STATE PURCHASE OF RIGHT OF WAY – OVERVIEW FOR GENERAL PUBLIC

OVERVIEW*

The Texas Department of Transportation (TxDOT) is responsible to millions of Texans for planning, building and maintaining the state highway system and certain other public transportation projects. In order to carry out these responsibilities, TxDOT must occasionally obtain land for new or existing facilities.

Transportation projects are not developed arbitrarily. They are the result of cooperative efforts with local and regional partners. In addition, a proposed project weighs the needs for safe and efficient transportation with all alternatives. In weighing alternatives, the department uses a systematic approach to evaluate many aspects and potential impacts of a proposed project. Those impacts include: social, economic, adjacent property and environmental, to name a few.

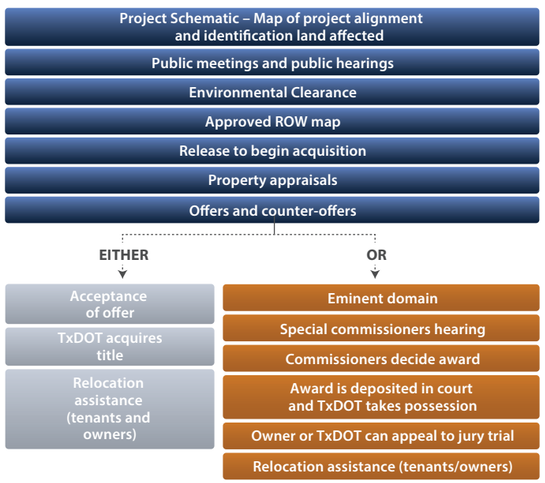
Under state and federal law, TxDOT can acquire only the right of way (ROW) needed for a transportation project. As a transportation project is being developed, the department's systematic approach extends to informing the public – and potentially affected property owners – about the proposed project. (See Right of Way Process chart)

In many ROW cases, the first time property owners hear that their property is needed is when they are notified of an upcoming public meeting or ultimately a public hearing. But before that, a lot of work has already been completed. A schematic has been drawn detailing the project and the land affected by the proposed alignment.

As a general rule, before TxDOT can acquire any property, the project must obtain environmental clearance. Then, right-of-way maps are developed that detail every parcel known to be affected. Only then will TxDOT's Right of Way Division allow the property acquisition process to begin with letters mailed to every individual property owner. At the same time, appraisers are hired to determine the value of the land and any improvements located on the land and the negotiation process begins.

Property owners are given several booklets outlining their rights, the ROW process and the help provided by the department in relocating tenants and property owners. The booklets "State Purchase of Right of Way," "Landowner's Bill of Rights" and "Relocation Assistance" can be found online at: http://www.txdot.gov/government/processes-procedures/row.html

TXDOT'S RIGHT OF WAY PROCESS



SOURCE: Texas Department of Transportation. TxDOT graphic

EFFECTS ON EXISTING PROPERTY

Damages to Remaining Property

TxDOT typically acquires the amount of land necessary for transportation purposes, which can lead to portions of property left remaining after construction. It is important to note that highway construction often enhances the value of remaining property. When only a portion of a property is needed, TxDOT can offer an amount for damages if the appraisal process indicates that the remaining property will have a lesser value after the highway is constructed. The amount established for damages, if any, will be stated separately and will also be included in the total offer made by the department.

Retention of Improvements

When TxDOT and a property owner reach an agreement for a voluntary conveyance of the needed right of way, arrangements can be made for property owners to retain a house, building or other fixtures and move them to another location. Removal of such improvements, however, is the owner's responsibility and should be discussed with a TxDOT authorized representative during negotiations.

Control of Access

TxDOT retains the right to deny the ingress and egress from property adjoining certain state highways to ensure safe and efficient traffic flow. The department, however, may be required to compensate property owners along certain state system roadways if existing direct access on and off of their property is materially impaired. Guidelines for access rights along new roadways are treated differently, since access to a new roadway was not implied before it was built.

RELOCATION ASSISTANCE

TxDOT also provides additional benefits during property acquisition. This assistance in locating another home or business, and financial assistance in the form of moving and related expenses. Such benefits, if any, are in addition to the state's offer for the property and are handled separately from the purchase of real property. A relocation assistance booklet is available for property owners who must move.

FREQUENTLY ASKED QUESTIONS

(1) Under what circumstances will TxDOT use eminent domain?

TxDOT first attempts to acquire property through voluntary negotiations. If no agreement is reached, the department begins the eminent domain process, in which the state can purchase private property if an owner refuses to sell. Eminent domain is also used in cases to clear ownership and title issues.

(2) What is the general process for ROW acquisition?

