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# **Synthesis of Best Practices in Right-of-Way Valuations and Negotiations**

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# Table of Contents

<b>1. Introduction.....</b>	<b>1</b>
1.1 Purpose.....	1
1.2 Methodology.....	1
1.3 Organization.....	2
<b>2. The Right-of-Way Acquisition Process.....</b>	<b>3</b>
2.1 Planning .....	3
2.2 Valuation.....	4
2.3 Negotiation.....	5
2.4 Property Management.....	5
2.5 Relocation .....	6
<b>3. Review of Pertinent Laws and Statutes .....</b>	<b>7</b>
3.1 Laws and Statutes that Govern R/W Acquisition .....	7
3.1.1 Federal laws .....	7
3.1.2 State laws .....	7
3.2 Federal and State Laws that Influence Valuation .....	7
3.2.1 Appraisal requirement.....	7
3.2.2 Pre-appraisal contact.....	8
3.2.3 Appraisal standards .....	8
3.2.4 Appraisal waiver .....	8
3.2.5 Owner accompaniment .....	8
3.2.6 Appraisal and acquisition of improvements .....	9
3.3 Uniform Standards of Professional Appraisal Practice (USPAP) .....	9
3.3.1 Organization.....	9
3.3.2 Related standards .....	9
3.4 Federal State Laws that Influence Negotiation.....	10
3.4.1 Basic acquisition requirements .....	10
3.4.2 Written offer.....	10
3.4.3 Negotiation contacts.....	10
3.4.4 Coercive action .....	11
3.4.5 Administrative settlements.....	11
3.4.6 Uneconomic remainders .....	11
<b>4. Property Owner Satisfaction Survey .....</b>	<b>13</b>
<b>5. Analysis of Factors that Influence Possession Type.....</b>	<b>15</b>
<b>6. TxDOT ROW Personnel Survey .....</b>	<b>19</b>
<b>7. Valuation .....</b>	<b>29</b>
7.1 Overview and Purpose .....	29
7.2 Valuation Process Description.....	29
7.2.1 Pre-appraisal contact.....	30
7.2.2 Assign appraisers .....	30
7.2.3 Establish just compensation.....	30

7.2.4 Appraisal report review.....	30
7.3 Guidelines and Best Practices for Valuation .....	31
<b>8. Negotiation.....</b>	<b>39</b>
8.1 Overview and Purpose of Negotiation.....	39
8.1.1 Written offer.....	39
8.1.2 Negotiation contacts.....	39
8.1.3 Coercive action .....	40
8.1.4 Administrative settlements.....	40
8.1.5 Uneconomic remainders .....	40
8.2 Guidelines and Best Practices for the Negotiation Process .....	41
<b>9. Conclusions.....</b>	<b>47</b>
<b>10. References.....</b>	<b>49</b>
<b>Appendix A: Best Practices in R/W Valuations and Negotiations Survey .....</b>	<b>51</b>
<b>Appendix B: Summary of Survey Results .....</b>	<b>61</b>

## **List of Tables**

Table 4.1: Average Scores for Survey Questions by Fiscal Year.....	13
Table 4.2: Categorization of Property Owner Survey Results for Positive Comments.....	14
Table 4.3: Categorization of Property Owner Survey Results for Negative Comments .....	14
Table 5.1: Frequency Percentage of Possession Type .....	15
Table 5.2: Percent of Parcels by Property Use That Went to Condemnation.....	15
Table 5.3: Percent of Parcels with/without Improvements that Went to Condemnation.....	16
Table 5.4: Percent of Parcels by Project Type that Went to Condemnation.....	16
Table 5.5: Percent of Parcels by Taking Type that Went to Condemnation.....	17
Table 5.6: Percent of Parcel by District that Went to Condemnation.....	17
Table 5.7: Percent of Total Parcels by Year with Information on Possession Type .....	18
Table 5.8: Percent of Parcels by Year that Went to Condemnation .....	18
Table 6.1: Summary of Responses to Question 1 .....	19
Table 6.2: Summary of Responses to Question 2 .....	20
Table 6.3: Summary of Responses to Question 4 .....	21
Table 6.4: Summary of Responses to Question 5 .....	22
Table 6.5: Summary of Responses to Question 7 .....	23
Table 6.6: Summary of Responses to Question 8 .....	24
Table 6.7: Summary of Responses to Question 10 .....	25
Table 6.8: Summary of Responses to Question 11 .....	26



# **1. Introduction**

Right-of-way (R/W) acquisition is an integral component of the overall planning and implementation of highway and transportation projects. This process has become more complex, expensive, time consuming and socially sensitive over the last few decades. The valuation of the parcels and the negotiations with property owners are extremely important aspects of this process, and their success brings many benefits to transportation agencies.

Because the Texas Department of Transportation (TxDOT) earnestly pursues public satisfaction while at the same time maintaining efficient project performance, the agency's goals are met when right-of-way offers reflect fair market values. Different issues must be considered in order to achieve these goals: TxDOT must study practice differences among its districts; it must communicate engineering details to contractors in the early stages of new projects; it must understand the differences in appraisal types; navigate the intricacies of acquisition outsourcing; and it must maintain awareness of changing laws and statutes. These considerations and others contribute to the agency's ability to conduct efficient valuation and negotiation process. Such efficiency is crucial since, as Hakimi and Kockelman (2005) stress that inefficient valuation and negotiation processes typically frustrate the public and contribute to an increase in project cost and duration.

Since the right-of-way acquisition process immediately precedes the construction phase of the project, the right-of-way division faces constant pressure to acquire land and deliver properties as soon as possible. Consequently, many right-of-way departments have turned to outsourcing consultants to lessen the workload.

The objective of the right-of-way acquisition process is to obtain the title of the needed right-of-way. However, this process, at best, is extensive and complex. Given that right-of-way valuation and negotiations with property owners are usually in the critical path of the project and have a key impact on schedule and cost, there is a need to summarize best practices in the right-of-way valuation and negotiation processes.

## **1.1 Purpose**

Providing good service to the public is a principal goal of governmental agencies, a goal that is particularly challenged by right-of-way acquisition delays and complications. Due to the complex nature of the right-of-way acquisition process, it is difficult to simultaneously maintain time projections, low costs, and good rapport with property owners.

This research project aims to identify and summarize best practices, as well as process differences, legal aspects, and influence factors related to right-of-way valuations and negotiations. This synthesis of elements will be used as a guideline for R/W agents and outside appraisers to use in order to conduct effective R/W valuations and negotiations.

## **1.2 Methodology**

In order to accomplish project objectives, this research was divided into the following four tasks:

For the first task, literature reviews and surveys were performed to assess R/W valuation and negotiation practices. The research team reviewed academic papers and state and federal manuals. This task also included an analysis of the results of the TxDOT Property Owner

Satisfaction Survey, which was conducted by the Department from Fiscal Year 2003 to Fiscal Year 2006. A total of 1,063 surveys were reviewed and analyzed. Interviews with TxDOT right-of-way personnel were conducted to gain a better understanding of their current problems best practices. In addition, thirty-five TxDOT ROW staff members from eighteen districts were surveyed, and the results of these surveys were analyzed along with the interview results.

The second task required the review of state and federal manuals to identify the laws and statutes pertinent to the valuation and negotiation processes. The third task focused on identifying factors that can positively and negatively influence valuation and negotiation. TxDOT's Right-of-Way Information System (ROWIS) provided data for this investigation. The system provided data from previously acquired parcels, including variables such as possession type, project type, property usage, taking type, improvements, and location.

The fourth and final task was to prepare the research products and reports for submission.

### **1.3 Organization**

This report is organized into eight chapters. Chapter 1 presents the report's introduction, statement of purpose, methodology, and organization. Chapter 2 provides an overview of the right-of-way acquisition process, highlighting the valuation and negotiation processes. Chapter 3 performs a review of the pertinent laws and statutes including federal and state laws, and the Uniform Standards of Professional Appraisal Practice. Chapter 4 summarizes and discusses TxDOT's Property Owner Satisfaction Survey, and Chapter 5 analyzes the factors that influence possession type. Chapter 6 analyzes the results of the TxDOT ROW Personnel Survey and Chapter 7 gives an overview of the valuation and appraisal processes. This chapter also includes the guidelines and best practices for valuations. Chapter 8 presents an overview of the negotiation process and offers guidelines and best practices for negotiating with property owners. Finally, Chapter 9 presents the conclusion of the research.



## **2. The Right-of-Way Acquisition Process**

R/W acquisition is part of the complex process of highway project development. The entire process begins with preliminary activities: collecting preliminary R/W and utility data; developing project plans; and requesting deed releases, among others. After the preliminary actions take place, the R/W authorization is released and the district offices are authorized to acquire the needed properties. Then, once an accurate valuation of the desired property has been made, the agency presents an offer to the property owner and thereby initiates the negotiation process. If the owner accepts the offer, acquisition and relocation, if necessary, take place. However, if the owner rejects the offer after a number of negotiations, condemnation proceedings typically follow.

The purpose of this chapter is mainly to provide background information on the comprehensive and complex R/W acquisition process. According to the Real Estate Acquisition Guide for Local Public Agencies (TxDOT, 2004), the R/W acquisition process comprises five phases:

- Planning
- Valuation (also known as Appraisal)
- Negotiation
- Property Management
- Relocation

These categories provide the organization of this chapter, with each of the five R/W acquisition activities being discussed further in greater detail in each section.

### **2.1 Planning**

Planning is the first step of the process, and mainly involves environmental assessments, location and design studies, and the promotion of public involvement. The planning process is initiated by the statewide transportation plan, which provides a broad vision of the effects of transportation investments. The next step is to utilize the Statewide Transportation Improvement Program or the Transportation Improvement Program, both of which list by priority the projects expected to be advanced in the next 3 years. Identifying these plans and programs is important in receiving Federal funds for projects that are included in the Statewide Transportation Plan (FHWA, 2006).

During the planning phase, an environmental assessment is required; a study that mainly deals with the social, economic, and environmental impacts of the R/W acquisition and relocation. These impacts involve, for example, analyzing the number of people or businesses displaced by the project or the extent to which community services, wetlands, and wildlife habitats are disrupted by the project (FHWA, 2006).

Public involvement is as critical as the environmental assessment during the planning phase. The purpose of public involvement is to apprise affected communities of the need for and purpose of the project, to inform them of the possible social and environmental impacts, and to allow community members to freely present their opinions on the acquisition process. This information can be disseminated through a variety of mediums, such as public meetings,

newspaper notices, television advertisements, and letters. However, the level of public participation can vary depending on the complexity or size of the project and its impact (TxDOT, 2004).

Once the R/W acquisition authorization has been released, right-of-way agents are required by the Right-of-Way acquisition manual (TxDOT, 2005) to provide information to property owners about the project. The need for the property, the basic legal protections the owner may have, the general procedures of the acquisition, and other information should all be included in this initial communication. Furthermore, prior to the beginning of the second phase (i.e., appraisal), the agency should contact the property owner in person. The manual further recommends that agents use this initial meeting to obtain information on the property such as about the presence of any improvements, hazardous or underground materials, or liens against the property.

## **2.2 Valuation**

The second phase, valuation, is the process of having a parcel appraised and the appraisal reviewed to ensure that the agency offers just compensation to owners. After the planning phase of R/W acquisition, valuation of the particular property takes place. Federal law requires assigning an amount that the federal agency believes to be just compensation. In addition, The Act requires that the property be appraised before an acquiring agency begins negotiations to acquire it, and that the amount of the approved appraisal be the basis of the offer of just compensation.

A detailed appraisal should reflect standards that are nationally recognized, such as The Uniform Appraisal Standards for Federal Land Acquisition (UASFLA) and The Uniform Standard Practices for Appraisal Professionals (USPAP) (TxDOT, 2004). In accordance with the federal regulations, Texas law requires the appraisal report to include certain items, such as the purpose of the appraisal, a description of the physical characteristics of the property, and a description of comparable sales.

On the other hand, an appraisal can be waived if a parcel is donated or if the proposed acquisition is uncomplicated and low-valued. Whether the proposed acquisition is uncomplicated and low-valued can be determined by the local agency; if the anticipated value of the proposed acquisition is estimated at \$10,000 or less, based on a review of available data, the agency may proceed acquiring the needed property with negotiation.

The Uniform Act also requires that during the preliminary investigation of the desired property, property owner must be given the opportunity to accompany the appraiser. By complying with this requirement, appraisers can benefit from property owners' familiarity with the property; owners might indicate features of the property that will affect its valuation, or that might not be obvious to the appraiser. Texas laws also require that invitation to accompany the appraiser be made in writing.

Once the appraisal is completed, it must be authorized through appraisal review by a qualified reviewer. The purpose of the appraisal review is to ensure that the appraisal has been completed according all the requirements, and that the appraisal contains accurate information. If any inaccuracy is found, the reviewer should correct it.

The process of appraisal review is a significant part of the acquisition process. Since it carries a great deal of responsibility, only people who are thoroughly qualified and experienced should perform appraisal reviews. Reviewers must ensure that the appraisal is correct and

reasonably supported, and they must make corrections to reports if necessary. Further description is presented in the following chapter of this report.

## **2.3 Negotiation**

The next step is negotiation. In this phase, agencies make offers to property owners for acquisition of real property and improvements. Agencies also make payments for the properties and notify the owners to vacate. However, the process shifts to condemnation proceedings if negotiations fail.

When acquiring the needed property after the appraisal phase is finished, agencies are required by The Uniform Act to attempt to acquire the real property by negotiation, rather than through eminent domain authority. The basic requirements for R/W negotiation stated in The Uniform Act are:

- (1) Prior to the beginning of negotiation, present a written offer of the approved estimate believed to be just compensation for the real property; (2) Contact the property owner in order to explain the acquisition process, basis for establishing just compensation, etc; (3) Give the owner a chance to consider whether to accept or reject the offer of just compensation; (4) Have the appraisal updated if new appraisal information is needed or a significant delay occurs; and (5) Negotiate without any coercive actions in order to reach an agreement (42 USC 4601, 1970).

When reasonable efforts to negotiate the written offer of just compensation have failed, another option is to have an administrative settlement be processed before the negotiation shifts to condemnation (FHWA, 2006). To initiate the administrative settlement process, the property owner must make a counteroffer that includes a signed proposal for full settlement, specifying a value and supporting it with market information. This counteroffer, which is allowed only once, or the property owner's written request for an extension of time, must be received in the district no later than 30 days from the property owner's receipt of the initial offer letter. Any counteroffers/administrative settlement requests or requests for extension of time that are received after the 30-day time limit will not be considered (TxDOT, 2005). Additionally, any administrative settlement with a total compensation amount of \$50,000 or less will be considered by the district administrative settlement team, and any with a total amount of more than \$50,000 will be reviewed by the ROW division office. If the administrative settlement counteroffer is rejected, then the process shifts to condemnation proceedings. The negotiation process will be discussed in further detail in Chapter 8.

## **2.4 Property Management**

The fourth phase is property management, the part of the acquisition process during which the clearing of R/W takes place. The activities of this phase can be time-consuming and may lead to extensive schedule delays. However, if the revenue from the sale of excess property purchased during the R/W acquisition process can be maximized, it can be very useful in partially recovering a large part of the investment made during acquisitions. Other activities may also take place during this phase, such as assessments of distant future use of the excess properties, i.e., expansion of R/W. This phase is a process that requires a number of advanced skills, including time management, marketing, and financing.

## **2.5 Relocation**

Finally, in the relocation phase residences, businesses, farms, and non-profit organizations are displaced by federal or state programs designed for the benefit of the public. However, the displaced persons should not suffer inconveniences as a result of such public benefit.

According to the Real Estate Acquisition Guide (FHWA, 2006), the relocation process can be divided into four parts. The first is Relocation planning, which deals with analyzing the location, size, and schedule of the displaced residents. Secondly, in accordance with The Uniform Act, agencies must provide relocated residents with a general information notice, inform them of their eligibility for relocation, and give them a 90-day notice. The third part of the relocation process involves providing residents with an advisory service that provides pertinent information, counseling, and advice. Finally, payments must be made to the affected residents.

### **3. Review of Pertinent Laws and Statutes**

A review of the pertinent laws and statutes that affect the negotiation process was conducted to gain better understanding and assessment of R/W valuation and negotiation practices. Federal and state laws were found to greatly affect the valuation and negotiation processes.

