agreements now contain general or elaborate "condemnation" clauses that outline certain conditions for the lessor and lessee. These clauses (that range from the ratio of property acquired under the threat of condemnation, number or percentage of minimum parking spaces needed in the remainder after to conduct business/services, whether access is detrimentally changed, etc.) should also be studied carefully by appropriate personnel.

## Section 11 — Reviewing Updated Values

### Procedure

Occasions will arise when it becomes necessary to obtain updated appraisal reports on a property after a value has been previously approved. It may be that additional support is necessary for eminent domain testimony or an unusual length of time has elapsed since the value was originally approved, placing its validity in doubt due to depreciation of improvements or market changes. In addition, improvements may have been overlooked, added, destroyed by fire, or damaged. Right of way design changes (such as additional right of way being needed after an offer was made), as well as ownership changes due to severing the original parcel, will also necessitate an updated appraisal report. Normally, in such instances the original appraiser is requested to update the report.

When it is necessary to obtain a new or an updated appraisal report after a value has been approved; and, a new value is indicated, the new appraisal data should be reviewed in the same careful manner as the original appraisal report(s). An examination should be made to be sure that all new opinions are properly supported. It is important that any change in value is supported with new appraisal data; otherwise, it would appear that there was only a change in an opinion of value without proper documentation.

The review appraiser should be sure that the new appraisal data was not available at the time the original report(s) were made, or have an adequate explanation from the appraiser as to why this information was not used if it was available. Appraisers sometimes make errors and should be prepared to update their values and furnish a complete analysis of the matter to support their revision(s). The appraiser must submit new pages in this case.

One of the most frequent reasons given for an updated value is an increase in value due to the lapse of time. The appraiser's revised estimate must be due to an actual increase in value as measured by subsequent appraisal data. **An increase in value due to time or changing market conditions cannot be assumed, but must be measured and supported.**

In order for the influence of the proposed facility/highway project not be reflected in the updated value, comparable sales that have not been affected by the proposed facility should be given the greatest weight. For those sales that are affected by the proposed facility, it is usually extremely difficult to separate a general increase in value from an increase in value caused by the facility. It is very undesirable to use this type of comparable sale in a condemnation trial; therefore, every effort should be made to support the appraisal by comparable sales that have not been influenced by the project, except as support for the value of the remainder after.

When a major or substantial increase in value is indicated from the information obtained in a single updated appraisal, an additional appraisal report by a different appraiser should be obtained to document properly the state's position on the value.

## Chapter 6 — Establishing Right of Way Values

### Contents:

[Section 1 — Form ROW-A-10, Tabulation of Values](#)

[Section 2 — Approved Values](#)

[Section 3 — Overlooked Items of Value](#)

[Section 4 — Revision in Approved Values for Negotiation](#)

[Section 5 — Cancellation of Approved Values](#)

## Section 1 — Form ROW-A-10, Tabulation of Values

### Form Usage

The major parts of this form are detailed in the following explanation of purpose and use. The data is entered into TxC. The [ROW-A-10 Tabulation of Values](#) form is available on the TxDOT website.

- ◆ On Page One, the data should agree with data shown on the right of way map and other documents that relate to the parcel.
  - Contract Fencing should be indicated by a “Yes” or “No.” Also, see [Chapter 3, Section 5, Procedures on Appraisals of Specific Types and Situations](#).
  - Access rights are defined as Denied, Permitted, and Partially Permitted. If access will be partially permitted and/or denied, a brief explanation will be added to the reviewing appraiser’s review comments in Section VI, Comments and Conclusions on Values in the Appraisal Report of this form.
  - Pages One and Two are designed to assist in a comparison of appraised values for Land (Section I), Non-OAS Improvements (Section II), Damages and Enhancements (Section III), and OAS Improvements (Section IV), and provide a breakdown of values for accounting and recording purposes as well as for documentation and audit purposes. Information is entered in TxC from the appraisal reports, together with an on-the-ground inspection of the parcel and the comparable sales. On Page One, each improvement within (or partially on the ROW) should be listed under “Improvement Type.” “Type Construction” should indicate masonry, wood, concrete block, etc. The “Improvement Value” will be the appraised value of each improvement.
  - The recommended retention value, to be subtracted from the improvement’s value if the owner retains that improvement, is to be shown in the space provided on Page One of form *ROW-A-10*. Furthermore, the explanation on the basis for said retention value is to be entered in the “Retention Clause” field of “Acquisition Interests”. These comments will then be shown on Page Four under Section VII, Justification and Explanation for Credit if Retained.
  - Severed or bisected improvements should be classified as Category I or Category II bisections and commented in Section VI. If the structure is classified as Category II bisection in TxC, a supplemental paragraph will be automatically added at the bottom of Page Two of form *ROW-A-10*. It will be signed by responsible engineering personnel stating that the “cutting of the building is a design and location requirement and that any reduction in right of way would adversely affect requirements for transportation purposes.” This recommendation will then bear the signature of the district engineer, or **designated representative that is a state licensed professional engineer**.

- On Page Two, Exempt Damages are defined as estimates of damages for the remainder property that the appraiser and reviewer determine should not be offset by enhancements or benefits. Typically, exempt damages are cost to cure estimates for curative work the appraiser believes to be necessary for the remainder property to function ([Chapter 3, Section 5, Procedures on Appraisals of Specific Types and Situations](#)).
- ◆ Page Three, Section V, Recapitulation. Appropriate recommended totals for each of the respective component values will be entered in this section. When the appraised value is less than \$1,000, the recommended value may be rounded upward to \$1,000 as outlined in [Chapter 2, Section 11, Economic Adjustments](#).
- ◆ Page Three, Section VI, Comments and Conclusions on Values in the appraisal report is for use by the review appraiser to explain adequately the reasoning in making the value recommendation, together with any other pertinent comments regarding the appraisal data. Comments regarding any denial of access, bisected improvements, lessee-owned improvements, personalty items not appraised in the report, etc. should also be made in this section. It is recommended that full use be made of “Review Comments” in T×C in this regard.
- ◆ Page Four, Section VII, Justification and Explanation for Credit if Retained should be used in conjunction with the improvements and retention values entered in T×C.
  - Retention values are to be recommended when improvements, located within the part to be acquired, may be retained and removed by the owner. The retention value is the appropriate amount to be deducted from the improvement’s approved value. This is determined and recommended by a ROW PD review appraiser based on an analysis of sales of similar improvements. The retention value is the expected value of that improvement if the state were to sell it in order to have it removed from the proposed ROW. Retention values shall not be less than one dollar, unless the appraised value of the improvement is zero.
  - An explanation for the retention value should include specific reference data such as an individual listing of similar sales under like conditions, including sales made through the Texas Building Procurement Commission.
  - Usually the retention value will be the entire value of the improvement if it is based on salvage value. This is done because salvage value is intended to be that value which can be obtained for that improvement to be removed from the parcel.
  - When an improvement that may be retained is an item that has been included in the value of the land, such as fencing or a water well, it will be necessary to abstract its value (usually salvage) from the land value. It should then be listed with the other improvements in Section Two with an appropriate retention value.
- ◆ Page Five, Section IX, Reviewing Appraiser’s Statements, are required statements and signature blocks for either ROW PD or the ROW Program Office review appraiser.
- ◆ Page Five, Section IX, Approval of Values, are required statements and signature block for approval by ROW PD.

Authorized signatures, original or electronic, and dates must appear on the original form *ROW-A-10 Tabulation of Values*. Photocopy signatures are acceptable on all other copies created from the original.

## Section 2 — Approved Values

### Procedure

The review appraiser can recommended appraisal reports for use by TxDOT.

The review appraiser will electronically submit a copy of each appraisal report and the approved [ROW-A-10 Tabulation of Values](#) to ROW PD.

ROW PD will approve the *ROW-A-10 Tabulation of Values* in TxC, and submit an electronic copy to staff for authorized signature.

If requested by ROW PD, the ROW Program Office will review the recommended value. In this case, the ROW Program Office will return the reviewed *ROW-A-10 Tabulation of Values* (with appropriate comments for ROW PD's consideration) before the authorized ROW PD staff approves the *ROW-A-10* and the parcel value. If the submission is complete and properly documented (and the ROW Program Office concurs with ROW PD's recommendation), approval of the total value shown on the form *ROW-A-10* will be indicated by the ROW PD staff's signature.



### Section 3 — Overlooked Items of Value

#### Procedure

It is the responsibility of ROW PD staff to determine, in contacts with the property owner and by examination of the property, if items of value have been overlooked in the appraisal process.

On parcels that have been acquired and such items have been overlooked, an X-parcel consisting of the overlooked improvements will be added to the acquisition parcel in TxC. ROW PD will contact the appraiser and obtain a corrected report that includes the omitted item(s) as the X-parcel.