The process usually does not begin until after multiple public meetings, presentation of alternative routes and ultimately, environmental clearance for a set project route. Surveys are then ordered, market value appraisals are obtained and offers are made to property owners. Negotiations either produce a purchase agreement or result in eminent domain if no agreement can be reached.

(3) What is an administrative settlement? How does that benefit property owners?

An administrative settlement is essentially the potential for a property owner to make a counter offer to TxDOT's original offer. It improved the process for most property owners by replacing the "one offer" negotiation process. Administrative settlements are generally limited to only one such counter offer, and if the offer is not accepted, the eminent domain process will begin.

(4) Why does TxDOT need my land? How much of my land can TxDOT acquire?

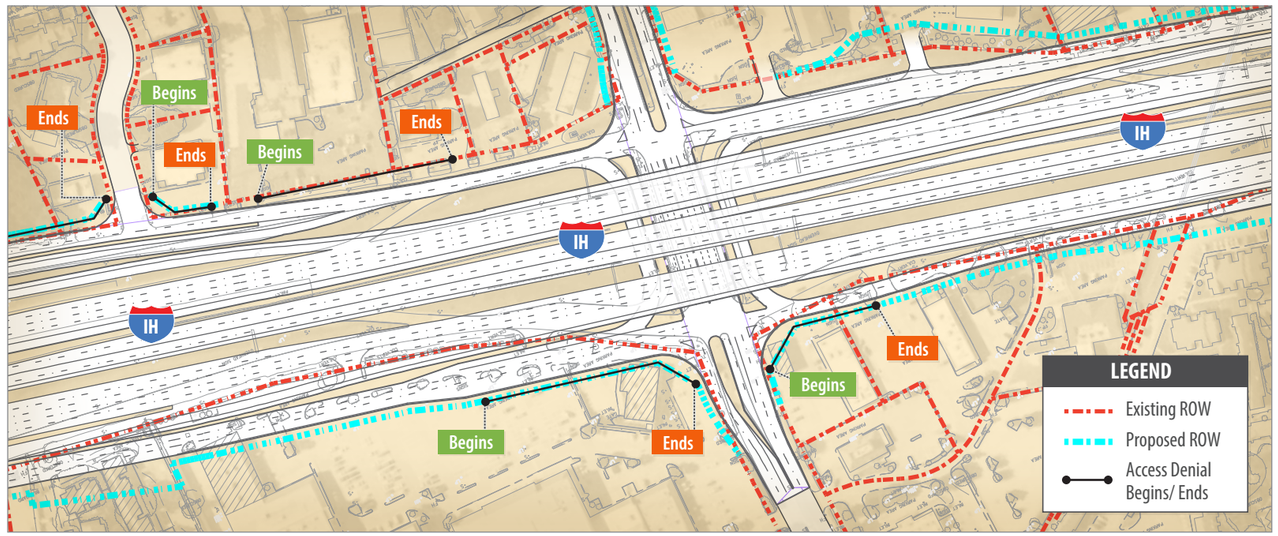
TxDOT is authorized to acquire real property interests only if "the acquisition is necessary or convenient" to a state highway purpose. The highway purposes for which real property can be acquired by TxDOT are enumerated in Transportation Code Section 203.052(b). None of these purposes include the purchase of real property for resale. In short, TxDOT can only acquire property necessary or convenient for specific highway purposes, except that an owner's remaining property may be acquired voluntarily under certain limited circumstances, but only if the landowner requests or agrees to sell the remaining property on mutually agreeable terms.

(5) What are some of the steps required for TxDOT to use its eminent domain powers?

Acquisition by eminent domain cannot happen overnight. A final offer is made to a property owner. If it is not accepted, TxDOT requests the Texas Transportation Commission for the authority to begin eminent domain proceedings. Texas law requires the Commission pass a minute order at a formal Commission meeting that specifically requests the Attorney General's office to start condemnation. Notification of a condemnation hearing must also be personally delivered to a property owner or the property owner's agent at least 20 days before the hearing. The hearing either results in a Special Commissioners award acceptable to all parties or, if any party files objections to the award, the process becomes a judicial proceeding, including possible jury trial.

(6) What assistance does TxDOT provide once it acquires my property?

TxDOT also provides additional benefits during property acquisition. This assistance includes locating another home or business, and financial assistance in the form of moving and related expenses. Such benefits, if any, are in addition to the state's offer for your property and are handled separately from the purchase of real property. A relocation assistance booklet is available for property owners who must move.



Typical schematic highlighting existing right of way (red line) and proposed right of way line (blue). TxDOT follows state law in seeking to acquire only the property needed for roadway projects. TxDOT also follows established guidelines to control ingress and egress from adjacent properties, also known as control of access.

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