#### **3.1 Laws and Statutes that Govern R/W Acquisition**

##### **3.1.1 Federal laws**

The principal laws for R/W acquisition on Federal projects are Public Law 91-646 and The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, also called The Uniform Act. The Uniform Act protects property owners whose property and/or improvements are acquired or who are displaced from R/W acquisition by federal or federally assisted state projects (FHWA, 2006). As for The Uniform Act, three sections (or titles) comprise the Act. Title III, the "Uniform Real Property Acquisition Policy," governs acquiring real property for Federal and federally assisted projects. The provisions of Title III encourage agencies to acquire real property through negotiation, and to minimize the possibility of litigation (FHWA, 2006). The bulk of this chapter is based on this part of the Uniform Act.

The Public Law 49 Code of Federal Regulations (CFR) Part 24, the Uniform Act regulation, is the regulation most pertinent to real property acquisition activities by federal and federally assisted state projects. According to the Real Estate Guide for LPAs (TxDOT, 2004), the CFR is "a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government."

##### **3.1.2 State laws**

State and local laws also govern public project and program activities. As indicated by the Real Estate Guide for LPAs (TxDOT, 2004), The Texas Status, Transportation Code, Title 6, Chapters 201-250, and Property Code, Chapter 21, are the primary state laws that govern R/W acquisition. Moreover, other regulations can be found that support these statutes, such as administrative rules provided in the Texas Administrative Code (TAC), title 43, Part 1, Chapters 1,2, 5,6, 15, and 21 (TxDOT, 2004).

#### **3.2 Federal and State Laws that Influence Valuation**

##### **3.2.1 Appraisal requirement**

After the planning phase of R/W acquisition, valuing the particular property takes place. The Uniform Act requires the determination of an amount that the Federal Agency believes to be just compensation. In addition, The Act requires that the property be appraised before an acquiring agency begins negotiations to acquire it, and that the amount of the approved appraisal be the basis of the offer of just compensation.

According to the TxDOT appraisal and review manual (TxDOT, 2006), the Texas Constitution allows "the acquisition of private property for public use, while requiring that any

such acquisition entitles the owner to just compensation." The manual further states that the purpose of the property valuation is to develop an estimate that reasonably reflects the owners' property. Though the agency must offer the proper amount that the property owner is entitled to, state law prohibits paying more than the agency is required to pay.

### **3.2.2 Pre-appraisal contact**

The R/W acquisition manual (TxDOT, 2005) requires agents to contact the property owner, in person, prior to the beginning of the appraisal. At the pre-appraisal meeting, the agent should provide property owners with a statement of the agency's intention to acquire the property, an explanation of the need for the acquisition, notification of the property owner's right to donate the property to the agency, and an enumeration of the property owner's basic legal protections. However, the manual cautions agents "not to make a commitment to value or make an offer before receiving approved values."

### **3.2.3 Appraisal standards**

According to the Federal Highway Administration guidebook (2006), The Uniform Act regulations require agencies to conduct detailed appraisals for all complex appraisal issues, whether the acquisition is a whole or partial taking. In developing a detailed appraisal, The Act states that the acquiring agency has a legitimate role in the appraisal process, especially in defining the scope of work of the appraisal problem. Also, the agency has the responsibility to assure that the appraisals are appropriate to its programs' needs and that they reflect established and commonly accepted federal program appraisal practices.

The real estate acquisition guide for LPAs (TxDOT, 2004) suggests that a detailed appraisal should reflect standards that are nationally recognized, such as The Uniform Appraisal Standards for Federal Land Acquisition (UASFLA) and The Uniform Standard Practices for Appraisal Professionals (USPAP). Complying with the federal regulations, the state requires that the appraisal report include certain items, such a statement of purpose for the appraisal, a description of the physical characteristics of the property, and a description of comparable sales.

### **3.2.4 Appraisal waiver**

As stated by The Uniform Act, the federal agency allows the state transportation departments to develop procedures for waiving the appraisal requirement when an appraisal is unnecessary; such waivers apply when the valuation problem is uncomplicated and the anticipated value of the proposed acquisition is estimated at \$10,000 or less, based on a review of available data. State laws also waive the appraisal requirements in these cases, as well as when property owners donate the property. Moreover, the federal agency may approve a waiver for properties with values exceeding the \$10,000 threshold—up to a maximum of \$25,000 for some State transportation departments—if the Agency acquiring the real property offers the property owner the option of having the agency appraise the property.

### **3.2.5 Owner accompaniment**

The Uniform Act regulations require giving the property owner the opportunity to accompany the appraiser during the examination of the property. By complying with this requirement, property owners can advise or indicate features of the property that might impact the valuation of the property or that might not be obvious to the appraiser.

Likewise, the state requires that the property owner be given the opportunity to accompany the appraiser during the examination. The state laws also require that the invitation 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 refusal should also be in writing and be retained in the agency's file.

### **3.2.6 Appraisal and acquisition of improvements**

For appraisal and acquisition of improvements, Texas laws require the LPA to include all buildings, structures, or other improvements located on R/W parcels in appraisal reports, if determined to be real property under state standards.

## **3.3 Uniform Standards of Professional Appraisal Practice (USPAP)**

### **3.3.1 Organization**

As discussed above, Texas law requires that a detailed appraisal should reflect nationally recognized appraisal standards, such as the USPAP practices. The purpose of the USPAP is to maintain a high level of public trust in appraisal practice by establishing requirements for appraisers. The appraiser's responsibility to protect the overall public trust and certain ethical obligations are placed on the appraiser because his or her role is so important. USPAP reflects the current standards of the appraisal profession.

USPAP is composed of five main sections: definitions, rules, standards, standards rules, and statements. The definitions section generally deals with the application of certain terminology in USPAP. The rules section sets forth the requirements for ethics, competency, scope of work, and jurisdictional exception. The standards section, which is the main body of the USPAP, establishes the requirements for appraisal, appraisal review, appraisal consulting service, and the manner in which each is communicated. A number of standards are discussed below that are related to the process of valuation and negotiation. In addition to the standards, the statements on appraisal standards clarify, interpret, explain, or elaborate on a rule or on standards rules. Comments are an integral part of USPAP and have the same weight as the component they address. Furthermore, advisory opinions are addressed as addenda to the document. Advisory Opinions are issued to illustrate the applicability of appraisal standards in specific situations and to offer advice from the Appraisal Standards Board for the resolution of appraisal issues and problems. However, these opinions do not establish new standards or interpret existing standards.

### **3.3.2 Related standards**

Ten standards address the requirements for appraisal, appraisal review, and appraisal consulting services, but only a few are related to the scope of the present research project (TxDOT 0-5379). Following are those pertinent standards: Standard One—Real property appraisal, development; Standard Four—real property appraisal consulting, development; and Standard Nine—business appraisal, development.

Standard One is directed toward the substantive aspects of developing credible appraisals of real property. *Real property* means the interests and rights inherent to the ownership of an identified parcel of land, including improvements. The requirements set forth in Standard One

follow the order of the appraisal development process, and can be used by appraisers and the users of appraisal services as a convenient checklist.

The purpose of an assignment under Standard Four is to develop an analysis, recommendation, or opinion that involves at least one value estimate. However, an opinion of value or an opinion of the quality of another appraiser's work cannot be the purpose of an appraisal consulting assignment.

Standard Nine is directed toward the substantive aspects of developing a credible appraisal of an interest in a business enterprise or intangible asset.

### **3.4 Federal State Laws that Influence Negotiation**

#### **3.4.1 Basic acquisition requirements**

In obtaining required R/W properties, The Uniform Act states that the agency should attempt to acquire real property by negotiation to the greatest extent possible rather than by condemnation authority. The Act further requires a qualified member of the agency's staff to conduct the negotiations. However, fee negotiators may be hired when there are not enough agency staff members to perform negotiations.

The basic requirements for R/W negotiation mandated by The Uniform Act will be discussed further in detail:

Prior to the beginning of negotiation, present a written offer of the approved estimate believed to be just compensation for the real property; Contact the property owner in order to explain the acquisition process, basis for establishing just compensation, etc; Give the owner a chance to consider whether to accept or reject the offer of just compensation; Have the appraisal updated if new appraisal information is needed or a significant delay occurs; and Negotiate without any coercive actions in order to reach an agreement (42 USC 4601, 1970).

#### **3.4.2 Written offer**

After the valuation phase is complete, The Uniform Act requires the presentation of a written offer to the property owner, explaining the amount of just compensation and the basis for the amount. Delivery of the offer constitutes initiation of negotiations and establishes the principal date for determination of relocation assistance entitlements (FHWA, 2006).

Texas law also requires the presentation of a written offer to the property owner that officially initiates the negotiation process. State law also requires including the following items in the written offer: (1) a statement of the established amount believed to be just compensation, including damages; (2) a description of the R/W parcel to be acquired; (3) a copy of the appraisal as a basis for justification of the amount offered; and (4) a description of the administrative settlement process (TxDOT, 2005).

#### **3.4.3 Negotiation contacts**

The Uniform Act requires an acquiring agency to make "all reasonable efforts" to contact each real property owner in order to explain the negotiation process as well as the responsibilities of both the acquiring agency and the property owner. The real estate acquisition guide (FHWA,



2006) encourages the agency to approach owners with the aim of establishing good rapport with them.

Although the FHWA strongly encourages the acquiring agencies to contact the owner in person, the TxDOT manual does not urge the personal contact as emphatically; in Texas "negotiations are usually conducted through personal contacts, but can be conducted via other appropriate means" (TxDOT, 2004). The manual provides further guidelines for personal contact, such as presenting the offer letter, fully discussing the offer, and explaining the administrative settlement process.

#### **3.4.4 Coercive action**

Another requirement of The Uniform Act for R/W negotiation disallows agencies from using coercive actions to make an agreement. The Act also forbids advancing the time of condemnation or deferring negotiations or condemnation. The real estate acquisition guide (FHWA, 2006) further recommends that the negotiator should not imply that the negotiation is a "take it or leave it" proposition, nor should condemnation be used as a threat.

#### **3.4.5 Administrative settlements**

An administrative settlement occurs before invocation of the agency's condemnation authority and when landowners refuse the initial offer (FHWA, 2006). According to The Uniform Act, the amount is typically more than the initial offer of just compensation because of the consideration of the cost of litigation and project delays. Furthermore, a written statement of the basis for such a settlement should be developed.

Texas law also allows agencies to acquire properties by administrative settlements. To initiate the administrative settlement process, a written counteroffer is required and must include a property owner's signed proposal for full settlement. The counteroffer must set forth a specific value that is supported by market information. This counteroffer, which is allowed only once, or the written request from the property owner for an extension of time, must be received in the district no later than 30 days from the property owner's receipt of the initial offer letter. Any counteroffers or administrative settlement requests or requests for extension of time received after the expiration of 30 days will not be considered (TxDOT, 2005).

In addition, the R/W acquisition manual (2006) explains that all the administrative settlements recommending total compensation amount of \$50,000 or less will be considered by the District administrative settlement team. Amounts exceeding \$50,000 will be reviewed by the ROW division office. If the administrative settlement counteroffer is disapproved, then the process shifts to condemnation proceedings.

#### **3.4.6 Uneconomic remainders**

When partial property acquisitions leave the property owner with an uneconomic remainder, The Uniform Act obliges the agency to make an offer to acquire the valueless remaining property along with the portion of the property necessary for the project (FHWA, 2006).

Texas law prohibits the acquisition of properties in excess of R/W requirements, except in the case of "uneconomic remnants." Transportation Code, §203.0521 gives TxDOT the statutory authority to acquire such uneconomic remainders. However, the state statutes require that the property owner must consent to the acquisition. For TxDOT to acquire the uneconomic remainder, it must be determined as having "(1) little or no value or utility to the property owner,

or (2) the entire tract must be able to be acquired for virtually the same compensation as the partial tract, including damages to the remainder property” (TxDOT, 2006).

## 4. Property Owner Satisfaction Survey

TxDOT conducted a survey seeking feedback from property owners whose land had been acquired by the agency. The survey addressed parcels acquisitions dated from 2003 to 2006. This data was stored and made available to the research team for analysis by TxDOT. A total of 1,063 owner satisfaction survey forms were collected over the three-year period.

The survey asked five questions, and the answer values ranged from 1 to 5, with 5 being the best. The average scores for each survey question are presented below in Table 4.1. These scores ranged between 4.21 and 4.80, attesting to an overall satisfaction with the service received. The question with the highest-ranked response each year was the fourth question, regarding the courteousness and professionalism of the right-of-way agent. On the other end of the spectrum, the fifth had the consistently lowest score. It asked property owners about the usefulness of the printed material provided by the department. These scores are an indication of some areas in which the department may want to continue its current good practices as well as improve current practices.

**Table 4.1: Average Scores for Survey Questions by Fiscal Year**

Number	2003	2004	2005	2006	Question
Q1	4.58	4.53	4.32	4.61	How well did we answer your questions about the proposed transportation project?
Q2	4.62	4.51	4.35	4.59	How well did we explain the need for your property and the process used to purchase your property?
Q3	4.69	4.60	4.44	4.60	Was the Right of Way Agent informed and responsive to your questions?
Q4	4.75	4.77	4.63	4.80	Was the Right of Way Agent courteous and professional?
Q5	4.29	4.38	4.21	4.47	How would you rate the usefulness of the printed material provided by the Department?

The surveys also provided an area for comments. Out of the total 1,063 surveys, 139 had positive comments (13.08 percent) while seventy-one had negative comments (6.68 percent). The remaining respondents did not include comments in their replies. These comments were analyzed from various viewpoints, including types of comments by districts and types of comments by land use type. The only analysis that will be described in detail is the categorization of property owner survey results for both positive and negative comments.

The positive and negative comments were categorized and sorted to identify some of the recommended practices and main issues respectively. Table 4.2 presents the positive comments and Table 4.3 presents the negative comments. Each category has examples of the comments classified in that group.

**Table 4.2: Categorization of Property Owner Survey Results for Positive Comments**

Category	Frequency	Examples
General Compliment	59	Very good; Thanks; All people were a pleasure to work with.
Polite & Courteous	43	Ms. H. has been very courteous and professional.
Good Response & Informative	34	She was able to answer all my questions in a knowledgeable and friendly manner; C&F were good about any questions that we had.
Fast & Nice Transaction	11	I have been very pleased with the way I was treated in the whole process; Very efficient operations; We were pleased with the process and promptness with all concerned.
Cooperative	7	Everyone was very cooperative. We compliment them.
Helpful Info, Mat.	5	The material was great, but your people were fantastic at answering any questions.
Other	4	N. did a wonderful job. She explained in English and Spanish everything we needed to know.

Some of the comments that appeared for one parcel entry were placed in two different categories, making the total number of positive comments in this table 163 instead of 139. The majority of the comments were categorized as “general compliments,” “polite and courteous,” and “informative.” The practice that elicited these positive comments should be encouraged, and the practice that got negative reactions should be corrected.

For Table 4.3, some of the comments that appeared for a single entry were placed in two categories, making the total number of negative comments in this table 75 instead of 71. The majority of the comments were categorized as “slow process” and “low payment.” These represent the main issues in requiring improvement. New techniques should be applied to speed up the acquisition process and negotiation should be encouraged.

**Table 4.3: Categorization of Property Owner Survey Results for Negative Comments**

Category	Frequency	Examples
Slow Process	14	It took 7 months before we got the money for the property.
Low Payment	12	Not satisfied with money proposed for demolition.
Other	11	
Information Materials	9	Too many duplicated materials; Needs to be explained in simpler terms.
Contact issues	7	Would be better to talk in person; I had to call TxDOT, lawyers.
Not Courteous	6	I'd like to know where the State of Texas found the rude appraisers.
Unprofessional Rep.	5	Lied about the amount of the HOA & issued me an incorrect check amount. When I objected she said Wilcrest Walk Association told her too.
Feeling of "Loss"	5	This is our home, not just a tract of land the State can add to what it owns.
Job site issue	3	Did not ask about taking my fence down and they didn't put it back. Cut down a pecan tree on my land. You need to come to talk to me about what you will be tearing up while you work on the road.
Keep informed	3	Would like to be updated often on progress of FM 8 project.

## 5. Analysis of Factors that Influence Possession Type

Using data from the Right-of-way Information System (ROWIS), the research team identified potential factors that influence valuation and negotiation, including issues that typically lead to condemnation proceedings. A total of 21,310 parcels are listed in the database, but the total number of entries with the information for Possession Type (condemnation or negotiation) was 9,686. For some variables, there were undetermined or unknown values as well as missing values; therefore, the total number of parcels (N) for each variable may differ. The variables analyzed were Possession type, Project Type, Property Use, Taking Type, Improvements, and District. Following are the preliminary findings:

The first analysis is a frequency count of possession types among parcels. Nine times more parcels were settled by negotiation than those that went to condemnation (see Table 5.1). The total of data in this analysis is 9,686.