On parcels that have not been acquired and such items have been overlooked, negotiations will be suspended and ROW PD will contact the appraiser and obtain a corrected report that includes the omitted item(s).

The review appraiser may appraise items for X-parcels and overlooked improvements for valuation and negotiating purposes by revising values on the [ROW-A-10 Tabulation of Values](#) form.

NOTE: Overlooked items of value will be valued by the appraiser at no additional fee.

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## Section 4 — Revision in Approved Values for Negotiation

### Procedure

After a parcel value has been approved, there should be no significant delay in initiating negotiations. If during negotiation, it is believed that either market conditions or the parcel status has changed to the extent that the approved value appears questionable, revised appraisal information should be obtained and a revised recommendation made accordingly. In this case, an “Update Appraisal for Negotiations” assignment will be made in TxC and the updated appraisal report will be entered.

Examples of conditions which affect approved values are additional depreciation or improvements to the property, loss by fire, flood or other damage, removal of an improvement by the owner, conveyance of a portion of the parcel being acquired, and/or changes in the trend of the market in the area involved.

If an updated appraisal is acquired prior to the filing of the Petition of Condemnation, send a copy to the property owner and revise the offer, if necessary. For updated appraisals acquired after the filing of the Petition of Condemnation, send a copy of the appraisal along with form [ROW-N-Post-Petition Post Petition Updated Appraisal Letter](#) to the property owner.

If more than one appraiser was used to determine the approved value, and if a single updated appraisal report indicates a significant increase in value, the other appraiser(s) should also be assigned to update his/her report in order to properly support such an increase in value.

## **Section 5 — Cancellation of Approved Values**

### **Procedure**

Whenever a parcel, or parcel number, is to be changed and a value has previously been approved for the parcel, ROW PD may cancel the approved value unless the change would result in an inconsequential effect on the value.

When submitting information relative to any change in a parcel, ROW PD should include a recommendation regarding whether the previously approved value should be canceled.

# Chapter 7 — Eminent Domain - State Acquisition

## Contents:

[Section 1 — General](#)

[Section 2 — Recommendation of Appraisers and Expert Witnesses](#)

[Section 3 — Updated or New Appraisal Reports](#)

[Section 4 — Updated Values](#)

[Section 5 — Comparable Sales Subsequent to the “Date of Taking”](#)

## Section 1 — General

### Policy

The counties and cities are responsible for the acquisition of right of way by either negotiation or condemnation on 90-10 (except on the alternate procedure) and Farm-to-Market programs per LPA Use of State's Appraisals and Appraisers in Condemnation ( [Chapter 8, Section 8, Eminent Domain in LPA Acquisition](#)).

In other programs where the state is the acquiring agency (including 90-10 projects converted to the alternate procedure), the OAG handles eminent domain proceedings.

## Section 2 — Recommendation of Appraisers and Expert Witnesses

### Procedure

Contract (PREAS) appraisers and other individuals selected as expert witnesses will be recommended by ROW PD. Some of the factors to be considered in making these recommendations are:

- ◆ experience of each individual as a witness in court;
- ◆ the recognition that will be given in the community to the ability and judgment of each individual as a subject matter expert;
- ◆ consultation with the appraisers and/or expert witnesses regarding possible changes in market conditions and other factors which would affect their original estimates;
- ◆ the time required to furnish a new or updated report; and
- ◆ availability of the appraiser or expert witness to testify.

When ROW PD submits the parcel's form [ROW-E-49 Request for Eminent Domain Proceedings](#), it will recommend the appraiser(s) and expert witness(es) to prepare for testimony at a Special Commissioners' Hearing. ROW PD will review and approve the updated appraisal report(s) and obtain any corrections or additional support necessary for them to serve as a basis for testimony at the Special Commissioners' Hearing. Any updated technical expert's reports will have to be reviewed by ROW PD staff.

ROW PD may make its assignments to update report(s) as necessary once the state's "Final Offer" is mailed to the property owner(s).

After a Special Commissioners' Hearing and Award, if it becomes necessary to continue condemnation proceedings by a jury trial, the OAG will notify ROW PD of its recommendations for the parcel's appraiser(s) and expert witnesses. The OAG will make the final determination on which witness(es) will be used at any subsequent jury trial.

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## Section 3 — Updated or New Appraisal Reports

### Procedure

After selection has been made of the appraisers or expert witnesses to be used in eminent domain proceedings, it remains ROW PD's responsibility to make the work assignments and prepare appropriate contracts ([Chapter 2, Operating Procedures](#)). In making assignments for updated or new reports, the assignment's due date must provide the appraiser adequate time to complete the report properly. There should also be sufficient time for ROW PD, the ROW Program Office, and OAG to complete the necessary reviews before the Special Commissioners' Hearing or jury trial.

In preparing for eminent domain proceedings, additional appraisers or expert witnesses may be assigned besides those used for negotiation purposes.

The need for two or more appraisals should be based on one or more of the circumstances listed below. ROW PD files should reflect the circumstance(s) that necessitated the additional appraisal(s):

- ◆ When experience has proven that the original appraiser, though competent as an appraiser, is not effective as a witness.
- ◆ When special or multi-purpose properties or uniquely complex valuation questions are involved, and the OAG deems it essential to have an appraisal from a person whose experience with such problems better qualify him or her to testify.
- ◆ When the nature of the case (extremely valuable property, for example), including indications from the property owner's defense preparation, reflects, in the opinion of the OAG, that additional testimony will be a tactical advantage.
- ◆ For purposes of jury trial, at least two separate appraisers should be assigned to prepare reports for a parcel whose value is one million dollars or greater.
- ◆ When the original appraisal(s) are made by an appraiser(s) residing and doing their primary business outside the immediate community in which the parcel is located, it may be wise to have additional testimony from a local appraiser.
- ◆ When parcels involved in eminent domain proceedings are either severed or consolidated for trial purposes, thus making the original appraisal(s) inappropriate or improper. This action may be brought about by: (1) a decision of the OAG before filing the state's petition; or, (2) by a court order sustaining a motion by the property owner's defense counsel.
- ◆ When the original appraiser(s) may not be available for testimony at the Special Commissioners' Hearing or jury trial, an assignment can be made to an additional appraiser(s).

- ◆ When a conflict of interest existed (or later occurs) that disqualifies the appraiser that originally appraised that specific parcel, immediate steps should be taken to secure an additional appraisal(s).

**When a new appraiser has been selected to serve as a witness**, he/she should be assigned to prepare an appraisal report in the same manner as the original appraiser(s) assigned for negotiation purposes (through an approved work authorization). After the appraisal report has been reviewed, the appraiser must have the time and funds available in his/her approved work authorization to perform any additional work required to prepare for testimony (updates, exhibits, meetings with the OAG, and, of course, actual time spent in testimony).

The updated, additional or third appraisal report will be prepared on form [ROW-A-5 Real Estate Appraisal Report](#).

For a Special Commissioners' Hearing, ROW PD will review and forward the updated or new appraisal report(s) to the ROW Program Office, along with form [ROW-A-10 Tabulation of Values](#). Any change in value would not necessitate a revised offer to the property owner before the Special Commissioners' Hearing. However, the updated or new appraisal should be provided to the property owner or their legal representative, since the appraisal will be basis of the state's testimony at the hearing.

Since the appraiser(s) will have to testify regarding the parcel's value "as of" the day of the Special Commissioners' Hearing, the updated or new appraisal report's valuation date should be as current as possible, preferably within 90 days of the hearing date.

For a jury trial, updated or new appraisal report(s) will be prepared with a valuation date "as of" the date the Special Commissioners' Award was deposited at the courthouse, as this constitutes the "date of taking." These reports will be reviewed by ROW PD. After all corrections have been made, **one electronic copy** of the report(s) should be submitted to the ROW Program Office for processing.

It is essential that a full and complete analysis of the report(s) be given in ROW PD's cover memorandum when transmitting the appraisal report(s). This analysis should be equivalent to the "Comments and Conclusions on Values in the Appraisal Report" Section VI, on Page 3, of form *ROW-A-10 Tabulation of Values*. The cover memorandum should also include any comments that are pertinent to the lawsuit involved. Finally, the cover memorandum should recommend the approval of the appraisal report(s) as witness material; and, it should include a statement on whether the appraiser(s) is considered an acceptable witness in the state's eminent domain proceedings ([Chapter 7, Section 5, Special Commissioners' Award and Settlement Value Analyses](#)).

ROW PD will review the updated or new appraisal report(s) for jury trial. Once reviewed, ROW PD will forward a copy of the report to the OAG with recommendations in its transmittal memorandum.



If the review appraiser determines that an updated or new appraisal report does not conform with TxDOT appraisal guidelines, USPAP, or industry standards, the report(s) must nevertheless be submitted to ROW PD with the reasons why the report is considered non-compliant, and/or the reasons for recommending the disqualification of the appraiser for testimony.

Based on recent court decisions, it is possible that all appraisers appraising a parcel in eminent domain proceedings may be subpoenaed. This may include the original appraiser(s), who prepared the initial report in negotiations, but was not recommended as a witness in the state's eminent domain proceedings.

## Section 4 — Updated Values

### Procedure

If an updated appraisal is acquired prior to the filing of the Petition for Condemnation, send a copy to the property owner and revise the offer, if necessary.

If the revised offer is not accepted, a copy of the “Final Offer” letter, at the revised value, must be submitted to the ROW Program Office and the OAG for continued processing of eminent domain proceedings.

For updated appraisals acquired after the filing of the Petition for Condemnation, a revised final offer is not necessary. Send a copy of the appraisal along with form [ROW-N-PostPetition Post Petition Updated Appraisal Letter](#) to the property owner.

An electronic copy of the appraisal report(s), the revised form [ROW-A-10 Tabulation of Values](#), and any new negotiator reports or correspondence should also be sent to the ROW Program Office and the OAG.

## Section 5 — Comparable Sales Subsequent to the “Date of Taking”

### Procedure

The appraiser must consider several factors when using comparable sales in an update or additional appraisal report **after** the “date of taking”. The factors involved in these sales are the possibility of their value increasing or decreasing due to a change in the general economy or because the sale is located on the project. In either case, it would be necessary for the appraiser to make certain adjustments in comparing the sale to the subject. If the change in value is due to a change in the general economy, the appraiser will make an adjustment for market conditions (date of sale and time adjustment). In the case of a sale on the project, whether it is before or after the “date of taking,” or a remainder or whole property left with frontage, makes no difference since the factor to be concerned with is whether the sale has been impacted by project influence. If there has been a large change in value to the sale due to the project, then that sale would not be relevant for comparison to the subject. If it can be determined that the sale is not impacted by project influence, then the sale can be compared to the subject just as with any other sale.

In an eminent domain case, the mere fact that a sale occurred after the date of taking does not automatically render such data inadmissible. The trial court is vested with broad discretion in determining whether such sales are appropriately comparable according to the same rules which would be applied to sales before the date of taking. Sales that are too remote in time or reflect an increase in value directly attributable to the project for which subject property is being acquired are not admissible.

# Chapter 8 — LPA Acquisition with State Participation

## Contents:

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[Section 6 — ROW PD Submission of Recommended Values](#)

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[Section 8 — Eminent Domain in LPA Acquisition](#)

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## Section 1 — General

### 90-10 Canals Having a Private Function

Where the LPA is purchasing the right of way, it may wish to perform the work as a property adjustment; however, appraising and establishing values will be in accordance with previous instructions.

### 90-10 Right of Way Fencing

Where damage for an unfenced condition is to be a part of the cash consideration paid to the property owner or is to be handled as a property adjustment, such damage will be based on the estimated cost of re-fencing.

If the LPA elects to perform needed right of way fencing on a lump sum or actual cost basis as a part of the right of way consideration, this must be made known when the values are established so the value of the parcel can be determined with fencing provided. There must be coordination between the values and proposed fencing procedure so that adequate compensation is determined in each instance. Recommended and approved values will not include either a value for existing fences whose use will be restored by the new right of way fence or damages for an unfenced condition.

### Values for School Properties on 90-10 Projects

Appraisals will be obtained in accordance with the Texas Supreme Court decision in the Waco School District case [*State v. Waco Independent School District*, 364 SW2d 263 (1963)]. However, in the case of a minor acquisition, appraisals prepared along the usual approaches to value will be obtained unless subsequently it is necessary to condemn.

The portion of the special instructions requiring more than one technical expert does not apply.

### 90-10 Utility Lines Having a Private Function

On primary and secondary highways, the FHWA has granted blanket approval of the retention of private utility lines as a part of the right of way transaction.

The LPA may perform an adjustment with eligibility established in the same manner as other property adjustment work; i.e., appraising and establishing values will be in accordance with previous instructions.

**90-10 Advertising Signs**

The LPA should follow the procedures outlined in [Chapter 3, Section 5, Procedures on Appraisals of Specific Types and Situations](#).

**90-10 Supplement**

- ◆ Form [ROW-A-10 Tabulation of Values](#)
  - The LPA representative shall sign all submissions except where the state is establishing values by waiver.
  - ROW PD should handle all excepted parcels and forms should be submitted with each parcel together with at least one state appraisal on each parcel.
  - If the state is determining values, the ROW Program Office should be furnished a copy of the LPA waiver of their right to establish values.

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## Section 2 — LPA Appraisal Guidelines

### Informational Notice to Owners Required

As required by federal regulations, an informational notice letter must be given to every property owner. Form [ROW-N-INTO Informational Notice to Owner](#) should be completed and personally delivered to the property owner at the pre-appraisal contact or sent by Certified Mail, Return Receipt Requested.

### Pre-appraisal Contact/Interview

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

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

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

The LPA may use TxDOT form [ROW-A-PAC Pre-Appraisal Contact with Property Owners](#) during the pre-appraisal contact. The LPA should also refer to [Appendix A](#) of this manual.

ROW PD should monitor all pre-appraisal procedures by an LPA on 90-10 projects to ensure that TxDOT's guidelines are followed.

**NOTE: The LPA should make every effort to identify potential on-site hazardous materials during the acquisition process.** If the LPA suspects that donated property may be contaminated, it should obtain right of entry from the property owner and investigate **prior** to accepting the donation. Refer to the Environmental Checklist for LPAs.

## Establishment of Just Compensation Required

Before initiation of negotiations, appraise the real property, and have the values reviewed by a qualified review appraiser, to establish just compensation. An exception to this requirement occurs when a parcel will be donated and the property owner waives the establishment of just compensation through the appraisal process. Refer to the *ROW Real Estate Acquisition Guide for Local Public Agencies*, [Chapter 3, ROW Acquisition](#) as well as the *ROW Acquisition Manual*, [Chapter 6, Right of Way Donations and Exchanges](#).

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

The amount of just compensation will not be less than the approved appraisal, taking into account the value of allowable damages or enhancements to any remaining property. For acquisition by negotiation, just compensation is the amount established as the approved value through the appraisal process and shown on the completed form [ROW-A-10 Tabulation of Values](#). For more information, refer to [Chapter 6 - Establishing Right of Way Values](#).

In accordance with the agreement, the county judge, city mayor, or their appointed designees shall approve **all** appraisal reports, thereby approving the values.

## Policies on Use of Appraisers

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

Appraisal assignments to fee appraisers on projects where there is federal aid in right of way and/or construction of the project may only be made to individuals that are licensed as certified residential or certified general appraisers by the Texas Appraiser Licensing and Certification Board. The appraisal assignment must fall within the scope of practice permitted under the appraiser's licensure level. TxDOT ROW Program Office maintains a roster of Department Certified Appraisers, and the roster is available in the ROW PD office. In addition, the TxDOT list of approved fee appraisers contains the certification/license information for each appraiser and may be used by the LPA for reference and verification.

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



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## Appraisal Standards

A detailed appraisal shall reflect nationally recognized appraisal standards, including, to the extent appropriate, USPAP. An appraisal must contain sufficient documentation, including valuation data and the appraiser's analysis of that data, to support his or her opinion of value. The LPA is encouraged to consult with TxDOT Right of Way personnel regarding acquisitions that require a detailed appraisal as well as those presenting uncomplicated valuations. As a minimum, the LPA appraiser shall prepare complete appraisal reports on each parcel to be acquired utilizing TxDOT forms [ROW-A-5 Real Estate Appraisal Report](#) and/or [ROW-A-6 Real Estate Appraisal Report](#) as applicable. Reports shall be signed by the assigned appraiser only. This requirement does not preclude the assigned appraiser from accepting significant professional assistance from competent personnel as long as the assistance is appropriately documented per USPAP requirements.

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

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

If the LPA determines that a formal appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at \$10,000.00 or less, based on a review of available data, **and there is no state cost participation involved**, it shall use [ROW-A-PVD Parcel Value Determination Form for LPAs](#). When form *ROW-A-PVD* is used, the report shall be completed by agency personnel with sufficient understanding of the local real estate market to be qualified to make the parcel value determination. The *ROW-A-PVD* shall be submitted with supporting documentation to TxDOT for its review and acceptance. Should TxDOT disapprove the value, either additional documentation or a formal appraisal will be required. **If state cost participation is involved**, the LPA **must** use a Department Certified Appraiser to prepare a formal appraisal report.