**Table 5.1: Frequency Percentage of Possession Type**

Percent of parcels that lead to condemnation is (n=945)	9.80%
Percent of parcels that lead to negotiation is (n=8741)	90.20%

The percentages of parcels that were referred to condemnation were analyzed according to their “Property Use” classification. Table 5.2 shows these values. The property uses that had the highest percentages of condemnation proceedings were “Retail Store” and “Industrial,” both with similar values. All the residential categories congregated at the lower end of the table. The Rural areas were also calculated to be at the lower end, while the Vacant properties stood in the middle. The total of data included in this analysis is 9,347.

**Table 5.2: Percent of Parcels by Property Use That Went to Condemnation**

Property Use	Percentage that lead to Condemnation
Retail Store (n=62)	19.40%
Industrial (n=103)	18.40%
Commercial (n=2122)	14.90%
Vacant Acreage (n=1141)	9.60%
Special Use (n=153)	9.20%
Vacant Lot(n=492)	8.70%
Agriculture (n=740)	8.60%
Rural Land (n=402)	8.50%
Rural Residential (n=950)	6.40%
Ranch (n=203)	6.40%
Residential(n=1745)	6.10%
Residential Lot (n=329)	5.80%

Some of the parcels had improvements. These improved parcels were analyzed to determine whether the changes to the properties had any influence on the Possession Type. Table 5.3 shows this analysis. The percentages did not vary significantly, indicating that improvements do not seem to affect a parcel's tendency toward condemnation. The total of data included in this analysis is 9,686.

**Table 5.3: Percent of Parcels with/without Improvements that Went to Condemnation**

Parcels with Improvements that lead to Condemnation (n=5348)	8.70%
Parcels without Improvements that lead to Condemnation (n=4338)	11.10%

Another consideration in the acquisition process is the relationship between the different types of projects and the frequency of condemnation. The project types with the greatest percentage of parcels that went to condemnation were interstate projects and Principal Arterial Street Systems (PASS) (see Table 5.4). These two had significantly greater percentages than the rest of the project types; this may be because these projects are greater in magnitude. The total of data included in this analysis is 9,686.

**Table 5.4: Percent of Parcels by Project Type that Went to Condemnation**

<b>Project Type</b>	<b>Percentage that went to Condemnation</b>
Interstate (n=557)	33.80%
PASS (Principal Arterial Street System) (n=23)	30.40%
Alternate Procedure (n=4768)	8.30%
CMAQ (Congestion Mitigation Air Quality Improvements) (n=86)	8.10%
90% Reimbursement (n=182)	7.10%
100% State (n=810)	6.80%
Farm-to-Market (n=165)	3.60%
County/City (State Highways) (n=35)	2.90%
Enhancements (n=40)	2.50%

When parcels are acquired, they are not always needed in their entirety; in these cases, they are divided and only a partial taking of the property takes place. These types of takings were compared to access rights only to analyze the differences in percentages of parcels that went to condemnation (see Table 5.5). There was very little difference between the two primary types of takings. The total of data included in this analysis is 9,686.

The possession types were then analyzed and compared by districts; no specific trends were found for the percentages of "rural" districts and "urban" districts (see Table 5.6). The district with the highest percentage of parcels that went to condemnation was San Antonio. The total of data included in this analysis is 9,686.

**Table 5.5: Percent of Parcels by Taking Type that Went to Condemnation**

<b>Taking Type</b>	<b>Percentage that went to Condemnation</b>
Whole (n=1169)	9.90%
Partial (n=7861)	9.80%
Access Rights Only (n=116)	1.70%

**Table 5.6: Percent of Parcel by District that Went to Condemnation**

<b>District</b>	<b>Percentage that went to Condemnation</b>
SAT (n=252)	27.00%
HOU (n=823)	24.00%
LBB (n=201)	18.40%
PAR (n=222)	15.30%
BRY (n=539)	14.70%
BMT (n=376)	14.60%
AUS (n=342)	13.70%
DAL (n=903)	13.70%
BWD (n=148)	10.80%
FTW (n=770)	8.40%
ATL (n=537)	7.10%
LFK (n=264)	6.40%
ABL (n=338)	5.60%
LRD (n=55)	5.50%
WFS (n=279)	5.40%
PHR (n=859)	4.90%
WAC (n=675)	4.10%
CRP (n=232)	3.90%
TYL (n=891)	3.30%
CHS (n=326)	3.10%
ELP (n=134)	3.00%
YKM (n=384)	1.60%
AMA (n=51)	0.00%
ODA (n=36)	0.00%
SJT (n=49)	0.00%

Parcel's entries in ROWIS date back to 1986, but not all of the entries include information on Possession Type. The research team calculated the percentage of parcels with information on Possession type for each year. Table 5.7 shows this analysis. According to the

results, the entries dating from 2000 include the Possession Type of the parcel. The total of data included in this analysis is 9,686.

**Table 5.7: Percent of Total Parcels by Year with Information on Possession Type**

<b>Year</b>	<b>Percentage that has Possession Type Information</b>
1986 (n=2)	0.00%
1989 (n=9)	0.00%
1996 (n=29)	0.00%
1997 (n=199)	0.00%
1998 (n=406)	0.00%
1999 (n=584)	0.00%
2000 (n=1583)	53.60%
2001 (n=1820)	60.20%
2002 (n=1823)	68.40%
2003 (n=2721)	59.90%
2004 (n=4255)	59.30%
2005 (n=5026)	46.60%

The entries from 2000 to 2005 were then analyzed to identify any trends among possession types (see Table 5.8). Condemnation rates were found to have increased each the year, but it must be noted that the number of parcels recorded on ROWIS also increased each year. The total of data included in this analysis is 9,686.

**Table 5.8: Percent of Parcels by Year that Went to Condemnation**

<b>Year</b>	<b>Percentage that went to Condemnation</b>
2000 (n=849)	3.50%
2001 (n=1096)	4.60%
2002 (n=1247)	5.60%
2003 (n=1629)	8.00%
2004 (n=2521)	13.50%
2005 (n=2344)	13.80%

A regression analysis was conducted to determine if there is any potential correlation between the independent variables (property use, improvements, project type, taking type, and district) and the dependent variable (possession type). The research team hoped that such a correlation, if found, could be used to predict the likelihood of a parcel going to condemnation. The results of this analysis showed no correlation between the independent variables and the dependent variable. In other words, it is not feasible to use a regression model to predict condemnation.



## 6. TxDOT ROW Personnel Survey

In order to obtain a better understanding of the current practices and problems and issues in right-of-way valuations and negotiations, the research team conducted a survey of TxDOT right-of-way personnel. The survey was divided into two sections: valuation and negotiation. The participants were asked a variety of questions, such as whether they recommended certain practices, if they were experiencing specific problems, how often they implemented certain practices, and the importance they gave to certain issues. There were also areas on the questionnaire in which they could comment on any additional problems or issues they face as well as comment on innovative practices they use (see Appendix A).

The survey was sent to the twenty-five Texas district right-of-way offices, and thirty-five responses were received from eighteen different districts. The participants' identities were kept strictly confidential. The following tables summarize the survey results.

Table 6.1 summarizes the answers to the first question of the valuation section in which participants were asked to rank the frequency with which they were experiencing certain problems during the valuation process. The problem most frequently reported was the property owner's distrust of the agency and/or disagreement with the appraised value. The second most frequent problem was the way that R/W plan changes and revisions affect the nature and extent of acquisition on many parcels. Delays in the delivery of appraisal reports were the third most frequent problem reported.

**Table 6.1: Summary of Responses to Question 1**

<b>1. Please indicate the approximate frequency in which you have experienced the following problems during the valuation process.</b>				
	<b>Often</b>	<b>Sometimes</b>	<b>Rarely</b>	<b>Never</b>
1-i. Property owner distrust of agency and/or disagreement with appraised values	38.2%	55.9%	2.9%	2.9%
1-a. Right-of-way plan changes and revisions affect nature and extent of acquisition on many parcels	32.4%	61.8%	5.9%	0.0%
1-e. Delays in the delivery of appraisal reports	29.4%	55.9%	14.7%	0.0%
1-b. Insufficient right-of-way staff to obtain appropriate appraisals in a timely manner	17.6%	23.5%	44.1%	14.7%
1-c. Lack of qualified fee appraisers	14.7%	29.4%	41.2%	14.7%
1-f. Inconsistencies among appraisal reports (e.g., significantly different values for the same parcel)	8.8%	35.3%	55.9%	0.0%
1-d. Poor quality of appraisals produced by fee appraisers	5.9%	38.2%	55.9%	0.0%
1-g. Appraisers do not have time to meet with property owners personally	2.9%	14.7%	55.9%	26.5%
1-h. Disagreement over prioritization criteria used by outsourced appraisers to select which parcels will be appraised first	2.9%	14.7%	50.0%	32.4%

The second question asked participants to rank the importance of given actions during the valuation process. Table 6.2 summarizes the results for this question. The most important issue, according to the respondents, was the way R/W plan changes and revisions affect the nature and extent of the acquisition of parcels. The second most important issue was the poor quality of

appraisals produced by fee appraisers, and the third was delays in the delivery of appraisal reports. Although the most frequent problem was not the most important issue to the respondents, the second and third most important issues were found to be among the top three most frequent problems they experienced.

**Table 6.2: Summary of Responses to Question 2**

<b>2. In your experience, what is the importance of the following actions during the valuation process?</b>				
	<b>Highly Important</b>	<b>Important</b>	<b>Less Important</b>	<b>Not Important</b>
2-a. Right-of-way plan changes and revisions affect nature and extent of acquisition on many parcels	70.6%	23.5%	5.9%	0.0%
2-d. Poor quality of appraisals produced by fee appraisers	67.6%	26.5%	5.9%	0.0%
2-e. Delays in the delivery of appraisal reports	52.9%	41.2%	5.9%	0.0%
2-g. Appraisers do not have time to meet with property owners personally	50.0%	41.2%	8.8%	0.0%
2-c. Lack of qualified fee appraisers	47.1%	50.0%	2.9%	0.0%
2-f. Inconsistencies among appraisal reports (e.g., significantly different values for the same parcel)	44.1%	35.3%	20.6%	0.0%
2-h. Disagreement over prioritization criteria used by outsourced appraisers to select which parcels will be appraised first	32.4%	41.2%	26.5%	0.0%
2-b. Insufficient right-of-way staff to obtain appropriate appraisals in a timely manner	29.4%	50.0%	17.6%	2.9%
2-i. Property owner distrust of agency and/or disagreement with appraised values	23.5%	41.2%	29.4%	5.9%

The third question gave respondents the opportunity to write in any problems or issues not addressed by the questionnaire. Following are some examples of these comments.

- “Shortage of qualified review appraisers”;
- “Property owners who will not cooperate with the appraiser by not providing needed information”; and
- “When new formats for appraising were introduced, there were some problems and resistance from some fee appraisers.”

The fourth question asked respondents to indicate the frequency with which given practices are used during the valuation process; Table 6.3 summarizes the results. The practice most frequently used during valuation is the invitation of the property owner to accompany the appraiser during the appraiser’s inspection of the property. This practice is required by the Uniform Act, and is further discussed in Valuation, Chapter 7. The second most frequently used practice is to voluntarily and routinely share copies of complete appraisal reports with property owners. Encouraging fee appraisers to meet property owners in person is the third most frequent practice. For an agency to begin to increase personal contact with property owners, it would be useful to determine a baseline of the current frequency of in-person meetings. For many districts, the ROW district office does not require fee appraisers to meet the property owners; they only encourage and recommend the practice.

**Table 6.3: Summary of Responses to Question 4**

<b>4. Please indicate how often the following practices are used during the valuation process.</b>				
	<b>Often</b>	<b>Sometimes</b>	<b>Rarely</b>	<b>Never</b>
4-i. Give the property owner an opportunity to accompany the appraiser during the appraiser's inspection of the property	100.0%	0.0%	0.0%	0.0%
4-h. Share copies voluntarily and routinely of complete appraisal reports with property owners	94.1%	0.0%	0.0%	5.9%
4-d. Encourage fee appraisers to meet property owners in person	88.2%	11.8%	0.0%	0.0%
4-j. Assign projects according to appraiser's experience	82.4%	17.6%	0.0%	0.0%
4-c. Encourage R/W staff to meet property owners in person	82.4%	14.7%	2.9%	0.0%
4-e. Provide the outsourced appraisers with pre-appraisal information obtained by district personnel	78.8%	12.1%	3.0%	6.1%
4-b. Evaluate outsourced appraisers annually on their performance	67.7%	12.9%	16.1%	3.2%
4-m. Reduce the time-lapse between appraisal valuation date and the initiation of negotiation	62.5%	31.3%	6.3%	0.0%
4-g Share and discuss the project's preliminary R/W map with all property owners	55.9%	20.6%	17.6%	5.9%
4-k. Prioritize parcels according to complexity/appraisal difficulty and contract appraisals for those that are most complex first	50.0%	35.3%	11.8%	2.9%
4-l. Utilize most appropriate technology (e.g., mobile device, GIS) to expedite appraisal production	31.0%	34.5%	27.6%	6.9%
4-f. Use the same agent (e.g., consultant) for the valuation and negotiation process	12.9%	9.7%	12.9%	64.5%
4-a. Offer training courses for staff, fee appraisers, and appraisal reviewers	8.8%	50.0%	38.2%	2.9%

The fifth question asked participants whether they recommended certain practices; Table 6.4 summarizes the results. The most recommended practice is to encourage fee appraisers to meet property owners in person. It is apparent that this practice is believed to be very helpful during the valuation process. The second most recommended practice is to give the property owner an opportunity to accompany the appraiser during the inspection of the property. The third most recommended practice is to assign projects according to the appraiser's experience. Respondents recommended that complex parcels or parcels with greater difficulty be assigned to appraisers with greater experience to avoid delays resulting from mistakes and confusion.

**Table 6.4: Summary of Responses to Question 5**

<b>5. Please indicate if you recommend the following practices based on their effectiveness to improve the valuation process.</b>				
	<b>Highly Recommend</b>	<b>Recommend</b>	<b>Not Recommend</b>	<b>Oppose</b>
5-d. Encourage fee appraisers to meet property owners in person	94.1%	5.9%	0.0%	0.0%
5-i. Give the property owner an opportunity to accompany the appraiser during the appraiser's inspection of the property	91.2%	8.8%	0.0%	0.0%
5-j. Assign projects according to appraiser's experience	88.2%	11.8%	0.0%	0.0%
5-c. Encourage R/W staff to meet property owners in person	76.5%	23.5%	0.0%	0.0%
5-e. Provide the outsourced appraisers with pre-appraisal information obtained by district personnel	75.8%	21.2%	3.0%	0.0%
5-h. Share copies voluntarily and routinely of complete appraisal reports with property owners	73.5%	14.7%	8.8%	2.9%
5-m. Reduce the time-lapse between appraisal valuation date and the initiation of negotiation	70.6%	29.4%	0.0%	0.0%
5-b. Evaluate outsourced appraisers annually on their performance	70.6%	26.5%	0.0%	2.9%
5-k. Prioritize parcels according to complexity/appraisal difficulty and contract appraisals for those that are most complex first	67.6%	29.4%	2.9%	0.0%
5-a. Develop training courses for staff, fee appraisers, and appraisal reviewers	64.7%	35.3%	0.0%	0.0%
5-l. Utilize most appropriate technology (e.g., mobile device, GIS) to expedite appraisal production	51.6%	45.2%	3.2%	0.0%
5-g. Share and discuss the project's preliminary R/W map with all property owners	47.1%	32.4%	20.6%	0.0%
5-f. Use the same agent (e.g., consultant) for the valuation and negotiation process	12.5%	9.4%	25.0%	53.1%

The sixth question gave respondents the opportunity to write in any practices not addressed by the questionnaire. Following are some examples of these comments.

- “I have prepared a “Review Checklist” and I fax it to the appraiser for report corrections”;
- “Appraisers e-mail their report for review before printing, which saves on paper/printing”; and
- “Have the district Review Appraiser accompany the fee appraiser on initial inspection.”

The negotiation section of the survey begins with the seventh question. This question asked participants to rank the frequency with which they have experienced given problems during the negotiation process. Table 6.5 summarizes the results. The most frequent problem, reported by the respondents is property owners complaining about low payment. The second most frequent problem is the TxDOT time limitation (30 days) being insufficient for property owners to present counteroffers. The third most frequent problem is the mandated review of all

administrative settlements over \$50K by the division office, even when counteroffers differ by only a few percentage points.

**Table 6.5: Summary of Responses to Question 7**

<b>7. Please indicate the approximate frequency in which you have experienced the following problems during the negotiation process.</b>				
	<b>Often</b>	<b>Sometimes</b>	<b>Rarely</b>	<b>Never</b>
7-a. Property owners complaining of low payment	51.5%	42.4%	6.1%	0.0%
7-h. TxDOT time limitation (i.e., 30 days) for property owners being insufficient in order to present a counteroffer	42.4%	30.3%	15.2%	12.1%
7-i. All administrative settlements over \$50K being reviewed by the Division office, even when the counteroffer differs by only a few percentage points	28.1%	34.4%	21.9%	15.6%
7-b. Property owners distrust of agency and/or appraisal methods	27.3%	66.7%	6.1%	0.0%
7-c. Property owners complaining of a slow negotiation process	9.1%	57.6%	30.3%	3.0%
7-d. Property owners complaining of R/W brochures being too technical and hard to understand	3.0%	9.1%	54.5%	33.3%
7-e. Negotiator not contacting the property owners in person	0.0%	18.2%	36.4%	45.5%
7-g. Negotiator not keeping owners updated of the status of the process	0.0%	12.1%	60.6%	27.3%
7-f. Negotiator not being courteous or professional	0.0%	3.0%	57.6%	39.4%

The eighth question asked participants to judge the importance of certain problems or issues that occur during the negotiation process. Table 6.6 shows the respondents consider negotiator's lack of courtesy and professionalism towards the property owner as the most important problem. The second most important problem is the negotiator's negligence in keeping property owners updated on the status of the process. Negotiators failing to contact the property owners in person represents the third most important problem.

**Table 6.6: Summary of Responses to Question 8**

<b>8. In your experience, what is the importance of the following problems during the negotiation process?</b>				
	<b>Highly Important</b>	<b>Important</b>	<b>Less Important</b>	<b>Not Important</b>
8-f. Negotiator not being courteous or professional	83.9%	16.1%	0.0%	0.0%
8-g. Negotiator not keeping owners updated of the status of the process	67.7%	29.0%	3.2%	0.0%
8-e. Negotiator not contacting the property owners in person	58.1%	32.3%	9.7%	0.0%
8-h. TxDOT time limitation (i.e., 30 days) for property owners being insufficient in order to present a counteroffer	45.2%	19.4%	32.3%	3.2%
8-i. All administrative settlements over \$50K being reviewed by the Division office, even when the counteroffer differs by only a few percentage points	35.5%	12.9%	48.4%	3.2%
8-b. Property owners distrust of agency and/or appraisal methods	32.3%	51.6%	16.1%	0.0%
8-a. Property owners complaining of low payment	22.6%	38.7%	38.7%	0.0%
8-c. Property owners complaining of a slow negotiation process	22.6%	35.5%	38.7%	3.2%
8-d. Property owners complaining of R/W brochures being too technical and hard to understand	9.7%	12.9%	58.1%	19.4%

The ninth question gave respondents the opportunity to write in any problems or issues not addressed by the questionnaire. Following are some examples of these comments:

- “Getting title commitments in a timely manner”;
- “Sometimes a negotiator can be too aggressive at the first meeting. Rather, the agent should attempt to uncover the owner's concerns. Then an attempt to ease or solve these concerns may advance the acquisition”; and
- “It is very difficult to explain the need for the property to the owner without a set of construction plans.”

The tenth question asked participants to report the frequency with which given practices are used during the negotiation process (see Table 6.7). The responses indicate that the requirement that negotiators present and discuss the offer in person to the property owners. The second most used practice is the organization of an “open-house” event explaining the right-of-way acquisition process for a specific project to the public. The third most frequent practice is to require negotiators to meet owners prior to the beginning of the negotiation process in order to discuss the project, the R/W acquisition process, and the justification of the valuation results.

**Table 6.7: Summary of Responses to Question 10**

<b>10. Please indicate how often the following practices are used during the negotiation process.</b>				
	<b>Often</b>	<b>Sometimes</b>	<b>Rarely</b>	<b>Never</b>
10-d. Require negotiators to present and discuss the offer in person	87.9%	12.1%	0.0%	0.0%
10-f. Conduct an “open-house” event explaining the right-of-way acquisition process for a specific project to the public	64.5%	16.1%	6.5%	12.9%
10-c. Require negotiators to meet owners prior to the beginning of the negotiation process, in order to discuss the project, the R/W acquisition process, and justification of valuation results	33.3%	18.2%	15.2%	33.3%
10-j. Encourage negotiators to assist property owners on preparing and negotiating a counteroffer	25.0%	43.8%	21.9%	9.4%
10-i. Allow more than 30 days for owners to present a counteroffer	21.2%	42.4%	36.4%	0.0%
10-h. Create a guidebook to assist property owners on writing an appropriate counteroffer	6.1%	12.1%	3.0%	78.8%
10-b. Use incentive programs for early completion of the negotiation process (e.g., incentive payments for early completion and penalty for late completion)	3.1%	0.0%	6.3%	90.6%
10-g. Use a streamlined process to provide immediate payment to property owner for low value property rights	3.0%	9.1%	6.1%	81.8%
10-l. Employ land exchange, which is exchanging previously purchased property outside the acquisition area for the needed parcel	0.0%	18.2%	45.5%	36.4%
10-k. Employ land consolidation (which is when remainder parcels are purchased on either side of a new highway leaving the owner with a consolidated property)	0.0%	6.5%	16.1%	77.4%
10-e. Use a closing manual which lists pertinent contacts, phone numbers, and directions to and inside the courthouse	0.0%	0.0%	22.6%	77.4%
10-a. Allow the same person to perform the valuation and negotiation for any given parcel	0.0%	0.0%	3.0%	97.0%

The eleventh question asked respondents to indicate whether they recommended certain practices. Table 6.8 shows that the most recommended practice in negotiation is to require negotiators to present and discuss the offer in person. The second most recommended practice is to conduct an “open-house” event explaining the R/W acquisition process for a specific project to the public. The third most recommended practice is to increase the limit on the value of the properties that are not subject to review by the division office. This item had a second part requesting that, if the respondent had recommended the practice, he or she would suggest the amount the limit should be increased to—\$75K, \$100K, \$150K, \$200K or “other.” 58.6 percent of the respondents chose \$100K, 13.8 percent chose \$75K, 13.8 percent chose “other,” 10.3 percent chose \$200K, and 3.4 percent chose \$150K.

**Table 6.8: Summary of Responses to Question 11**

<b>11. Please indicate if you recommend the following practices based on their effectiveness to improve the negotiation process.</b>				
	<b>Highly Recommend</b>	<b>Recommend</b>	<b>Not Recommend</b>	<b>Oppose</b>
11-d. Require negotiators to present and discuss the offer in person	78.8%	21.2%	0.0%	0.0%
11-f. Conduct an “open-house” event explaining the right-of-way acquisition process for a specific project to the public	41.9%	38.7%	16.1%	3.2%
11-i. Increase the limit on the value of the property that is not subject to review by the Division office	39.4%	51.5%	9.1%	0.0%
11-g. Use a streamlined process to provide immediate payment to property owner for low value property rights	36.4%	39.4%	21.2%	3.0%
11-j. Allow more than 30 days for owners to present a counteroffer	33.3%	27.3%	27.3%	12.1%
11-c. Require negotiators to meet owners prior to the beginning of the negotiation process, in order to discuss the project, the R/W acquisition process, and justification of valuation results	29.0%	32.3%	29.0%	9.7%
11-k. Encourage negotiators to assist property owners on preparing and negotiating a counteroffer	27.3%	42.4%	21.2%	9.1%
11-h. Create a guidebook to assist property owners on writing an appropriate counteroffer	18.2%	57.6%	18.2%	6.1%
11-b. Use incentive programs for early completion of the negotiation process (e.g., incentive payments for early completion and penalty for late completion)	9.4%	46.9%	31.3%	12.5%
11-m. Employ land exchange, which is exchanging previously purchased property outside the acquisition area for the needed parcel	9.1%	36.4%	30.3%	24.2%
11-l. Employ land consolidation (which is when remainder parcels are purchased on either side of a new highway leaving the owner with a consolidated property)	6.5%	25.8%	38.7%	29.0%
11-e. Use a closing manual which lists pertinent contacts, phone numbers, and directions to and inside the courthouse in order to reduce staff time at courthouse	3.3%	50.0%	40.0%	6.7%
11-a. Allow the same person to perform the valuation and negotiation for any given parcel	0.0%	6.1%	36.4%	57.6%

The twelfth and last question of the survey provided the respondents with an area in which to describe any other negotiation practices that they consider helpful and effective. Some examples of these comments are:

- “If possible, use more than one Title Company on a project to expedite title services. On projects located far from home district office, we had a laptop computer with small printer to instantly prepare conveyance documents for owners' signatures—saved time and travel”;



- “The counter offer has been very helpful; it provides the owner/TxDOT the ability to settle acquisition and avoid condemnation, reducing the cost of acquisition and cost of the project”; and
- “The administrative settlement process has been helpful. Best to settle dispute over small amount than go to ED.”

The survey permitted deeper insight into the problems/issues currently experienced by the respondents, and shed light on the respondents’ favorite practices. The practices they recommend are explained further in detail in the Valuation Chapter and the Negotiation Chapter, and Appendix B has the detailed results of the survey.



## **7. Valuation**

Valuation is the process that begins in the district office right after the receipt of the official right-of-way letter of release from the ROW division. This chapter will give a brief overview of the valuation process, describing each phase and discussing its purpose. Also included are guidelines and best practices for property valuation.

### **7.1 Overview and Purpose**

The valuation process is basically the preparation for an appraisal. An appraisal is a professional opinion—usually written—of the market value of a property such as a home, business, or other asset. The purpose of appraisals, in this context, is to appraise land needed for transportation purposes; these opinions of value establish, with reasonable certainty, the amount of money the property owner is entitled to receive. Despite the fact that the property owner should receive the amount he or she is entitled to, the state should not pay more than it is obligated to pay under the law. The Texas Constitution permits that private property be acquired for public use, but it requires that any such acquisition entitles the owner to just compensation. Just compensation is defined as the fair market value of the property. This market value typically does not include legal costs or other items such as relocation expenses.

An acquiring agency must make several determinations before ordering an appraisal. These determinations include what is to be appraised; what appraisal techniques and methods are to be used; which legal engineering considerations need to be followed; what construction features are involved; what are the definition and date of value on a property; and what property rights must be respected. Defining these parameters before assigning the appraisal avoids misunderstandings with the appraiser and unacceptable appraisals that address the wrong problems. Another important decision to be made before ordering the appraisal is the quantity and the formats to be used.

Three different appraisal formats are suggested for use on federally assisted programs (FHWA. 2005). They are the Value Finding Appraisal Format, the Short Form Appraisal, and the Detailed Appraisal. The use of each depends on the type of property, the type of problems involved, the availability of good market data, and in some cases, the value of the property.

Acquiring agencies must develop and use as appropriate at least two appraisal formats—detailed and minimum. Agencies are encouraged to develop additional forms to meet their needs. Detailed appraisals must be prepared for all acquisitions except those that by virtue of their low value or simplicity do not require in-depth analysis or market comparisons. The State of Texas allows the use of the Value Finding Appraisal Format when, among other requirements, the value of the property does not exceed \$25,000. State law also allows the use of the Memorandum of Value Determination when, among other requirements, the compensation does not exceed \$10,000, among other requirements.

### **7.2 Valuation Process Description**

Following is a description of the four basic tasks of the appraisal process: make pre-appraisal contact; assign appraisers; establish just compensation; and review appraisal report.

### **7.2.1 Pre-appraisal contact**

Prior to parcel appraisal there should be a pre-appraisal contact with the property owner. This contact should be a meeting, in person, with the property owner. In this meeting, the owner is given information regarding the overall right-of-way acquisition process, the general type of facility to be constructed, and the appraisal procedure that will ensue. A commitment must not be made on value nor are any offers made before receiving approved values. During this meeting, the property owner should be advised on distinguishing between realty and personalty. Realty is real estate property such as buildings and land. Personalty is personal property, that is, property other than real property consisting of things temporary or movable. Any controversies that may arise over this distinction should be resolved in this meeting to avoid future delays or setbacks. Determining whether an item is a fixture is generally the challenge of identifying an item as personalty or realty. As stipulated by the State of Texas, a fixture is used to indicate an item of personal property that has become so annexed to land or buildings that it has become a part of the realty.

### **7.2.2 Assign appraisers**

Once the pre-appraisal contact has been made, an appraiser is assigned the task of determining the market value for each parcel. TxDOT R/W staff and fee appraisers hired by the Department of Transportation must be state certified or licensed by the Texas Appraiser Licensing and Certification Board. The right-of-way division must approve all staff and fee appraisers. It is the district's responsibility to determine that the appraiser assigned to a parcel is qualified to appraise that particular type of property.

### **7.2.3 Establish just compensation**

Once the fee appraiser is assigned, the fair market value and just compensation are determined. The fair market value is an appraisal based on an estimate of what a buyer would pay a seller for any piece of property. The "Just compensation" is a term used that means a full and perfect equivalent for the property taken. The amount of just compensation will not be less than the approved appraisal. The approved appraisal takes into account the value of allowable damages and enhancements to any remaining property. This offer of just compensation may have to be updated or a new appraisal may be needed in certain situations: information provided by the property owner may have a bearing on the value; a material change in the property's condition may also affect the value; and if significant time has passed since the last appraisal, the value may need to be determined anew. If indeed the just compensation offer must be changed, the revised written offer must be sent to the property owner and the original offer must be annulled.

### **7.2.4 Appraisal report review**

Once the completed appraisal report is received, the district reviews it in preparation for establishing an approved value for the property. A review appraiser will examine the report for completeness, consistency in land values, variances in component values, appraisals of any remainders, compensability, and leased properties. Completeness of the report includes the verification of documentation and the determination of any errors or omissions. The consistency in land values for similar parcels should be maintained to assure fair and equal treatment for all parcel owners. When there has been more than one appraisal prepared for a parcel, the variances

in component values are reviewed to identify major differences between appraisals. When the appraisal of the remainder is reviewed, the analysis should cover the appraiser's support for the value of the remainder after taking. The appraiser reviewer should have knowledge of elements of value that may be non-compensable, both with regard to the part taken and the remainder. Last of all, the proper consideration of a leasehold interest by the appraiser should be carefully checked by the reviewer, because an appraisal of this type will usually involve complicated appraisal techniques.

Upon completion of the review, the review appraiser will recommend that the appraised value be approved. The approved value will be used as the basis for the state's offer to acquire a property.

### **7.3 Guidelines and Best Practices for Valuation**

Valuation is the first step in the process of acquiring a particular property. Its success depends on many factors, such as quality of appraisers and review appraisers, property owner involvement, and cost and time efficiency. For a successful valuation process, a number of guidelines and recommended practices are outlined below.

**Guideline 1** Regularly train, monitor, evaluate the expertise of right-of-way staff, fee appraisers, and review appraisers.

- ✓ Offer opportunities for right-of-way staff, fee appraisers, and review appraisers to attend training courses in order to ensure their up-to-date understanding of laws and procedures relating to right-of-way valuations (FHWA, 2002; AASHTO, 2003; NCHRO, 2000).

This practice improves the quality and timeliness of appraisals. Whether using staff or fee appraisers, on-time delivery of a quality appraisal is crucial. The FHWA's National Highway Institute, the International Right-of-Way Association, and professional appraisal organizations sponsor appraisal course presentations and technical assistance workshops that may be attended by right-of-way fee appraisers and reviewers.

According to the report *Innovative Practices to Reduce Delivery Time for Right of Way in Project Development* (NCHRP, 2000), "Training is ranked as the most effective practice to accelerate right-of-way delivery.

- ✓ Recommend that right-of-way staff, fee appraisers, and review appraisers take refresher courses periodically or develop an ongoing in-house employee development program (Adkins and Buffington, 1967).

Because professional development for right-of-way skills is not usually a part of college curriculums, it is up to agencies and the industry in general is to provide and encourage such crucial learning (NCHRP, 2000). Frequent seminars within appraisal sections could be of great benefit in increasing interest and improving expertise. For example, seminars may be offered according to the specific needs of a department to maintain proficiency levels and to address problem areas. These courses may be outsourced or offered in-house.