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

## Appraisal Review Requirements

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

- ◆ A qualified review appraiser shall examine all appraisals to assure that they meet TxDOT appraisal requirements and shall, prior to acceptance, seek correction or revision of those that do not.
- ◆ If the review appraiser is unable to approve or recommend approval of an appraisal as adequate support for compensation, the review appraiser may develop appraisal documentation to support a new value conclusion or recommend a new appraisal be ordered.
- ◆ The review appraiser's certification and the recommended or approved value of the property shall be set forth in a signed written statement that identifies the appraisal reports reviewed and explains the basis for such determination. Any damages or enhancements to any remaining property shall also be identified in the statement.
- ◆ The environmental condition of the property.

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

### **Policies on Appraisal and State Acquisition of Improvements**

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

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

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

### **Updating Offer of Just Compensation**

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

- ◆ Information provided by the property owner indicates a need for a new or updated appraisal, such as the owner locating an overlooked improvement.

- ◆ A material change in the property's condition indicates a need for a new or updated appraisal.
- ◆ Significant time passes since the last appraisal.
- ◆ Real estate market conditions change significantly.

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

For updated appraisals acquired after the filing of the condemnation petition, a revised offer is not required. However, send a copy of the appraisal to the property owner along with a [ROW-N-Post-Petition Post Petition Updated Appraisal Letter](#).

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## Section 3 — Establishing Values

### Establishing 90-10 Right of Way Values

Establishment of an approved value for each right of way parcel is essential, since it ultimately may serve as a basis for the limit of state participation in the LPA negotiated parcel cost. The counties or cities also need current values in negotiations and for use in condemnation proceedings.

It is expected that an LPA usually will prefer to have the process of determining a property value completed and be in receipt of the state's approval on a parcel before proceeding with the purchase, but this is not mandatory. However, if the LPA will seek reimbursement from the state, it must conform to all policies and procedures contained in this manual, especially those in [Chapter 8, Section 2, Appraisal Guidelines for LPAs](#). Special attention is directed to the fact that, regardless of the method of determining values, there is a definite need for TxDOT to keep its process of determining values abreast with LPA action in acquisition. Where improvements are involved, an intelligent analysis of value cannot be made unless such improvements can be evaluated in their existing condition and original position on the property. The appraisals and analyses must be made before any improvement is removed either through sale by the General Services Commission or through retention by the owner.

If a LPA retains the right to recommend values but is slow in submitting this recommendation, ROW PD should exercise TxDOT's option of making an independent determination of value before any improvement is removed or before an award is made in condemnation.

### Values for Improvements

For negotiated parcels, the state participation in the cost of improvements will be based on values approved by the state. Whether the LPA anticipates acquiring the improvement or letting the owner retain the improvement, or plans on relocating the improvements for the owner, it is necessary that the state be furnished with the values of each item of improvement. This requirement is predicated on the fact that the state's upper limit of participation will be the approved value reduced by the retention value for the improvement if the improvement is not acquired. Market values are therefore essential for the state to set these upper limits of cost participation ([Chapter 3, Section 5, Procedures on Appraisals of Specific Types and Situations](#)).

### Exceptions to Requirement for Establishing Values

Values will not be established for property interests held by railroads or utilities, or for irrigation and drainage canals not privately owned when these interests are handled by agreement and by payment for adjustment of the facilities. If an owner offers to donate his property or accept a reduced

consideration, he must be fully informed of all the facts, including his right to just compensation under the law.

### **Retention Values for Improvements**

Under the terms of the contractual agreement, an owner may retain all or part of the improvements located on the property being acquired for right of way purposes, and the upper limit of state cost participation will be reduced by an appropriate amount. Where the property owner retains an improvement within the acquisition, the state's upper limit of participation in the compensation paid will be based on the state's approved value less the retention value of the improvement.

### **LPA to Recommend Values**

In determining values, a flexible procedure has been adopted in order to use existing organizations and efficient processes in counties and cities. The assistance of local officials is also proposed for projects traversing areas where uniform property values prevail and the knowledge of such values by the LPA will assist the state in making its determination of values on which to base its cost participation. Therefore, the contractual agreement provides that the LPA may recommend right of way values for each parcel to be acquired for the project. These values can be determined by any method acceptable to the LPA, but must be fully supported by information to document such recommendations. Attention is directed to the manner in which right of way fencing is to be handled. If the approved value is to include fencing costs, the recommended value is to include the value for the fence in the part to be acquired and the net damages, if any, accruing to the remainder, including damage due to an unfenced condition, if any. If the LPA is to perform the right of way fencing on a lump sum or actual cost basis, neither a value for existing fences whose use will be restored by the new fence nor damages for an unfenced condition are to be included in the recommended value. These values are to be recommended on the prescribed forms to ROW PD for the state's consideration and action.

## Section 4 — LPA Recommends Values

### Requirements

Unless waived in accordance with the contractual agreement, the LPA will furnish the recommended compensation for each parcel broken down into the component parts of land acquired, itemization of improvements acquired and (if a partial acquisition) damages or enhancements, if any, to the remainder. These values must be supported by an accompanying explanation together with a copy of information or reports prepared by the LPA and used as a basis in arriving at the values recommended. The LPA is not required to submit all or any specified number of the recommended values at any one time.

### Current Market Values Essential

Current market value information is to be furnished for each parcel because it may be essential for TxDOT use in determining the upper limit eligible for the state's participation in the parcel cost as required by the law.

### Forms for LPA Submission of Values

The contractual agreement stipulates that the values determined by the LPA be submitted in tabular form and signed by the appropriate LPA representative. It further provides that the tabulation shall list for each parcel the parcel number, ownership, acreage and recommended compensation broken down into component parts of land acquired, itemization of improvements acquired and concerning a partial acquisition, net damages or enhancements, if any, to the remainder. Form [ROW-A-10 Tabulation of Values](#) has been created for the LPA's convenience in furnishing this information and in order to provide uniformity in submissions facilitating TxDOT processing. This form also serves as a clear and concise permanent record for both the LPA and the state.

### LPA Preparation of Form ROW-A-10

The LPA recommended values will be tabulated on form [ROW-A-10 Tabulation of Values](#). When a value is less than \$1,000, the recommended value may be rounded upward to \$1,000 as outlined in [Chapter 2, Section 11, Economic Adjustments](#). Form *ROW-A-10* will show "No" in the fencing column for each parcel when:

- ◆ no fencing is to be done,
- ◆ fencing is included in the recommended value, and
- ◆ fencing is included in the recommended value but the LPA acts as agent for the property owner in performing the fencing work as a property adjustment in lieu of payment to the owner.

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If the LPA is to perform right of way fencing under agreement with the state either on a lump sum or actual cost basis, neither a value for existing fences whose use will be restored by the new fence nor damages for an unfenced condition will be included in the recommended value.

### **LPA Submission to ROW PD**

The form [ROW-A-10 Tabulation of Values](#) and the appropriate appraisal form should be submitted electronically by the LPA. Forms submitted may include all parcels for a project or may be on a partial project basis, but must be accompanied by the supporting data relative to each parcel listed thereon.

### **ROW PD Review of LPA Values**

The LPA submission of recommended values is to be reviewed by qualified ROW PD personnel, and a field check of all right of way parcels should be made to determine if the values recommended are appropriate and sufficiently supported and that the forms are prepared properly. The form [ROW-A-10 Tabulation of Values](#) should be reviewed to insure that the fencing information is properly shown to establish the basis for fencing by the LPA or payment to the owner. The form should be checked to insure:

- ◆ that values recommended for each item of improvement are proper,
- ◆ that [“Bisected Improvements”](#) are properly classified as Category I or Category II,
- ◆ that the proper retention amount is indicated for each improvement, and
- ◆ that the total of the improvements shown for each parcel is in exact agreement with the improvement column.

### **Acquiring Additional Information or Appraisals**

When it appears that data submitted by the LPA is not sufficient to support recommended values, ROW PD should take immediate steps to obtain additional information. If investigations and studies indicate that the LPA values are not sufficiently supported and recommended for approval, qualified staff or fee appraisers will be used as necessary to enable ROW PD to make a firm recommendation as to values. The cost for such appraisers shall be borne by either the LPA or TxDOT, in accordance with the contractual agreement.

### **ROW PD Recommended Values**

If certain values recommended by the LPA cannot be approved by ROW PD, ROW PD will approve its own value on a separate form [ROW-A-10 Tabulation of Values](#).

Such values will be supported with one or more appraisal reports acquired by the state from qualified appraisers and accompanied by ROW PD's analysis on form *ROW-A-10* to document the value recommended/approved. The LPA will not sign this additional form *ROW-A-10*.



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## Section 5 — State Establishes Value

### State's Appraisals to Establish Values

When the state and the LPA agree that the state will establish right of way values under the waiver provision of the contractual agreement, ROW PD will proceed with appraising in the usual manner, or by the use of “value findings.” ROW Program Office approval is not required for additional appraisals. All appraisal fees for appraisals for negotiation will be predetermined lump sum fees, and appraisal fees for preparation for and appearance in testimony will be based on an hourly rate in accordance with the appraiser's contract in effect at the time of the assignment. Project agreement supplements to appraisal contracts will not be executed nor appraisal assignments made before ROW Program Office's release of the project for right of way acquisition.