- ✓ Monitor the time required to deliver appraisal reports.

The timely delivery of appraisals is critical for expediting the right-of-way acquisition process. Establish monitoring procedures, especially when using fee appraisers and reviewers. Because this practice will establish trends and standards, report delivery projections may be easier to produce. In addition, reasonable deadlines and estimated expected timelines for appraisal reports may be determined.

- ✓ Assign projects according to the appraiser's experience.

Experienced appraisers are more capable of handling complex cases and "problematic" parcels than novice appraisers. Therefore, projects that are more complex or have greater appraisal difficulty should be assigned to appraisers that have more experience. The purpose of this practice is to reduce the error rate of the agency's reports by avoiding mistakes in complicated situations. Requirements regarding the number of complex appraisals completed each year may be used to maintain high expertise levels and professionalism (AASHTO, 2003).

- ✓ Evaluate appraisers periodically on their performance.

The purpose of this practice is to ensure the quality and the professional development of appraisers. It is up to the district offices to determine how often these evaluations should be performed. The evaluation of appraisers not only keeps track of their progress but may also serve as an incentive for them to constantly maintain and improve their skills.

- ✓ When outsourcing, remember that TxDOT is public service driven rather than profit driven; public satisfaction and good rapport with property owners are of paramount importance to TxDOT.

Outsourced consultants should strive to do quality work and to engender property owner satisfaction; rather than prioritize or approach the parcel valuations and negotiations only with incentives in mind. Good relations with property owners helps build confidence in the agency and encourages public support. Property owners should be treated as customers; their satisfaction should be a priority and agents should help them as much as possible throughout the acquisition process.

- ✓ Offer opportunities for district office staff members to meet to exchange ideas and share preferred methods for the valuation process.

Meetings among district offices encourage the exchange of ideas and best practices and may serve as workshops. If organized periodically, implementation and outcome reports may be generated over time to determine whether newly adopted practices are improving the acquisition process in a given district office.

- ✓ No appraiser or review appraiser shall have any interest, direct or indirect, in the real property being appraised for the Department that would in any way conflict with the preparation or review of the appraisal (AkDOT, 2001).

If there is any conflict of interest, the appraiser or review appraiser should notify the department so that the appropriate changes can be made. This type of situation could result in bad rapport with the property owners and generate distrust of the agency.

***Practices to Avoid:***

- Routinely using inadequately trained ROW staff on parcel valuations may affect the project in many ways. The valuations they perform may result in costly delays, damage to the agency's reputation, or even legal problems. Because unskilled staff are more likely to produce appraisal reports of lower quality, their work can cause considerable delays in the appraisal review process. Also, property owners are more likely to be dissatisfied with unqualified staff members' estimates of just compensation. One NCHRP study (NCHRP, 2000) reported that having inadequately trained staff is one of the biggest obstacles encountered when reducing the project deliverable time.

**Guideline 2** Involve and contact the property owner personally early in the acquisition process.

- ✓ Encourage right-of-way staff and fee appraisers to meet property owners in person.

Meeting property owners personally increases the likelihood of better valuations and successful negotiations by creating an opportunity for an exchange of information and by establishing a good relationship with the property owners. If property owners feel that they can trust the appraiser to be available to help and answer questions, the appraisal process may be completed without delays or with fewer complications than otherwise. The FHWA scanning team encourages states to use a more extensive interview process with property owners to discuss the project's impact and to gain an understanding of how property owners use their property (FHWA, 2002).

- ✓ Invite the property owner (or the owner's designated representative) to accompany the appraiser during the inspection of the property (AkDOT, 2001; TxDOT, 2006A; TxDOT, 2000; ILDOT, 2004).

The Uniform Act requires that the property owner be given the opportunity to accompany the appraiser during inspection of the property. The intention of this is to ensure that the owner has the opportunity to inform the appraiser of any features of the property that might affect the valuation of the property. The owner may also be able to point out any elements of the property that might not be apparent to the appraiser.

- ✓ Explain the offer to purchase the property to the property owner the offer to purchase the property including the appraisal basis for the offer and the agency's real property acquisition policies and procedures (TxDOT, 2005).

The better the understanding the property owners have of the reasons behind the offer, the fewer the chances of their not accepting it. Property owners should have all of their questions and concerns addressed and should be apprised of the policies and procedures regarding the purchase of their land for public use.

- ✓ Advise the property owner of the appropriate personnel to contact on specific technical or engineering information (TxDOT, 2000).

ROW staff and fee appraisers should not attempt to answer any questions outside their area of expertise. This practice prevents misunderstandings and the communication of incorrect

information to the property owners, situations that can lead to delays and public disenchantment with the agency.

- ✓ Review records concerning a parcel before approaching the landowner. These records include tax records, zoning, flood maps, topographic maps, and previous deeds to the property.

By reviewing these documents, the appraiser has a better understanding of the type of parcel he or she will be working with and demonstrates the agency's standard of services to the owner. In addition, asking the property owner for a detailed physical and historical description of the property can be very helpful.

- ✓ Require appraisers to provide proof that the property owner was afforded the opportunity to accompany him or her on the inspection, and also to provide proof that an inspection was done.

To avoid controversy, appraisers should have a record of the invitation they offer the property owner or the designated representative to accompany them on inspections. They should also have a record of the owner's response to the invitation. An invitation to accompany the appraiser should be in writing and allow sufficient time for the owner to arrange to be present or to request an alternate time. If the property owner declines the invitation, that information should be documented in the parcel file. A checklist may be used by the appraiser as proof that an inspection of the property was done.

***Practices to Avoid:***

- In some cases, appraisers do not have time to meet property owners in person or can meet no more than once because of scheduling conflicts, heavy workloads, and so forth.
- Property owners are sometimes misinformed as a result of different people telling them different things. Miscommunication may damage the reputation of the agency or the relationship with property owners.

**Guideline 3** Streamline the valuation process to maximize production time, cost, and efficiency benefits.

- ✓ Prioritize parcels according to complexity/appraisal difficulty, and conduct appraisals for those that are most complex first.

According to one of the interviews conducted as part of the research, prioritization was an issue, particularly when using outsourced consultants. Prioritizing according to complexity prevents the mistake of leaving the potentially most time consuming parcels for last. Dedicating the necessary time and attention to them first then later working on the simpler, easier parcels makes delays from unexpected complications less likely.

- ✓ Provide the appraisers with pre-appraisal information.

This practice saves time for the appraisers since it relieves them of the need to search for relevant information already accessible through the district office. This enables the appraisers to



use the time they would have spent obtaining the documents preparing themselves before meeting the property owner.

- ✓ Obtain and store electronic copies of appraisal reports.

Implementing this practice provides records for future reference creating a user-friendly automated database system that makes information easily accessible. The database applications may be shared among offices to track the status and trends of the right-of-way process.

- ✓ Reduce the time lapse between the appraisal valuation date and the initiation of negotiations (Minnesota DOT, 2003).

According to the Minnesota DOT publication *Process/peer Review of the Appraisal and Acquisition Practices* “Offers to property owners should be made within a few days or weeks of valuation rather than months” (FHWA Minnesota DOT, 2003). The authors of this document stress that when too much time has passed between valuation and offer, the appraisal may not reflect the current fair market value that must be offered to the owner. Also, in order to provide adequate time for the review appraisers to complete their reviews, appraisers should submit their reports shortly after the valuation date. Making an offer to the property owner in a timely manner enables negotiation to start promptly.

- ✓ Utilize most appropriate technology to expedite appraisal production (FHWA, 2002; AASHTO, 2003).

Using appropriate technology improves the speed and accuracy of data collection. For instance, the use of cell phones and pagers enhances communication between staff in the field and the central office, improving service and availability, and reducing the need for additional field trips. Digital cameras help appraisers who have been refused entrance into a property to obtain pictures from afar, and from different angles. Moreover, downloading photos onto the agency computer makes them available for filing and sharing with other members.

#### ***Practices to Avoid:***

- Outsourced appraisers may sometimes prioritize properties to be acquired according to ease instead of difficulty, especially when the same fee applies to all types of parcels. Properties that are difficult to appraise naturally tend to consume more time than easier ones. If these more complex properties are valued at the end of the time schedule window, the process can consume valuable schedule floats can be consumed and project delays may be caused.
- Late design and R/W plan changes and revisions affect and slow down the process. Even a small R/W plan change can trigger a significant change to the acquisition of a single property. In such cases, the appraiser might have to perform redundant and time-consuming activities, such as re-doing the valuation, updating information given to property owners, and executing a new appraisal from the beginning.

**Guideline 4** Simplify value determinations, reporting protocols, and review procedures.

- ✓ Streamline appraisal review procedures (FHWA, 2002; AASHTO, 2003).

A short form review should be developed for low-value and uncomplicated appraisals, and the reviewer should be involved in the project scope meetings and in pre-acquisition meetings. On commercial properties, the inspections for appraisals and relocation can be combined. These practices expedite the acquisition process.

- ✓ When property values increase or decrease because of proposed public improvement, such changed values must be disregarded when estimating the ‘before’ value but not when estimating the ‘after’ value of the property (FHWA, 2005; ILDOT, 2004).
- ✓ To reduce appraisal time and costs, encourage the use of the Value Finding Appraisal Format rather than a Real Estate Appraisal Report, when appropriate (FHWA, 2005; TxDOT, 2006).

The FHWA Appraisal Guide encourages agencies to allow the use of the Value Finding Appraisal Format when appropriate. The State of Texas allows the use of this format for inexpensive parcels having values of \$25,000 or less, provided the compensation does not include damages to the remaining property other than for items measurable by cost-to-cure. Cost-to-cure is the cost of solutions that cure impacts to the property and its improvements incurred by a public project. If there are any damages that cannot be easily documented as cost-to-cure, a Real Estate Appraisal Report will be necessary.

The Value Finding Appraisal Format has a series of legal requirements. There are strengths as well as weaknesses related to this type of appraisal, and these should be carefully considered. Normally these appraisals should be prepared by staff appraisers.

- ✓ Use the Memorandum of Value Determination to expedite the valuation process and minimize the appraisal cost (TxDOT, 2006).

This form has been designed for uncomplicated properties where the right-of-way acquisition will not result in enhancement or damage to the remainder. When this form is used, compensation should not exceed \$10,000. A district staff reviewer normally completes this form, and a parcel sketch, photograph, and field notes are to be attached it.

The valuation process for which this form is used is defined as a non-appraisal valuation. This method of valuation is not a formal appraisal and does not produce an appraisal report.

- ✓ Emphasize compromising on issues related to just compensation. Such techniques are recognized for effectively resolving acquisitions in a timely and cost effective manner (FHWA, 2002).

This practice is recommended by the International Right of Way and Utilities European Scan Team (FHWA, 2002). Reaching a reasonable compromise with the property owner when there is a good faith dispute over the value of the property acquired or damaged will reduce costly and time-consuming proceedings.

#### ***Practices to Avoid:***

- Complicated and lengthy valuation procedures can be the reason for inconsistency among appraisal reports. Also, resistance from appraisers and other problems can result when new formats are introduced.

- Property owners sometimes feel that the just compensation value is too low due to the poor quality of an appraisal report, which is the basis of determining the reasonable estimate of the property.

**Guideline 5** Inform property owners of what will take place at each step about the entire acquisition process.

- ✓ Furnish the property owner with information on the overall anticipated timing of the acquisition process, the general type of facility to be constructed, and the appraisal procedures that will follow. The more information provided to the property owners, the fewer questions and delays may occur (AASHTO, 2003; TxDOT, 2000).
- ✓ Share and discuss the preliminary right-of-way map for the project with all property owners (TxDOT, 2000).

This practice is recommended by the *ROW Considerations during Project Development and Design* manual (TxDOT, 2000). Any discrepancies in the map should be noted and any necessary changes made before appraisal assignments are issued. It should be made clear to property owners that these maps are preliminary and that subsequent changes may occur.

- ✓ Inform the property owners of the method for selecting qualified appraisers and estimating values (TxDOT, 2000).

Ask for information the owner can provide that will be helpful to the appraiser in estimating the parcel's value. If the property owner knows the process and feels to be a part of it, he or she will be more willing to give helpful information to the appraiser. This cooperation will result in better appraisal reports.

- ✓ Identify real property and personal property prior to proceeding with the appraisal. Solve any uncertainties over whether an item is personalty or realty before the appraisal report is completed and just compensation is determined.

According to the survey respondents' comments, it is important to advise the property owner of the advantages and disadvantages of declaring items as personalty versus realty. This prevents confusion and/or changes of mind by the property owner, both of which could result in delays.

***Practices to Avoid:***

- Property owners may resent the appraiser and feel disoriented because they do not understand the process. This can be avoided by keeping the property owners informed on the status of the project.



## **8. Negotiation**

Negotiation is the process that begins right after the valuation process has been completed. This chapter will give a brief overview of the negotiation process. This chapter also includes guidelines and best practices for negotiations with property owners.

### **8.1 Overview and Purpose of Negotiation**

In the R/W negotiation process, agencies make offers to property owners for acquisition of real property and improvements. Agencies also make payment for the properties and notify the owners to vacate. The TxDOT Real Estate Acquisition Guide for LPAs (TxDOT, 2004) illustrates the basic steps of the negotiating process. After the appraisal and appraisal review for the property is completed, the negotiation is initiated by the delivering of a written offer to the owner. Included in the offer package is a written offer to purchase the property in an amount not less than the approved appraised value and a copy of the appraisal. It is important to keep track of the date of delivery of this package because it establishes the owner's eligibility for relocation assistance, once the negotiation phase is complete.

If the offer is accepted by the property owner, the payment is arranged and the process proceeds to closing, or relocation assistance follows, if necessary. Either way, the negotiation process is complete once the offer is accepted. However, if the final offer is declined after several negotiations, and if the administrative settlement process has been denied, the acquisition process moves to the next phase, condemnation proceedings.

For an agency to obtain needed properties, it must meet several legal requirements. The Uniform Act states that the agency should attempt to acquire the real property by negotiation rather than condemnation authority. Because the negotiation process is a complex matter governed by a number of laws, such as The Uniform Act or The Code of Federal Regulations, it is important to discuss the steps of the negotiation process in relation to the laws in detail.

#### **8.1.1 Written offer**

Once the amount of just compensation has been determined and authorized by the qualified appraisal reviewer, the negotiation process can be initiated by sending a written letter offering the full just compensation amount to the property owner. Delivery of the offer also establishes the principal date for determination of relocation assistance entitlements (FHWA, 2001). The state requires certain information to be included with the offer letter: a statement of the amount offered; a description of the R/W parcel to be acquired; a copy of the appraisal report; and an explanation of the administrative settlement process (TxDOT, 2004).

#### **8.1.2 Negotiation contacts**

After the negotiation process has been initiated with the delivery of the written offer to the property owner—or sometimes before or during the offer—the agency contacts the owner or the owner's designated representative. The Uniform Act requires an acquiring agency to make “all reasonable efforts” to personally contact each real property owner and schedule an appointment at a convenient time and place. The purpose of this contact is to explain the negotiation process to the property owner as well as to apprise him or her of the responsibilities of both the acquiring agency and the property owner (FHWA, 2001). Although this requirement

seems subjective, it is important to contact the owner in person because the contact can help maintain a high level of public trust and inspire confidence in the acquisition process and in the fairness of the offer being made.

### **8.1.3 Coercive action**

During the negotiation process, a number of negotiation contacts take place. While these meetings with property owners occur, it is critical to perform negotiation without using any forceful methods. The Uniform Act demands that an agency not “advance the time of condemnation, or defer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.”

### **8.1.4 Administrative settlements**

If a final offer for just compensation is accepted by the property owner, the process can shift to the actual acquiring process and if necessary to the relocation process. On the other hand, if a final offer is declined by the property owner, an administrative settlement can be conducted as an alternative method reaching an agreement on the amount of just compensation. Such a settlement is preferable to condemnation proceedings.

According to the Uniform Act, the administrative settlement process occurs prior to the invocation of the agency’s condemnation authority. Typically, the amount is moderately more than the agency’s approved offer of just compensation. Furthermore, when federal funds pay for or contribute to acquisition costs, a written justification shall be prepared stating what available information, including trial risks, supports such a settlement.

In order to initiate the administrative settlement process, a proper counteroffer must be submitted by the property owner in writing. This counteroffer must include a property owner’s signed proposal for full settlement, setting forth a specific value with information to support the proposal. It must be received in the district office no later than thirty (30) days from the property owner’s receipt of the initial offer letter (TxDOT, 2005b). In addition, the R/W acquisition manual (2005b) explains that all the administrative settlements with amounts of total compensation of \$50,000 or less will be considered by the district administrative settlement team. Those exceeding \$50,000 will be reviewed by the ROW Division office. If the administrative settlement counteroffer is rejected, then the process shifts to condemnation proceedings.

### **8.1.5 Uneconomic remainders**

If partial property acquisitions leave the owner with a useless property, called “uneconomic remnant,” the Uniform Act regulation requires the agency to make an offer to acquire this remainder, along with the portion of the property needed for the project.

Texas Transportation Code, §203.0521 gives TxDOT the statutory authority to acquire uneconomic remainders. For TxDOT to acquire the uneconomic remainder, the state law requires that the property owner must consent to the acquisition. Furthermore, the commission must determine that an uneconomic remainder (1) has little or no value or utility to the property owner, or (2) that the entire tract could be acquired for virtually the same compensation as the partial tract, including damages to the remainder property (TxDOT, 2005b).

The negotiation process is a critical aspect of right-of-way acquisition, because successful negotiations can benefit TxDOT by reflecting fair market prices, building good rapport with

landowners, and reducing project duration and cost. For successful negotiations, a number of guidelines and best practices for the process are outlined.

## **8.2 Guidelines and Best Practices for the Negotiation Process**

**Guideline 1** Frequently and regularly contact property owners in person to promote confidence in the agency and to reduce delays and negotiation costs.

- ✓ Encourage agents to perform in-depth interviews with property owners discussing issues such as the influence of the project, property usage by the owner, etc.

According to *the European R/W and Utilities Best Practices* (FHWA, 2006) and the AASHTO (2003) report, interview with property owners may promote further expert analysis of potential damages on the property. The appraisal report, information from the interview, and the assessment from the experts may support the establishment of a comprehensive estimate of just compensation. This estimate should be presented to the property owner to further the negotiation process.

- ✓ Conduct an “open house” event at public meetings and hearings (AASHTO, 2003; NCHRP, 2000).

The property owners may have a better understanding of the project after attending an event at which the R/W process is explained to them. At this open house, owners learn about the specific project, the intention of the agency to acquire property, and the potential impact of the after the acquisition takes place. Also, an R/W agent should be present at the event to answer questions. Such good communication with property owners is known to be effective in increasing public trust in the agency.

### ***Practices to Avoid:***

- Property owners sometimes complain about negotiators not contacting them in person. Yet, according to the analysis of the property owner satisfaction survey, in many cases property owners were unsatisfied with the contact issues. Nearly 10 percent of the total negative comments by property owners (7 out of 71 complaints) are related to contact issues. Also, some responses expressed a preference for personal contact.

Communication difficulties with owners may not only cause the district office to gain a bad reputation, but they may also cause negotiation delays and a slowed acquisition process.

**Guideline 2** Conduct simplified and efficient negotiation processes, including the title acquisition process, in order to minimize schedule delays of the negotiation process.

- ✓ Require negotiators to meet owners prior to the initiation of the negotiation process

It is desirable to require negotiators to meet property owners prior to the beginning of the negotiation process in order to discuss the project, the right-of-way acquisition process, and the justification of valuation results. Such preliminary discussions reduce the number of questions, calls, and visits later in the process (AASHTO, 2003). This meeting may also eliminate confusion and promote trust, and as a result, expedite the negotiation process. Given the fact that two of the four most common complaints from property owners regarding the R/W acquisition process are related to slow process (18.7 percent) and contact issues (9.3 percent), this is one of the most important best practices.

*The CalTrans R/W Acquisition Manual* (2001) advises that “all owners will be advised of the department's policy of accepting voluntary donations,” and AASHTO (2003) recommends “making a reasonable effort to get donations on permanent and temporary easement parcels.” States such as New York, Texas, and Florida place even more emphasis on obtaining parcels through donation.

- ✓ Use a streamlined process to provide immediate payment to property owners for low-value property rights (AASHTO, 2003; FHWA, 2002; FHWA, 2006).

Property owners often complain about slow payment for their properties as well as the slowness of the process. Using a simplified process to make payments for low-value properties will significantly reduce the time of the negotiation process without degrading the quality.

- ✓ Use a closing manual that provides relevant contacts, phone numbers, and directions to the courthouse to minimize time spent at courthouse.

This is suggested by AASHTO (2003). In order to save time, the report further recommends providing “staff with either a blank check or credit cards to pay for title and closing work in the courthouses.”

- ✓ Use sketch maps, if a final map is pending, to accompany the offer on administrative settlements of just compensation.

In a complicated R/W acquisition project, many plan changes occur that, though they may be trivial, are known to cause delays. Rather than waiting for the final map to be completed and authorized, using a sketch map along with the offer will minimize project delays (AASHTO, 2003).

- ✓ Encourage appraisers to process all approval, grant, and disclosure forms at the same time the tenant/owner signs the disclosure form.

Attempt also to obtain all legal approvals before negotiation begins by appointing an authorized staff member to sign the forms. More importantly, emphasize the need to obtain plan revisions prior to beginning the negotiation process. By using these recommendations, both time efficiency and quality can be improved (AASHTO, 2003).

- ✓ Emphasize the effectiveness of compromising on disputed values of the property to be acquired in order to avoid or reduce time spent on litigation.

Another recommendation made in the FHWA (2006) and AASHTO (2003) reports is to compromise on disputed estimates to minimize the possibility of condemnation proceedings.



When a disagreement occurs between the agency's just compensation offer and owner's assessment of the property's value, compromising with the owner may have a significant impact on preventing the time and cost of condemnation proceedings. In addition, it is important to discuss all the appropriate documents of settlements with the related agency personnel.

- ✓ Use incentive programs for early completion of the negotiation process (e.g., incentive payments for early completion and penalties for late completion).

The FHWA (2006) and AASHTO (2003) reports recommend this best practice because it may give the R/W acquisition staff more motivation to acquire properties quickly and cost-effectively. By reducing time for acquisition, management overhead costs can be saved and the overall project schedule can be met. Moreover, by pursuing the project in good faith, the agent can build good rapport with the property owners.

- ✓ Establish the negotiating party (or agent) prior to the completion of the appraisal process (i.e., during project development, or during the appraisal preparation).

Appointing a negotiating party early on in the project is important because by the time the negotiation phase has begun, the agent may have a better understanding of the owner and the minor issues that could possibly cause a litigious dispute. This best practice is suggested in *the R/W and Utility Guidelines and Best Practices* (AASHTO, 2003).

#### ***Practices to Avoid:***

- Requiring unnecessary process/steps for acquiring low-valued parcels will lengthen the time for negotiation and may also irritate the property owners. As seen above, delays can cause property owners to complain about negotiation delays and the slow pace of the process.

**Guideline 3** Encourage negotiators to execute negotiations in a manner that builds good rapport with property owners and increases the owner's confidence in the agency.

- ✓ Require negotiators to present and discuss the offer in person (AASHTO, 2003; ILDOT, 2004; FHWA, 2006).

Meeting face-to-face with property owners can contribute to the process in a number of ways: more information can be obtained from the owner and the property; the chance of having a better quality appraisal is increased; a better basis for explaining the payment to the property owner during negotiation is established; and most importantly, a good relationship with the owner is maintained. These effects all positively affect the process.

- ✓ Emphasize the importance of getting to know the property owner at the outset of the negotiation process. Encourage agents to have an introductory conversation before beginning the negotiations.

According to the Illinois DOT R/W acquisition manual (2004), people tend to have less difficulty discussing matters when both parties share the same interests, hobbies, or belong to the same social organizations, etc. Therefore, it is equally important to obtain background

information on the property owner before making the first contact. Opening a conversation with owners in a friendly manner fosters trust.

- ✓ Require agents to regularly share copies of final appraisal reports with property owners.

This recommendation can be especially useful when property owners distrust the acquisition agency. These practices help minimize the owners' beliefs that the agency is not seeking just compensation in good faith, or that negotiators are hiding information. Property owners are reassured to know that the completed appraisal reports are established, reviewed, and authorized by stated approved appraisal companies (AASHTO, 2003).

- ✓ Furnish each property owner with a folder that includes comprehensive information related to the project.

The folder may consist of a written offer of just compensation, a copy of the final appraisal report, plans/maps of the area to be acquired, and legal descriptions. It can also include other pertinent information, such as a description of the intention to acquire and/or of the impact after the acquisition. By following this recommendation, agents are often able to acquire properties that are low-valued and non-complex by simply mailing this package (AASHTO, 2003).

#### ***Practices to Avoid:***

- As previously mentioned, property owners often feel that negotiators are too difficult to contact, or that they do not contact property owners in person, and thus compel owners to contact the agency on their own. These actions may engender costly public mistrust, and may impede not only the negotiation process, but also the entire acquisition process. Negotiators can also be too aggressive at the first meeting, rather than attempting to ease the owner's concerns and advance the acquisition.

Furthermore, when agents behave in this way, property owners tend to consider them discourteous or professional. Eleven out of the 71 (15.5 percent) negative comments were related to poor manners (6 not courteous, 5 unprofessional).

- Property owners may distrust the agency, believing that negotiators are not making every effort to come up with a reasonable amount of just compensation or that they are hiding something from landowners by encouraging the negotiation process. Further, property owners may also lose their trust in the agency when there are several personnel changes during the acquisition process. For property owners, it is better to have a smaller number of people to manage during the whole acquisition process. However, there must be at least two staff members who contact the property owner (i.e., for appraisal and negotiation), with other staff member added if relocation is needed. If the process is outsourced there may be more than two agents assigned to a parcel since sometimes a TxDOT representative will have contacted the owner prior to acquisition. The owner may have to deal with two to four people to complete the transaction whether it is a small-simple or large-complex parcel. Minimizing the number of people contacting the property owner and not changing staff for unnecessary reasons are desirable for maintaining good rapport with the public.

**Guideline 4** To the greatest extent possible, minimize the possibility of proceeding to condemnation.

- ✓ Use alternative dispute resolution techniques to settle acquisition disputes at the beginning of preliminary eminent domain processes.

Because it is so unpredictable, proceeding to litigation may drastically increase cost and schedule delays. Legal disputes also harm the relationship between the governmental entity and the public. Using alternative dispute resolution techniques such as mediation and administrative settlements can reduce the cost and time spent on normal litigation.

Administrative settlement is the only option of alternative dispute resolution described in the *TxDOT R/W acquisition manual* (2005). However, numerous other reports have shown that mediation is also an effective method of acquiring needed properties without condemnation authority (NCHRP, 2000; AASHTO 2003; FHWA, 2002; FHWA, 2006). Using other options, rather than using only one, i.e., administrative settlement, may improve the outcome of the negotiations.

- ✓ Give the property owner's file to a condemnation specialist or a legal expert before entering the condemnation proceedings in order to assess risks and to determine whether to enter into litigation.

If the property owners reject the agency's offer, the acquisition process must enter the condemnation proceedings. However, litigation can be avoided in a number of cases once all the documents are carefully reviewed. Although if a settlement cannot be obtained, it is important to ensure that all possibilities are carefully considered by allowing a condemnation specialist or a member of legal staff to review all the property owner's files before finally entering condemnation proceedings (AASHTO, 2003).

- ✓ Encourage negotiators to assist property owners in preparing and negotiating a counteroffer, with no assistance in reaching a specific amount.

When property owners feel that the amount for just compensation is insufficient, they are able to present a counteroffer. According to a number of interviews with TxDOT R/W acquisition staff, however, the owners often feel unable to prepare a proper counteroffer; such counteroffers involve gathering all relevant information and presenting it compellingly. Some owners even complain that the thirty-day allotment for them to present a counteroffer is too short. These owners are so frustrated that they forego the counteroffer and simply bring the case to litigation. If the negotiator can help the property owners prepare a correct and suitable counteroffer, the acquisition may not lead to the time-consuming condemnation proceedings.

Moreover, creating a guidebook or a sample counteroffer to help the owner produce a counteroffer can be even more valuable. For people who are not confident in their writing skills, the sample report provides a turn-key template for the document.

***Practices to Avoid:***

- Some property owners consider the TxDOT time limitation insufficient to present a proper counteroffer and enter condemnation. Though the time limitation to present a counteroffer is extendable only in writing, some owners do not know this fact. Ensuring

that the property owners understand that the time limitation for a counteroffer is extendable is also desirable. In short, avoiding costly and unpredictable schedule delays caused by litigation to the greatest extent possible is crucial.

**Guideline 5** Emphasize the significance of providing property owners not only with legally required information but also with any pertinent information that may enhance public trust.

- ✓ Ensure that all information required by law is provided to the property owner when delivering the written offer to initiate the negotiation process.

According to the TxDOT R/W acquisition manual (TxDOT, 2005b), the state law requires including as a minimum the following items in the written offer: (1) a statement of the established amount believed to be just compensation, including damages; (2) a description of the R/W parcel to be acquired; (3) a copy of the appraisal as a basis for justification of the amount offered, and (4) a description of the administrative settlement process. These guidelines are required by law and must be followed.

- ✓ Provide notice to property owners of the intent to acquire the property, the function of the acquisition, the agency's need for the property, the possible impact of the improvement on the property, the capability of the agency to accomplish the transaction, the right to donate the property to the agency, and the owner's legal protections (CalTrans, 2001; ILDOT, 2004; TxDOT, 2004).

Providing this information to property owners can make the negotiation process smoother and save time by giving owners a better understanding of the project and inspiring their faith in the agency. DOTs in states such as Illinois, California, Florida, and New York provide this information to the owners and have found the practice to be beneficial.

***Practices to Avoid:***

- Materials provided to property owners can be technical and difficult to understand; property owners can thus be confused about the project, the design, the impact on the remaining property after acquisition, and damages. Property owner survey results indicate that 12.7 percent of the complaints were about the materials provided to owners. Documents explaining the project must be concise and easy to understand. Take into account that the objective is to give property owners a better understanding of the project and the intention of the agency.

If the status of the process changes after the first notice has been given to property owners, the negotiator must keep them updated with new information. When property owners feel they have not been updated and have been left out of the negotiation process, they tend to lose trust and withdraw from the process. Moreover, if a change indicates a need to update the appraisal, the appraisal must be updated or newly obtained. Moreover, if the updated appraisal report or newly established appraisal indicates a need to change the just compensation purchase offer, the law requires the acquisition agency submit a revised written offer to the property owner.

## 9. Conclusions

This chapter concludes the Synthesis of Best Practices in Right-of-Way Valuations and Negotiations. This research had as its objective the identification and summary of the best practices, legal concerns, and influence factors of right-of-way valuations and negotiations. This objective has been accomplished and the conclusions are stated below.

The R/W Acquisition process is regulated by a series of state and federal laws and statutes. The primary documents that influence acquisition are the Uniform Act, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the Uniform Standards of Professional Appraisal Practice.

Because public satisfaction is a primary goal for TxDOT, the agency conducted a survey of property owners to get a better understanding of their experiences. According to the results of the survey analysis, the most common complaints from property owners are the slow pace of the process and low payment for properties. Both of these problem areas are addressed by the guidelines provided in this document. A common response from property owners was their feeling that no amount of compensation could ease their sense over the land sold to the agency.

Furthermore, potential factors that influence possession type were analyzed and identified. Different characteristics of the properties that had been acquired were related to possession type. These characteristics included taking type, property land use, project type, improvements, and district. Some of the conclusions regarding this analysis were:

- residential parcels have less of a tendency to lead to condemnation compared to commercial parcels;
- the project types that saw the greatest percentages of condemnation proceedings were Interstate projects and Principal Arterial Street System projects; and
- the rate at which parcels leading go to condemnation proceedings is increasing with the years. An attempt to create a regression model that could be used to predict condemnation was not successful.

After a careful literature review and an analysis of the ROW personnel survey, the research team identified a series of guidelines for the valuation and negotiation processes. The valuation guidelines may be summarized in these statements:

- adequate training for right-of-way staff and consultants is crucial;
- it is necessary to include property owners early on in the process; and
- streamlining the value determinations and appraisal review processes is recommended.

The negotiation guidelines may be summarized as well in three statements:

- promote better communication between right-of-way personnel and property owners;
- streamline the negotiation process; and
- minimize the possibility of condemnation proceedings to the greatest extent possible.

Right-of-way acquisition is an integral component of the overall planning and implementation of highway and transportation projects. It is vital that these processes be improved to achieve the primary goal—the pursuit of public satisfaction while maintaining the desired time and cost project performances.