In addition to the usual instructions, the appraisers must be advised regarding the manner in which the LPA desires to handle right of way fencing and whether the cost of fencing will be a part of the appraisal value. If the cost of right of way fencing is to be included in the approved value, this cost will also appear in the appraisal. If the LPA desires to perform right of way fencing under a lump sum agreement or on an actual cost basis, the appraisers should be instructed that neither a value for existing fences whose use will be restored by the new fence nor any damage for an unfenced condition is to be included in the estimate of value.

The five-year sales data is required on all parcels when federal-aid funds are involved in any phase of the project including construction. Refer to [49 CFR 24.103\(a\)\(2\)\(i\)](#), “[Five-Year Sales History](#).”

### Value Findings

On an inexpensive parcel having a value of \$25,000 or less, form [ROW-A-7 Real Estate Value Finding](#), rather than a formal appraisal report will be acceptable, provided the compensation does not include damages to the remaining property other than for items measurable by cost to cure. Should there be any damages that cannot be simply documented as cost to cure, form [ROW-A-6 Real Estate Appraisal Report](#), rather than form *ROW-A-7* will be necessary.

The valuation process of using form *ROW-A-7 Real Estate Value Finding* is defined as a non-appraisal valuation. The property owner must be informed this method of valuation is not a formal appraisal and does not produce an appraisal report.

If the use of the Real Estate Value Finding Report is being considered to value a parcel and if the parcel to be acquired is known to be more than \$10,000 in value, the owner must also approve of its use instead of an appraisal report. It is recommended that the use of this valuation process be considered and discussed during the pre-appraisal contact with the owner.

- ◆ Instructions

- ◆ Page 1 - This page identifies the parcel and classifies it as a whole or partial acquisition. The federal-aid project number is required on this page; it should follow the right of way account number. In addition, on the first page, market value is defined and the purpose of the appraisal is stated. The “Certificate of Appraiser” includes the appraiser’s opinion of value as of a date, and the dates which the subject and comparables were inspected. When a report is revised or supplemented and the final estimate of value is affected or changes the date of valuation, a new Page 1 of this form must be submitted to ROW PD.
- ◆ Page 2 - Pertinent Photographs of the Subject & Estimated Value of Acquisition - At the top of this page, one photograph will be sufficient and should provide support for the appraiser’s conclusion of value.
- ◆ At the bottom of the page, the table shows the value of the part to be acquired, the contributory value of any improvements located within the area to be acquired, and a summary of any cost to cure. The resulting value is the estimated total compensation. If needed, the ROW PD review appraiser can attach additional information. The plat map and field notes should also be included in this report.

The form [ROW-A-7 Real Estate Value Finding](#) provides for adequate analysis of the information considered in making the “Value Finding,” including reference to comparable sales and circumstances. Comparable sales data are available to the ROW PD review appraiser through previously approved project appraisals and other public sources of information. Form [ROW-A-5S Comparable Data Supplement](#) should be attached for each comparable used to achieve the value conclusion. Additionally, the form *ROW-A-7* should include at least a minimum description of the site and improvements to be acquired, along with field notes and plat map. If minor improvements are located within the area to be acquired, cost estimate sources should be identified.

Form [ROW-A-7 Real Estate Value Finding](#) is to be prepared by a ROW PD review appraiser or other ROW PD personnel with sufficient understanding of the local real estate market so as to be qualified to make the waiver valuation. Upon completion of the form *ROW-A-7*, another ROW PD review appraiser will prepare the form [ROW-A-10 Tabulation of Values](#) in the normal manner. If the ROW PD review appraiser preparing the form *ROW-A-7* is located in a ROW PD office that does not employ another qualified ROW PD review appraiser, the form *ROW-A-7* can be reviewed by either a ROW Program Office review appraiser or another ROW PD review appraiser. If the review appraiser or agency staff member preparing or reviewing the *ROW-A-7* is a state licensed appraiser, then the *ROW-A-7* must be supplemented to bring it into compliance with USPAP requirements.

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## Section 6 — ROW PD Submission of Recommended Values

### ROW PD Review of Appraisals and Preparation of Form ROW-A-10

ROW PD will make a determination of the values to be recommended by reviewing the value information that is set forth in the appraisal review sections of this manual. Form [ROW-A-10 Tabulation of Values](#) will be prepared for each parcel in accordance with [Chapter 6, Establishing Right of Way Values](#) and [Chapter 3, Valuation - Legal Aspects & Policy](#). The form should be completed to show the amount for each improvement that is to be subtracted from the approved value if the owner retains.

ROW PD's recommended values are submitted on form *ROW-A-10 Tabulation of Values*. As outlined in [Chapter 2, Section 11, Economic Adjustments](#) where a value is less than \$1,000, the recommended value may be rounded upward to \$1,000. Consideration should be given to rounding to values less than \$1,000 maximum where inexpensive parcel sizes vary and such values should be rounded proportionately according to size, insofar as this is possible, so that there will not be a semblance of inequity in the values so established. Form *ROW-A-10* will show "No" in the fencing column when no fencing is done, or where fencing is included in the recommended value and the LPA acts as agent for the property owner in performing the fencing work as a property adjustment in lieu of payment to the owner. The fencing column of form *ROW-A-10* will be completed to show "Yes" if the LPA is to perform the right of way fencing under agreement with the state either on a lump sum or actual cost basis, neither a value for existing fences whose use will be restored by the new fence nor damages for an unfenced condition will be included in the recommended value for payment

Form *ROW-A-10 Tabulation of Values* will show the classification of bisected improvements as Category I or II. When the total value recommended on form *ROW-A-10* includes values for more than one advertising sign, a footnote should be added to show the owner and the amount for each sign. When advertising signs not owned by the landowner or lessee in possession of the property are involved, follow procedures as outlined in Advertising Sign Interests. A complete description as to type, size, height, poles, etc., will be given for each sign having a compensable interest and handled as a part of the realty.

### Data to be Submitted to the ROW Program Office

Regardless of whether the state, the county or the city recommends the values, one original copy of form [ROW-A-10 Tabulation of Values](#) bearing ROW PD's recommendation for approval, will be forwarded to the ROW Program Office. The submission will also include and be supported by all information supplied by the LPA and all information or appraisal reports acquired by ROW PD in making its independent studies and investigations. When the state is to determine values under the waiver provision of the contractual agreement, the state's appraisal reports will be included in the

submission to the ROW Program Office. The LPA signature line will be voided on the form *ROW-A-10*.

Any leasehold ownership, including sign leaseholds, and pass rights to be retained in a parcel, should be clearly indicated on form *ROW-A-10 Tabulation of Values* to notify the LPA that such interest must be cleared.

If field note descriptions have not been submitted to the ROW Program Office previously and approved, they are to be submitted at this stage. If available, copies of work sheets or traverse sheets should be submitted with the field notes.

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## Section 7 — State Approved Values

### Approval of Recommended Values

ROW PD will review the submissions and will approve the reports for the state's upper limit of participation if they are proper and adequately supported. The approval will be evidenced by the signing of the form [ROW-A-10 Tabulation of Values](#) by ROW PD and, in the case of local participation, the LPA representative. ROW PD will then retain a copy for the files ([Chapter 6, Section 4, Revision in Approved Values for Negotiation](#) for revised values).

### Notification to LPA of Approved Values

Upon receipt of the form [ROW-A-10 Tabulation of Values](#) approved by the ROW Program Office, ROW PD should notify the LPA of the state's approved values. ROW PD's notification to the LPA may be accomplished by furnishing them one copy of the approved form *ROW-A-10*. If all the improvements are acquired by the state, ROW PD will advise the LPA that the upper limits of state participation in their negotiated parcel costs will be based on actual costs not to exceed the approved values as indicated on form *ROW-A-10*. If the owner retains the improvements, the upper limits of state participation will be reduced accordingly.

If the approved value includes costs of right of way fencing, this may be included in the consideration paid to the property owner who then becomes responsible for doing the fencing. In addition, if the approved value includes costs of right of way fencing, the LPA may exclude fencing costs from the consideration paid the property owner and do the fencing as a property adjustment necessitated by the right of way acquisition. In either case, the state's upper limit of participation will be the state's approved value reduced for any retention in the amounts indicated on form *ROW-A-10 Tabulation of Values*.

If the approved value does not include a value for existing fences whose use will be restored by the new fence nor damages to re-fence, the state will participate in ninety (90) percent of the LPA firm commitment agreement with the state for the fencing or in the actual cost if a firm commitment has not been established.