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## Appendix A: Best Practices in R/W Valuations and Negotiations Survey

**Project:** TxDOT 0-5379 Best Practices in Right-of-Way Valuations and Negotiations

**Description:** This questionnaire examines issues and opportunities in the valuations and negotiations required for R/W acquisitions. It will be distributed to ROW staff in all TxDOT district offices.

*Please answer all questions to the best of your ability. If it is necessary to ask others within your District office or refer to past records, please do so in order to ensure accuracy of the information collected in this survey. If appropriate, submit multiple surveys from different personnel within your District office. We will maintain strict confidentiality of your answers and not share your information with anyone outside of the CTR researchers involved in this project.*

District Office: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_ Date: \_\_\_\_\_

Years of experience in right-of way acquisition: \_\_\_\_\_

Approximate number of Parcel Acquisitions you have worked on: \_\_\_\_\_

1. Please indicate the approximate frequency in which you have experienced the following problems during the **valuation** process. Please check the appropriate box.

	Never	Rarely	Sometimes	Often
a. Right-of-way plan changes and revisions affect nature and extent of acquisition on many parcels	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Insufficient right-of-way staff to obtain appropriate appraisals in a timely manner	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Lack of qualified fee appraisers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Poor quality of appraisals produced by fee appraisers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Delays in the delivery of appraisal reports	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Inconsistencies among appraisal reports (e.g. significantly different values for the same parcel)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g. Appraisers do not have time to meet with property owners personally	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h. Disagreement over prioritization criteria used by outsourced appraisers to select which parcels will be appraised first	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i. Property owner distrust of agency and/or disagreement with appraised values	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

2. In your experience, what is the importance of the following actions during the **valuation** process? Please check the appropriate box.

	Not important	Less important	Important	Highly important
a. Right-of-way plan changes and revisions affecting nature and extent of acquisition on many parcels	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Sufficient right-of-way staff to obtain appropriate appraisals in a timely manner	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Qualifications of fee appraisers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Quality of appraisals produced by fee appraisers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. On-time delivery of appraisal reports	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Consistency among appraisal reports (e.g. similar values for the same parcel)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g. Appraisers meet with property owners in person	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h. Agreement over prioritization criteria used by outsourced appraisers to select which parcels will be appraised first.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i. Property owner distrust of agency and/or disagreement with appraised values	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

3. Are there any other problems that you have experienced during the **valuation** process? Please describe these here:

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4. Please indicate how often the following practices are used during the **valuation** process. Please check the appropriate box.

	Never	Rarely	Sometimes	Often
a. Offer training courses for staff, fee appraisers, and appraisal reviewers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Evaluate outsourced appraisers annually on their performance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Encourage ROW staff to meet property owners in person	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Encourage fee appraisers to meet property owners in person	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Provide the outsourced appraisers with pre-appraisal information obtained by district personnel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Use the same agent (e.g. consultant) for the valuation and negotiation process	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g. Share and discuss the project's preliminary R/W map with all property owners	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h. Share copies voluntarily and routinely of complete appraisal reports with property owners	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i. Give the property owner (or the owner's designated representative) an opportunity to accompany the appraiser during the appraiser's inspection of the property	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
j. Assign projects according to appraiser's experience	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
k. Prioritize parcels according to complexity/appraisal difficulty and contract appraisals for those that are most complex first	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
l. Utilize most appropriate technology (e.g. mobile device, GIS) to expedite appraisal production	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
m. Reduce the time-lapse between appraisal valuation date and the initiation of negotiation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

5. Please indicate if you recommend the following practices based on their effectiveness to improve the **valuation** process. Please check the appropriate box.

	Oppose	Do not recommend	Recommend	Strongly recommend
a. Develop training courses for staff, fee appraisers, and appraisal reviewers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Evaluate outsourced appraisers annually on their performance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Encourage ROW staff to meet property owners in person	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Encourage fee appraisers to meet property owners in person	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Provide the outsourced appraisers with pre-appraisal information obtained by district personnel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Use the same agent (e.g. consultant) for the valuation and negotiation process	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g. Share and discuss the project's preliminary R/W map with all property owners	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h. Share copies voluntarily and routinely of complete appraisal reports with property owners	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i. Give the property owner (or the owner's designated representative) an opportunity to accompany the appraiser during the appraiser's inspection of the property	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
j. Assign projects according to appraiser's experience	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
k. Prioritize parcels according to complexity/appraisal difficulty and contract appraisals for those that are most complex first	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
l. Utilize most appropriate technology (e.g. mobile device, GIS) to expedite appraisal production	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
m. Reduce the time lapse between appraisal valuation date and the initiation of negotiation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

6. Please describe any other **valuation** practices that you consider helpful and effective:

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7. Please indicate the approximate frequency in which you have experienced the following problems during the **negotiation** process. Please check the appropriate box.

	Never	Rarely	Sometimes	Often
a. Property owners complaining of low payment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Property owners distrust of agency and/or appraisal methods	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Property owners complaining of a slow negotiation process	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Property owners complaining of R/W brochures being too technical and hard to understand	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Negotiator not contacting the property owners in person	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Negotiator not being courteous or professional	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g. Negotiator not keeping owners updated of the status of the process	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h. TxDOT time limitation (i.e. 30 days) for property owners being insufficient in order to present a counteroffer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i. All administrative settlements over \$50K being reviewed by the Division office, even when the counteroffer differs by only a few percentage points	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

8. In your experience, what is the importance of the following problems during the **negotiation** process? Please check the appropriate box.

	Not important	Less important	Important	Highly important
a. Property owners complain of low payment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Property owners distrust agency and/or appraisal methods	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Property owners complain of a slow negotiation process	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Property owners complain that R/W brochures are too technical and hard to understand	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Negotiator does not contact the property owners in person	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Negotiator is not courteous or professional	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g. Negotiator does not keep owners updated of the status of the process	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h. TxDOT time limitation (i.e. 30 days) for property owners being insufficient in order to present a counteroffer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i. All administrative settlements over \$50K being reviewed by the Division office, even when the counteroffer differs by only a few percentage points	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

9. Are there any other problems that you have experienced during the **negotiation** process? Please describe these here:

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10. Please indicate how often the following practices are used during the **negotiation** process. Please check the appropriate box.

	Never	Rarely	Sometimes	Often
a. Allow the same person to perform the valuation and negotiation for any given parcel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Use incentive programs for early completion of the negotiation process (e.g. incentive payments for early completion and penalty for late completion)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Require negotiators to meet owners prior to the beginning of the negotiation process, in order to discuss the project, the right-of-way acquisition process, and justification of valuation results (thereby reducing the later number of questions, calls, and visits)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Require negotiators to present and discuss the offer in person	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Use a closing manual which lists pertinent contacts, phone numbers, and directions to and inside the courthouse in order to reduce staff time at courthouse	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Conduct an 'open-house' event explaining the right-of-way acquisition process for a specific project to the public	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g. Use a streamlined process to provide immediate payment to property owner for low value property rights	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h. Create a guidebook to assist property owners on writing an appropriate counteroffer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i. Allow more than 30 days for owners to present a counteroffer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
j. Encourage negotiators to assist property owners on preparing and negotiating a counteroffer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
k. Employ land consolidation (which is when remainder parcels are purchased on either side of a new highway leaving the owner with a consolidated property)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
l. Employ land exchange, which is exchanging previously purchased property outside the acquisition area for the needed parcel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

11. Please indicate if you recommend the following practices based on their effectiveness to improve the **negotiation** process. Please check the appropriate box.

	Oppose	Do not recommend	Recommend	Strongly recommend
a. Allow the same person to perform the valuation and negotiation for any given parcel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Use incentive programs for early completion of the negotiation process (e.g. incentive payments for early completion and penalty for late completion)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Require negotiators to meet owners prior to the beginning the negotiation process, in order to discuss the project, the right-of-way acquisition process, and justification of valuation results (thereby reducing the later number of questions, calls, and visits)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Require negotiators to present and discuss the offer in person	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Use a closing manual which lists pertinent contacts, phone numbers, and directions to and inside the courthouse in order to reduce staff time at courthouse	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Conduct an 'open-house' event explaining the right-of-way acquisition process for a specific project to the public	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g. Use a streamlined process to provide immediate payment to property owner for low value property rights	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h. Create a guidebook to assist property owners on writing an appropriate counteroffer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i. Increase the limit on the value of the property that is not subject to review by the Division office	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>• If you recommend or strongly recommend this practice, to what amount should the limit be increased?</p> <p><input type="checkbox"/> \$75 K    <input type="checkbox"/> \$100 K    <input type="checkbox"/> \$150 K    <input type="checkbox"/> \$200 K    <input type="checkbox"/> Other:</p>				
j. Allow more than 30 days for owners to present a counteroffer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
k. Encourage negotiators to assist property owners on preparing and negotiating a counteroffer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
l. Employ land consolidation (which is when remainder parcels are purchased on either side of a new highway leaving the owner with a consolidated property)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
m. Employ land exchange, which is exchanging previously purchased property outside the acquisition area for the needed parcel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



12. Please describe any other **negotiation** practices that you consider helpful and effective:

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**Thank you for your participation!**

Please send by fax to the attention of Dr. Carlos Caldas at 512-471-3191.

You may also mail it to him at:

*Professor Carlos H. Caldas*

*The University of Texas at Austin*

*Department of Civil, Architectural and Environmental Engineering*

*1 University Station C1752 - ECJ 5.302*

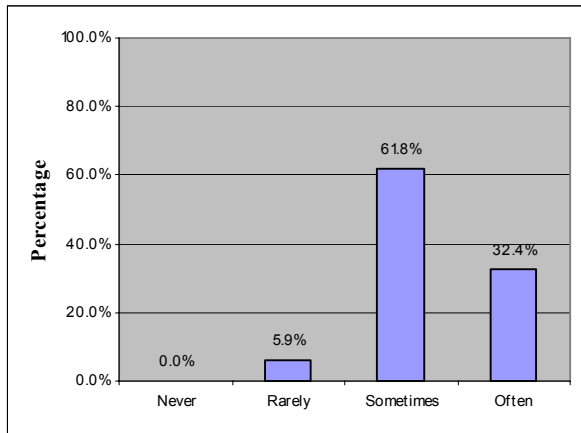
*Austin, Texas 78712-0273*



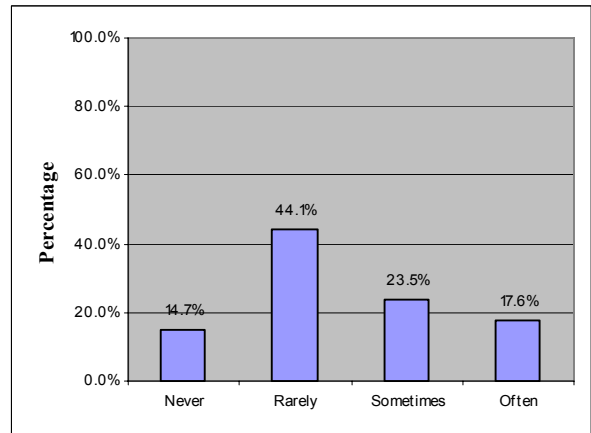
## Appendix B: Summary of Survey Results

1. Please indicate the approximate frequency in which you have experienced the following problems during the valuation process.

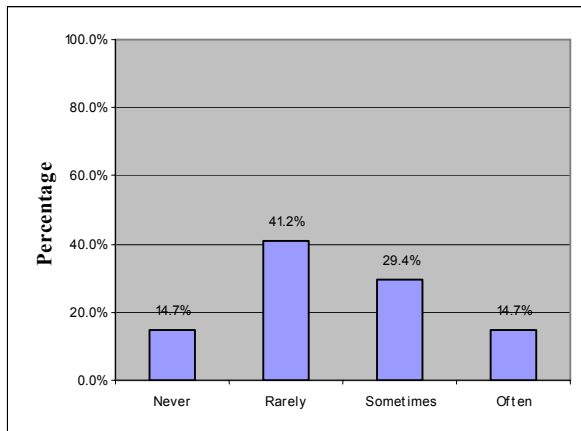
1-a. Right-of-way plan changes and revisions affect nature and extent of acquisition on many parcels



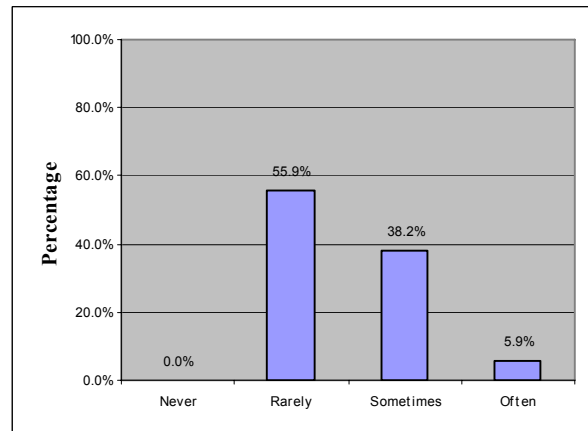
1-b. Insufficient right-of-way staff to obtain appropriate appraisals in a timely manner



1-c. Lack of qualified fee appraisers

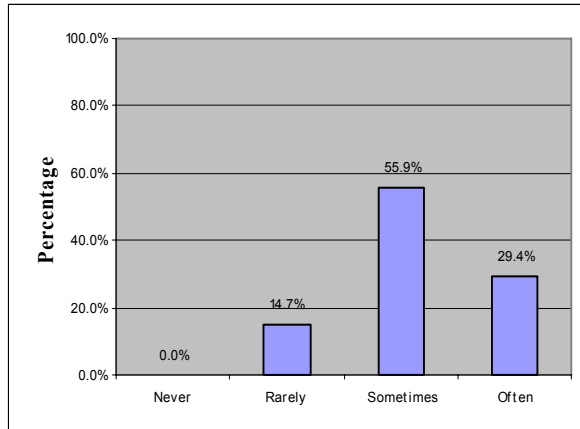


1-d. Poor quality of appraisals produced by fee appraisers

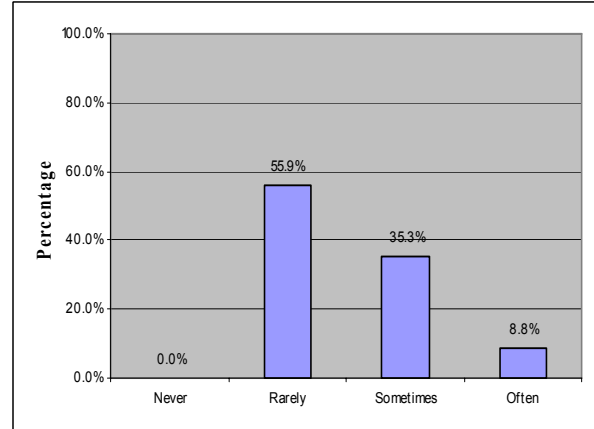


1. Please indicate the approximate frequency in which you have experienced the following problems during the valuation process.