Care must be exercised to provide notice of leasehold interests, pass rights to be retained, and of values approved for advertising signs. Notifying the LPA of all these facts at the approved value stage can avoid possible misunderstanding at the reimbursement stage ([Chapter 6, Section 5, Cancellation of Approved Values](#)).

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## Section 8 — Eminent Domain in LPA Acquisition

### LPA Use of State Appraisals and Appraisers in Condemnation

Condemnation proceedings are the counties' and cities' responsibility without state participation except as specified by law and agreed upon in the contractual agreement. The use of Department Certified Appraisers is provided for in the contractual agreement; however, the contract sets out that the state's prior approval of the LPA's use of the appraiser and his/her report is necessary. This is so that TxDOT can maintain sufficient control to ensure that the state's appraisers requested by the LPA are qualified and that their testimony will be in the state's best interest. In executing the 90-10 contract, the LPA agrees to pay the appraiser under the terms of his/her appraisal contract with the state. Since condemnation and negotiations are the responsibilities of the counties and cities, the state employs fee appraisers only to establish approved values upon which to base state cost participation as provided by the law; however, it is in the best interests of all concerned for the state to make its appraisers and appraisal reports available to the LPA for use in eminent domain proceedings. An appraiser will be considered the state's appraiser only if he/she is a ROW Program Office staff appraiser or a TxDOT certified fee appraiser under contract to the state. This requires that ROW PD make all assignments for initial appraisals, revised appraisals, or updating letters. This also requires all appraisals be submitted by the appraiser to the state only, never the LPA. Before a value is released to the LPA, ROW PD must review the report(s).

When the LPA is contacted concerning its request for use of a Department Certified Appraiser, it should be advised that if it makes appraisal assignments or accept reports direct from such an appraiser who is under contract to the state, then the LPA's payments to the appraiser would not be eligible for state participation.

When an appraisal assignment is made, the state's appraiser should be reminded that his/her contract is with the state and that he/she should not contact the LPA regarding his/her value without first being released to do so by the state. The appraiser should also be advised that payment of his/her fee would be made by the LPA unless a new value based on a new report is established before the Special Commissioners' hearing or in the event the appraiser is not released by the state.

Before releasing any appraisal report, the state should determine whether the appraiser's opinion of compensation is well supported and documented, that such opinion will support the filing of condemnation proceedings, or that possibly there is a need to establish a new value for reopening of negotiation. Appraisal reports released to the LPA are to be treated as confidential information for use only in eminent domain proceedings. Reports are to be returned to the state at the earliest practicable date.

Once the LPA has selected the appraiser, ROW PD will instruct the appraiser to update the appraisal or prepare an initial report, whichever is indicated. If it is the appraiser's initial assignment on the parcel, he/she will prepare a report as is customary for negotiation purposes and will

defer other work as necessary for testimony until it is determined that condemnation preparation is required, and he/she is released for use as a witness.

**Before** the Commissioners' Hearing, the updating of a previously approved report should be accomplished by letter, supplemented by Page One of form [ROW-A-5 Real Estate Appraisal Report](#), by a Department Certified Appraiser, whose opinion of value does not exceed TxDOT's approved value. In that letter, the appraiser should stipulate that his/her previous value is still appropriate and that he/she will testify to that value. A copy of the updating letter and the appraiser's report **with the Page One supplement** should be furnished by ROW PD directly to the LPA. A copy of the updated letter is to be sent to the ROW Program Office for permanent filing.

If objections are filed after the Commissioners' Hearing, and the case goes to jury trial, the original appraiser will re-inspect the property on the "date of taking" or a date shortly thereafter, and submit an appraisal report with a valuation as of that "date of taking."

In those cases where the LPA recommends values and no TxDOT appraisers were used in the original determination of values, the LPA may request the use of a Department Certified Appraiser as a witness in the eminent domain proceedings, either before or after the Commissioners' Hearing. In such a case, TxDOT will contract and assign an appraiser in the usual manner. If, in preparing for condemnation either before or after the Commissioners' Hearing, the LPA finds a material increase in value, all data will be submitted to ROW PD with the LPA recommendation. If necessary, ROW PD may employ Department Certified Appraisers at TxDOT's expense to prepare appraisals of the properties involved. All data will then be submitted to the ROW Program Office in the usual manner.

Before the Special Commissioners' Hearing, any initial or revised appraisal reports received by R/W-PD shall be reviewed by ROW PD staff and then forwarded to the ROW Program Office with such comments and recommendations that ROW PD believes appropriate for further handling of the parcel. This also applies to the initial report prepared by a new appraiser on the parcel. If the revised or initial reports and the recommendation of ROW PD properly support a material increase in value, the usual process will be followed to establish a new TxDOT approved value, ROW PD will inform and authorize the LPA to re-negotiate at the new value and TxDOT will pay the appraiser's fee based on the appraiser's contract with TxDOT. If the revised or initial reports do not warrant an increase in the approved value, ROW PD when submitting the reports for review by the ROW Program Office will recommend approval or disapproval of the appraisal reports and the appraisers in the Special Commissioners' Hearing. If approved for testimony, the reports will be released to the LPA, the appraiser notified, and the LPA will pay the fee that will be eligible for reimbursement. If disqualified, the appraisal reports will not be released and the LPA and the appraiser will be notified accordingly and his/her fee will be paid by TxDOT. The appraiser should be reminded that should the appraisal be released to the LPA or should testimony be given without TxDOT approval, TxDOT will consider this a breach of the appraiser's contract with TxDOT.

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If the appraisal reports obtained at the request of the LPA after the Special Commissioners' Hearing support an increase in value, the reports along with comments from ROW PD documenting their analyses and recommendations for settlement should be forwarded to the ROW Program Office for review. If approved, the LPA will be authorized to settle at the revised figure on the basis that the owner will not be allowed to retain any improvements. If the appraiser's estimate of value is excessive or is not well supported, his/her report should be released to the LPA with TxDOT comments regarding the report and a recommendation that the appraisal not be used.

Where state appraisals are obtained at the request of the LPA after the Special Commissioners' Hearing, there are no direct state payments to appraisers for services rendered and all payments are to be made by the LPA with state reimbursement where eligible.

The following shall constitute the basis for fees due the appraiser:

- ◆ If an appraiser selected by the LPA is one of the appraisers used by the state in determining its initial approved value for the parcel, any work done in confirming the values in the initial report or in preparing a revised report will be considered as preparation for testimony and the appraiser shall be entitled to the hourly rate as fixed by his/her contract with TxDOT for preparation for testimony, and payment will be made on this basis even though the parcel is negotiated and court action avoided.
- ◆ If a new appraiser is selected, he/she will be entitled to the fee established in the contract for an initial report. The appraiser will not be entitled to payment on an hourly basis for preparation for testimony until his/her initial report has been reviewed and he/she has been released to prepare for testimony.

### **LPA Use of Expert Witness/Technical Expert**

In addition to the provision for the LPA use of the state's appraiser in condemnation, the state will also participate in the cost of contracting with expert witnesses or technical experts. When the LPA wants the state to share in the cost of employing an expert witness or technical expert for use in condemnation proceedings, it will contact ROW PD for guidance and instructions. ROW PD will place such witness or expert under contract with TxDOT.



# Chapter 9 — Special Site Appraisal Situations

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## Section 1 — Introduction

### Purpose

This chapter contains information and procedures regarding appraisals for disposition:

- ◆ of engineering and maintenance sites,
- ◆ of dredge disposal sites,
- ◆ of property no longer needed for highway purposes, and
- ◆ for design purposes.

### Requirements

Appraisal services for the disposition of TxDOT property will be obtained in the same manner as appraisal services for the acquisition of property. The appraisal assignment will be accomplished using the appraisal work authorization and is to be signed by the ROW PD supervisor or designated representative. One copy is forwarded to the ROW Program Office, one copy is forwarded to the appraiser, and one copy is retained in the ROW PD office for its files. The appraisal fee will be a predetermined amount, based on the fee schedule in the appraiser's work authorization.

A potential purchaser of property no longer needed for highway purposes may select their own appraiser in lieu of TxDOT selecting the appraiser. However, the selected appraiser must be department certified with TxDOT and his/her report, though not required to be on an official TxDOT form, must comply with the appraisal guidelines in this manual. TxDOT reserves the right to commission its own appraisal, particularly on high value tracts relative to anticipated appraisal cost.

If the selected appraiser is not already TxDOT certified, the appraiser must become TxDOT certified before TxDOT will consider the appraisal for the disposition of property.

For specific instructions on applying to become a Department Certified Appraiser, see [Chapter 2, Section 2, Appraiser Qualifications and Evaluations](#).

## Section 2 — Appraisal of New Engineering, Maintenance Sites, and Dredge Disposal Sites

### Procedure

After the Support Services Division has approved district's recommendation regarding the acquisition of a new site, the ROW Program Office will notify ROW PD to have an appraisal made of the proposed site using a fee appraiser contracted by TxDOT. Only one appraisal is required. The appraisal generally will be made based on acquiring fee simple title to the property unless otherwise negotiated, and the normal procedure for appraising ROW will be followed.

ROW PD will then direct the appraiser to furnish an appraisal in accordance with this section using pages 1, 2 PVS, SCA, CA, IA of form [ROW-A-5 Real Estate Appraisal Report](#), plus supporting documentation accompanying the form [ROW-A-5S Comparable Data Supplement](#), Comparable Data Supplement. The appraisals will be made of the site considered as a whole acquisition of fee simple title in the land excluding oil, gas, and sulfur, since the owner reserves the minerals. Generally, appraisal guidelines should follow procedures as set out in [Chapter 2, Operating Procedures](#), unless directed otherwise by the ROW Program Office. Upon receipt of the completed appraisals, ROW PD will review the appraisals to determine that all items are properly covered, that the forms are complete, and that all items have been considered in accordance with appraisal instructions. After ROW PD has approved the appraisal report and determined a recommended value for the property based upon the appraisal, ROW PD will submit the recommended value to the ROW Program Office on form [ROW-A-10S Tabulation of Values for Engineering, Maintenance, & Dredge Disposal Sites, and Surplus Real Property Purposes](#).

## **Section 3 — Appraisal for Disposition of Engineering, Maintenance, and Dredge Disposal Sites**

### **Procedure**

Generally, the appraisals will be made of TxDOT land for disposition plus the improvements that are to be sold with the property. The appraiser should be cautioned not to appraise any improvements to be removed by ROW PD before the sale. The rights to oil, gas, and sulfur should not be appraised.

Occasionally situations arise whereby it is expedient to exchange surplus maintenance sites for other land needed for highway purposes. An exchange of a surplus maintenance site will be handled much like exchanges of surplus ROW and will be based on appraised values of the lands. ROW PD will obtain approval of the proposed exchange from Support Services Division's Facilities Management Section and from the ROW Program Office before assigning the appraiser and requesting a work authorization for the appraiser.

## **Section 4 — Appraisal for Disposition of Real Property: ROW, Easements, Access Rights, Roadside Parks, and Material Sites**

### **Procedure**

After the ROW Program Office has authorized the appraisal of surplus ROW, easements, roadside park property, material storage sites or borrow pits, the appraisal should be submitted to the ROW Program Office with ROW PD's recommended value based on the appraisal.

As there is no market for the right to build, maintain, or drain TxDOT highway facilities, a "market value" of state-owned surplus ROW easements, channel easements, or other easements being considered for disposal would be inappropriate. Instead, a "fair and reasonable consideration" for TxDOT's interest in the land is to be established. Generally, this will be the difference in the value of the fee simple title in the land with and without the burden of the state's easement interest. Specific problems in making such evaluations should be brought to the attention of the ROW Program Office Acquisition Section for further instructions and guidance.

All appraisals of these types of property, that are less than an economic unit because of size, configuration, and/or lack of access, will be appraised as part of the adjoining property and its contribution to that property. Any enhancement to property caused by state surplus property shall be considered. Enhancements are considered any benefit that may be produced when both pieces of property are considered as one and which accrue directly and solely to the property. If the state's additional property will cure a deficiency on the subject site or tract, this shall be considered. state-owned surplus property will be considered as a part of the subject's new whole property and its effect on value, and highest and best use. This may also be applied to leasing of TxDOT assets.

An accurate basis for determining the value of surplus access rights is the difference between the values of comparable properties with access and properties not having access. Again, specific problems in making such valuations should be brought to the attention of the ROW Program Office Acquisition Section for further instructions and guidance.

## Section 5 — Evaluation of Real Property To Be Exchanged: ROW, Easements, Access Rights, Roadside Parks, and Material Sites

### Procedure

Where surplus land is to be exchanged as consideration for needed land, the surplus property may not need to be appraised but may be computed by the staff appraiser on a unit basis in accordance with the following criteria:

- ◆ If the surplus property is of the same type or character as the land to be acquired, the surplus land will be valued by applying the unit value assigned to the land to be acquired.
- ◆ If the surplus property is not of the same type or character as the land to be acquired, the surplus land should be valued by applying the unit value that has been assigned to that portion of the landowner's whole property that is similar to the surplus in type or character. For example, if the land to be acquired is front land but the surplus land is back land, TxDOT will assign value based upon the value of the back land.
- ◆ The effect of any existing facility or buildings, if any, on the surplus property should be considered in determining the value for such surplus property.

**NOTE: If any improvement not owned by TxDOT exists on the property to be exchanged, it will not be valued.**

The staff review appraiser using information from the appraisal of the land to be acquired may compute the value assigned to the surplus property under the above situations.

For more information on appraisal issues in property management, see the *ROW Property Management Manual*, [Chapter 1, Disposition of Right of Way Interests No Longer Needed for Highway Purposes](#).

## **Section 6 — Engineering, Maintenance or Surplus Sites**

### **Appraisals**

Before TxDOT offers any proposed engineering, maintenance or surplus sites for sale, its policy is to obtain an appraisal for such sites.

### **Fees**

If a potential purchaser of a surplus site contracts directly with a Department Certified Appraiser, the potential purchaser will be responsible for paying the appraiser's fees.

## Section 7 — Leasing Appraisal and Valuation of State-owned Property

### Usage

Transportation Code, [Section 202.052](#) authorizes TxDOT to lease TxDOT assets, including highway ROW, to private entities. In order to do so, the assets must not be needed for highway purposes during the term of the lease, and must be leased at the appraised fair market rental value. The leasing program is coordinated by the ROW Division Real Estate Services Section, pursuant to rules found in Texas Administrative Code, Chapter 43, Sections [21.600 - 21.606](#) and in accordance with FHWA regulations.

There are four forms used in the appraisal process of highway ROW to be leased by TxDOT:

- ◆ Form [ROW-A-5 Real Estate Appraisal Report](#).
- ◆ Form [ROW-A-6 Real Estate Appraisal Report](#).
- ◆ Form [ROW-A-14 Rental Value Report](#). This form is used to estimate the fair rental value of the real property to be leased by TxDOT. Fair rental value may be defined as follows: “Fair rental value is the monetary amount reasonably expected for the right to the agreed use of the real estate.”
- ◆ Form [ROW-L-10 Tabulation of Values - Leasing](#). This form is used to provide a summary of the land component and a detail of component improvements to be leased by TxDOT.



## Section 8 — Aviation Division Land Acquisition Procedures

### Overview

- ◆ The Aviation Division determines the extent and type of property interest to be acquired.
- ◆ Title research is done with the title company, at the recommendation of the Sponsor (LPA).
- ◆ Survey, appraisal, appraisal review and relocation assistance functions are completed with ROW PD assistance, as required.
- ◆ Negotiations are performed by Aviation Division staff.
- ◆ Administrative Settlements are approved jointly by Aviation Division management and the Sponsor.
- ◆ Aviation Division staff and the sponsor approve all incidental property acquisition costs.

For further information, refer to Aviation Division's [website](#).

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## Section 9 — Fee in Lieu of Mitigation

### Administrative Procedures for Payments for Fee in Lieu Agreements

The following steps will be taken, when appropriate, to process payment for a Fee in Lieu (ILF) agreement when right of way funds the ILF:

- ◆ **ROW CSJ:** If there is no ROW CSJ already available for the project, the ROW PD project manager will coordinate with the ROW Program Office to obtain one. The final ILF payment will be charged to this CSJ.
- ◆ **Invoice from Third Party:** Once an agreement is ready for execution, request an invoice from the third party (the actual manager of the mitigation bank, preserve, fund manager, etc.) for the agreed amount.
- ◆ **Payment Memo and Required Enclosures:** Upon receipt of the invoice, ROW PD or the ROW Program Office will prepare a memo to the ROW Program Office to fund the fee. The district TPD Director, division project manager, or appropriate ROW PD or ROW Program Office finance officer will sign the memo. Form *ROW-A-15 Payment Request* will be prepared as an enclosure to the memo for agreements to be paid with ROW funds. The fee should be charged to comptroller object 7348, expenditure object 366 with function code 400 in Segment 76, mapped to Strategy 102, Right of Way Acquisition. A copy of the final ILF agreement, the permit, or other document (i.e., USFWS Biological Opinion) requiring the ILF agreement, the invoice, and a copy of the approved cost analysis mentioned in Attachment 1 will also be enclosed. The memo should clearly identify the date by which payment is due, and should be sent to the ROW Program Office. Copies without enclosures will be sent to appropriate other parties. Designated district offices and Environmental Division will always receive copies.

# **Appendix A — Pre-Appraisal Contact/Interview Procedures**

## Section 1 — Overview

### Responsibility

The ROW PD project manager should follow some general pre-appraisal contact (interview) procedures that will assist in the proper assignment of appraisals.

A pre-appraisal contact is that first personal interview with a property owner to discuss the state's proposed acquisition and to gather information that will assist an appraiser in preparing the appraisal report.

### Procedures

As required by federal regulations, an Informational Notice letter (form [ROW-N-INTO Informational Notice to Owner](#)) must be given to every property owner. This letter can be prepared as an individual Word document. This letter can be personally delivered to the property owner at the pre-appraisal contact or sent by Certified Mail, Return Receipt Requested.

A personal interview (either in person or by telephone) with the owner or his designated agent upon the property to be appraised is preferred. In some cases this cannot be accomplished and correspondence will be necessary. Whatever the situation, an attempt should be made to obtain pre-appraisal information from each owner.

Form [ROW-A-PAC Pre-Appraisal Contact with Property Owners](#) should be used to record data collected during the interview and inspection of the property (see section below on completing this form). The information recorded will help estimate appraisal fees and furnish instructions and materials to the appraiser.

The interview will serve the dual purpose of acquainting the owner with the proposed acquisition and to gather the necessary information for proper assignment and review. The property's preliminary right of way map should be reviewed with the owner; and, any discrepancies or corrections should be made before appraisal assignments are issued.

ROW PD or a ROWAPS Provider negotiation agent should explain the state's procedure for acquiring right of way; and, that an independent and qualified appraiser(s) will be selected to appraise the parcel to be acquired. General acquisition questions from the property owners should be answered; however, questions of a technical or engineering nature may need to be answered by other qualified personnel at a later date. There should be no discussion as to the property's value; however, the owner should be assured that no determination of value will be made until the proper appraisal report(s) have been completed, reviewed and approved.

If the acquiring agency is considering the use of a non-appraisal estimate such as the [ROW-A-8 Memorandum of Value Determination](#) and/or [ROW-A-7 Real Estate Value Finding](#) to value a parcel or parcels, the Pre-Appraisal Contact is recommended as being the most appropriate time to consider their use and, if necessary, obtain the approval of the Owner. Please refer to the instructions for the *ROW-A-7* and *ROW-A-8* forms for the requirements for their use.

## Section 2 — Guidelines on Completing Form ROW-A-PAC

### Procedure

- ◆ Acquisition - Note if the acquisition will be whole, partial or if only access rights will be acquired.
- ◆ Address of Property - If possible, note the physical address of the property, such as 2114 4th Street, 5400 Block of Brownfield Highway, 2 miles south of Shallowater on FM 179, etc).
- ◆ Property Owner - Note the address, phone number, and email address where the owner can usually be contacted and what day and time is normally most convenient. If necessary, note if there are multiple owners/trustees; or, if an attorney should be notified.
- ◆ Request Permission to Inspect - The interviewer should request permission to inspect the property for discussing such items as present and proposed uses of the property, zoning, leases, rentals, contracts of sale, sign and billboard data, liens, fence ownership, location and type of underground improvements, and any unusual features about the property.
- ◆ Occupant's Name - Note all persons/businesses utilizing or occupying the parcel of land. Also, note which improvements to be appraised are occupied by tenants. It is advisable to ask the owner to explain to his tenant(s) that an appraisal(s) of the property will be made. If the owner or tenant will be displaced by the acquisition, their name(s), mailing address(es), and other pertinent data should be furnished to ROW PD or a ROWAPS relocation agent.
- ◆ Type of Improvements - During inspection of the property, the interviewer should adequately describe each improvement by type and construction on the form to provide proper identification for assignment and review analysis (i.e., one story brick building, masonry residence, wood shed, chain link fence, etc). Notes should be made regarding any unusual feature about any improvements that may warrant special assignment instructions to appraisers and specific comments in review. Note if any improvements are to be bisected by the proposed right of way line ([Chapter 3, Section 5, Procedures on Appraisals of Specific Types and Situations](#)).

Prior to the assignment of appraisal work, TxDOT, the owner, and tenant-occupant(s) of the parcel should agree upon those improvements to be considered as personalty (using form [ROW-A-9 Property Classification Agreement](#)), releasing TxDOT from any payment for such items as realty. Discretion should also be used in not allowing an owner/tenant to declare a realty item as a personalty item in this agreement. A copy of this agreement should be given to the appraiser and be made a part of the appraisal report ([Chapter 3, Section 2, Legal Instructions](#)).

- ◆ Hazardous Materials - Are there any environmental concerns such as hazardous wastes/storage/materials, or manufacturing processes that pose a threat to the environment or human health and natural resources? Are there any clean-up efforts being pursued on the subject parcel of land? Ask if there are any building materials that contain asbestos or other hazardous

substances. Are there any oil disposal or waste pits, etc? (See [Chapter 3, Section 5, Procedures on Appraisals of Specific Types and Situations.](#))

- ◆ Underground Improvements - Are there any underground storage tanks? Are they registered as a LPST (leaking petroleum storage tank) with the Texas Commission on Environmental Quality (TCEQ), see their website at <http://www.tceq.state.tx.us>. What is their size? Who owns or operates these tanks or lines? Are there any water wells, private irrigation lines, septic tanks, etc.? Does the parcel plat accurately describe the current location(s) of any public utility easements (gas, water, electric, telephone lines, etc.)? Ask if there are private utility lines serving any of the parcel's or abutting property's improvements. Will there be any bisected public/private utility lines? (See [Chapter 3, Section 5, Procedures on Appraisals of Specific Types and Situations.](#))
- ◆ Fence Ownership (100% & Partnership Interest) - Who owns the fencing between neighboring parcels of land? Is it jointly owned 50-50%? Does any interior fencing belong to a tenant? The State cannot acquire the partial interest held by one owner and allow retention of the interest held by another owner. (See [Chapter 3, Section 5, Procedures on Appraisals of Specific Types and Situations.](#))
- ◆ Use of Improvements - How are the improvements being used, for a commercial business, farm support operation, medical clinic, school storage barn, public swimming pool, strip shopping center, etc? Is any improvement being used for a current purpose that it was not originally built for (gas station now an auto repair shop, florist shop, etc.)
- ◆ Number of Lots Under Common Usage and Location Relative to Subject - Is there one common lot or tract of land, or is it an assembly of several lots or tracts of land? Are they separated by any public roads, streets, alleyways, etc.?
- ◆ Leases - Record the names/addresses of all tenants that have a valid lease agreement with the fee owner. If possible, secure copies of these agreements for the appraiser(s). Ask for the terms of the lease agreement(s), such as: it is a month to month lease, yearly lease, who pays taxes, maintenance, etc? Are there any access or private utility easements with other parties to use a portion of the subject parcel of land?

During the pre-appraisal contact, it should also be determined if there are any real property improvements (located upon the parcel to be acquired) which are owned by a lessee. A title examination is also made to determine if there is a recorded property lease. When a valid [leasehold estate](#), exists and it is determined there are real property improvements owned by a lessee, the owner of record is advised that TxDOT may negotiate with the fee owner for all interests, fee and leasehold. The fee owner is advised that he may have TxDOT [negotiate separately](#), with the leaseholder. To do this, the fee owner must sign a waiver, form [ROW-N-120 Affidavit and Disclaimer - Owner](#), stating that he has no ownership interest in the leasehold improvements and requesting that the interests be appraised separately and that separate offers be made for the fee and leasehold interests. There must be a clearly separate and defined leasehold interest that can be distinctly appraised separate from the fee interest. A copy of any executed Affidavit and Disclaimer should be given to the appraiser(s).

- ◆ Liens - Though an owner's title policy commitment is often obtained, it is advisable to ask what lien(s), if any, are affecting title to the property. There may be an additional lien not of record; or, there may be a lien that has been paid but not properly released in the public property records. Ask the name of a contact person, address, telephone number, account number, with the lending agency/bank that is currently handling the owner's lien to secure a possible partial release of lien instrument (or if eminent domain becomes necessary, to cite the lien holder in the State's condemnation proceedings).
- ◆ Contract of Sale - Ask the owner if he/she has executed any type of contract of sale with another party. Is title in the other party while he/she makes payments for the property; or, does the owner have someone making payments to him/her and has promised to deed the property after final payment? Is the property listed "for sale"? on the market?
- ◆ Advertising Signs/Billboards on Property? - YES or NO? Even if the sign is located outside the acquisition area, a State quitclaim deed may have to be secured to extinguish any leasehold interest by the sign owner/company.
- ◆ Describe ownership and lease terms - Note the name of the billboard company or owner of the outdoor advertising sign, contact person's name, address and telephone number. Ask for a copy of the lease agreement or note the terms of the agreement, how many years, annual lease payment, etc.
- ◆ Remarks - Use this portion of form [ROW-A-PAC Pre-Appraisal Contact with Property Owners](#) to make any comments about the property or its ownership that will assist the appraiser, negotiator or relocation agent.