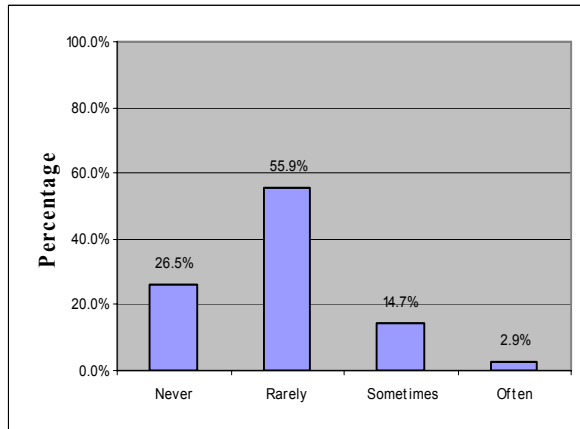
1-e. Delays in the delivery of appraisal reports



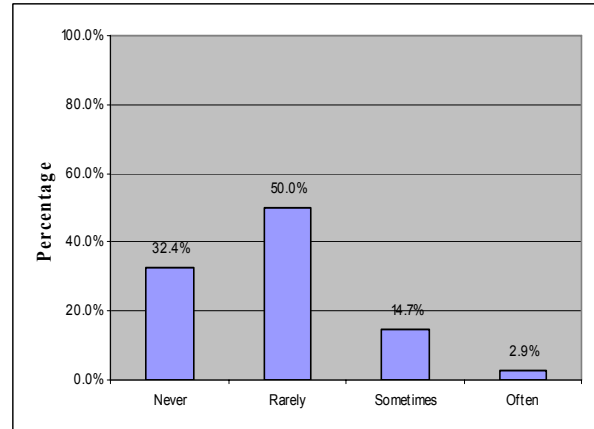
1-f. Inconsistencies among appraisal reports (e.g. significantly different values for the same parcel)



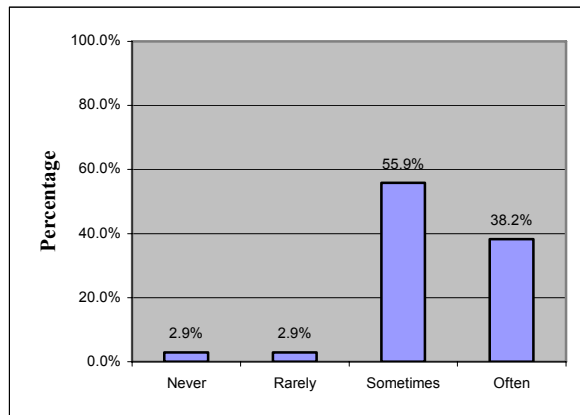
1-g. Appraisers do not have time to meet with property owners personally



1-h. Disagreement over prioritization criteria used by outsourced appraisers to select which parcels will be appraised first

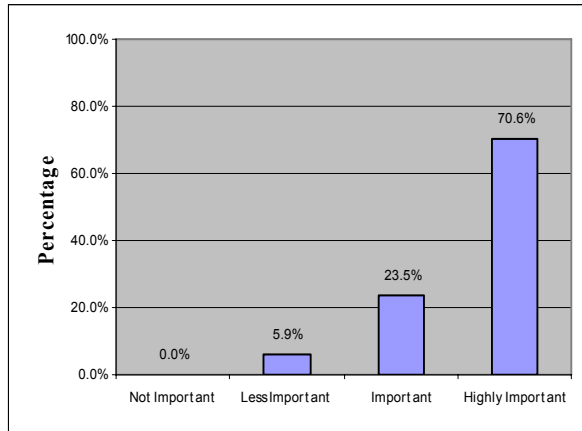


1-i. Property owner distrust of agency and/or disagreement with appraised values

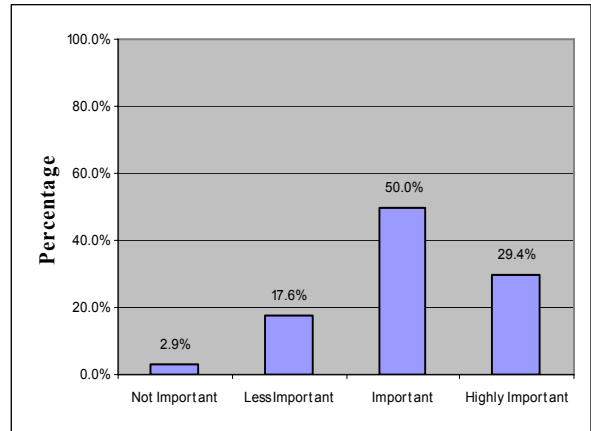


2. In your experience, what is the importance of the following actions during the valuation process? Please check the appropriate box.

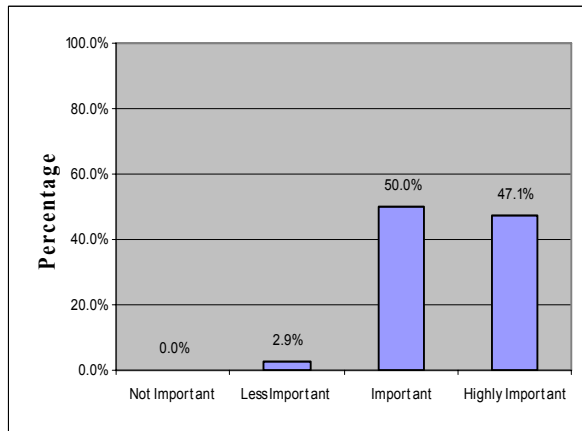
2-a. Right-of-way plan changes and revisions affect nature and extent of acquisition on many parcels



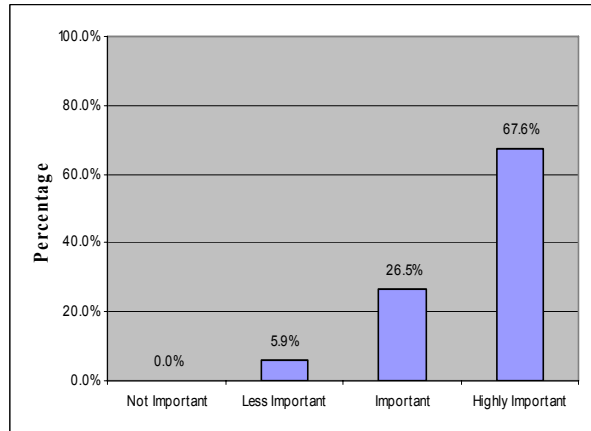
2-b. Insufficient right-of-way staff to obtain appropriate appraisals in a timely manner



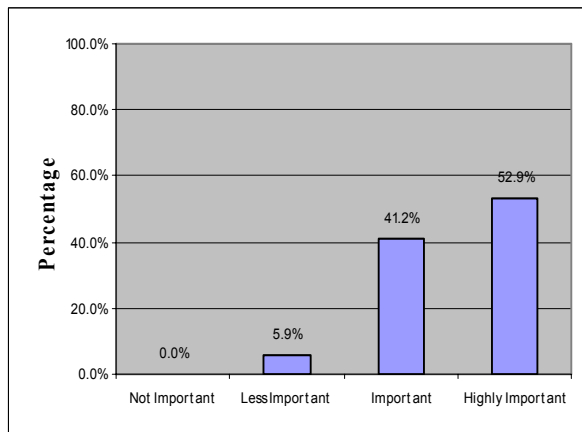
2-c. Lack of qualified fee appraisers



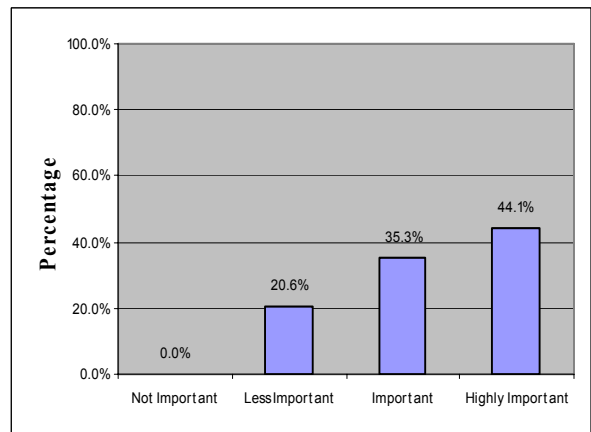
2-d. Poor quality of appraisals produced by fee appraisers



2-e. Delays in the delivery of appraisal reports

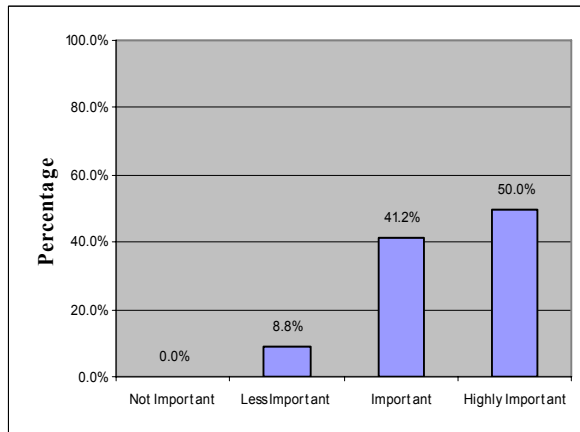


2-f. Inconsistencies among appraisal reports (e.g. significantly different values for the same parcel)

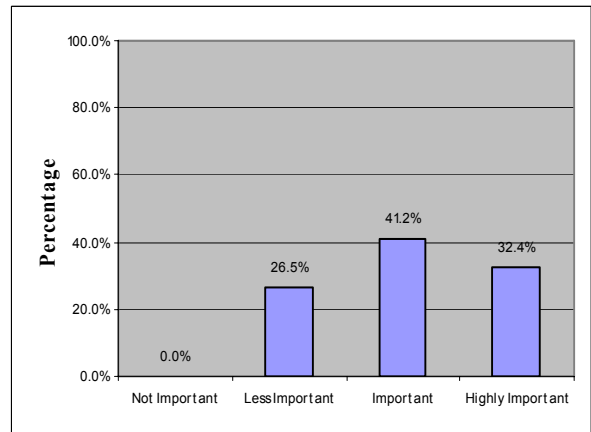


2. In your experience, what is the importance of the following actions during the valuation process? Please check the appropriate box.

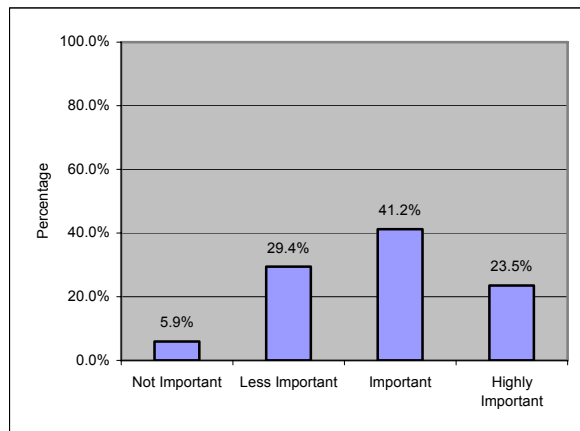
2-g. Appraisers do not have time to meet with property owners personally



2-h. Disagreement over prioritization criteria used by outsourced appraisers to select which parcels will be appraised first



2-i. Property owner distrust of agency and/or disagreement with appraised values



3. Are there any other problems that you have experienced during the valuation process? Please describe these here:

When new formats of A-5 and A-6 were introduced, had some problems and resistance from some fee appraisers.

Shortage of qualified review appraisers

Property owners who will not cooperate with the appraiser by not providing needed information, i.e. rent rolls, expense info, etc.

Most property owners who don't agree with value were never going to agree to state's value. It is likely their attorney advises them to disagree no matter what.

We need to give outsource companies the ability to hire technical experts, for use by their appraisers.

ROW maps are poorly prepared, have poor detail, and often title errors. ROW maps prepared by consultants need more quality control.

The appraisal problem is poorly defined or supported. The appraisers do not take the time to meet and discuss details with the owners or to adequately research the highest and best use.

Appraisers do not take the time and effort to meet and listen to property owners concerns.

Missed improvements on appraisal reports

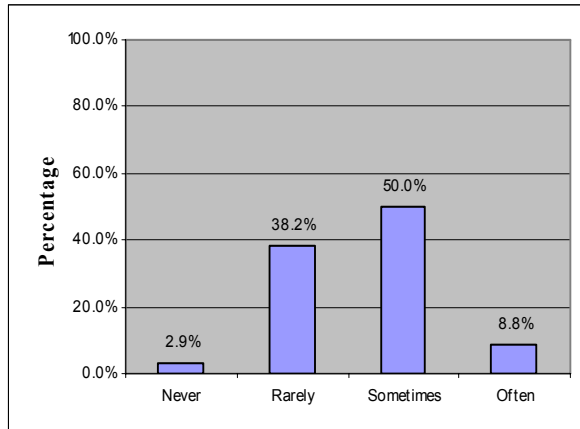
Lack of experienced fee appraisers & review appraisers in our area that will deliver accurate, complete and correct reports.

Identify real property and personal property prior to doing any appraisal work. Keep good documentation, must advise the owner of the pros and cons of declaring items as personal vs. realty. If owner is not clear on this, he might change his mind and will require TxDOT to update the appraisal, delaying the acquisition process.

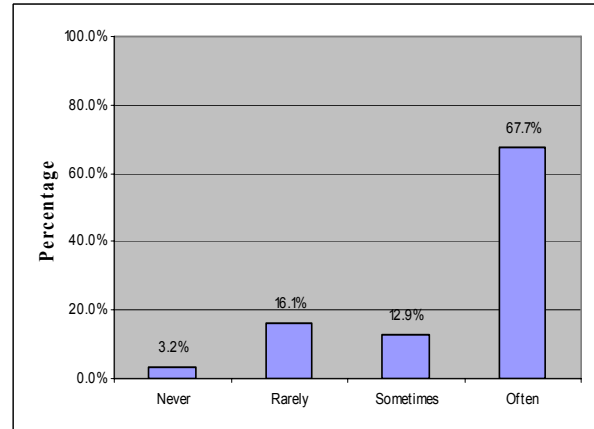
Getting the appraisal report turned in on time is often a problem.

4. Please indicate how often the following practices are used during the valuation process. Please check the appropriate box.

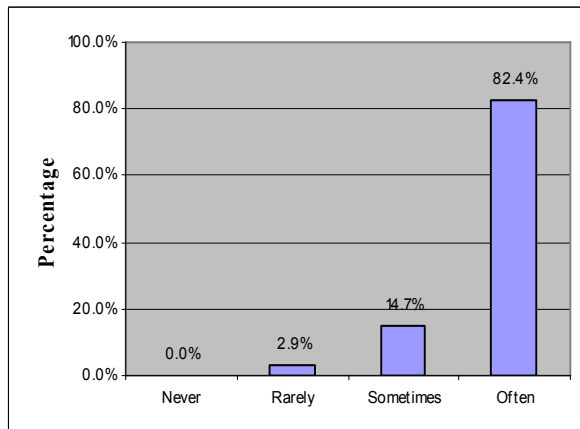
4-a. Offer training courses for staff, fee appraisers, and appraisal reviewers



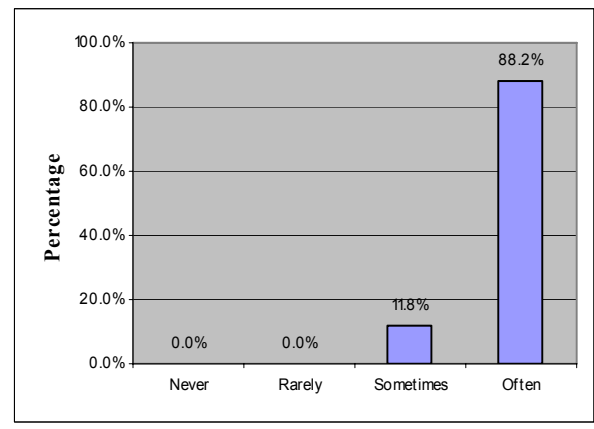
4-b. Evaluate outsourced appraisers annually on their performance



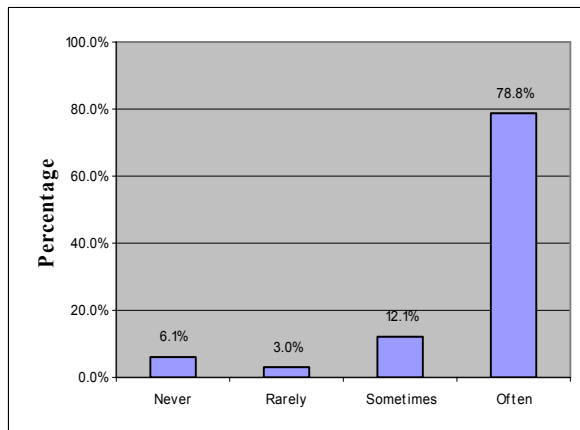
4-c. Encourage ROW staff to meet property owners in person



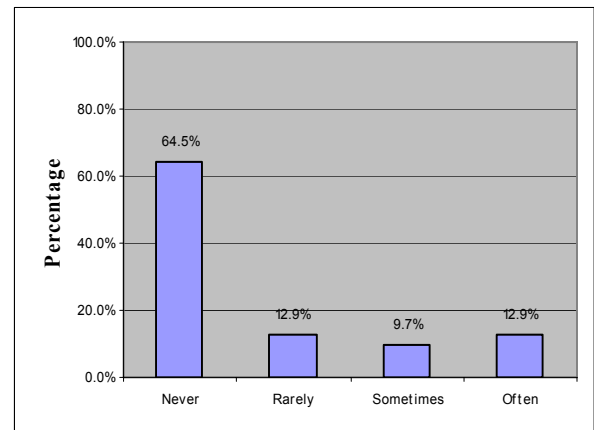
4-d. Encourage fee appraisers to meet property owners in person



4-e. Provide the outsourced appraisers with pre-appraisal information obtained by district personnel



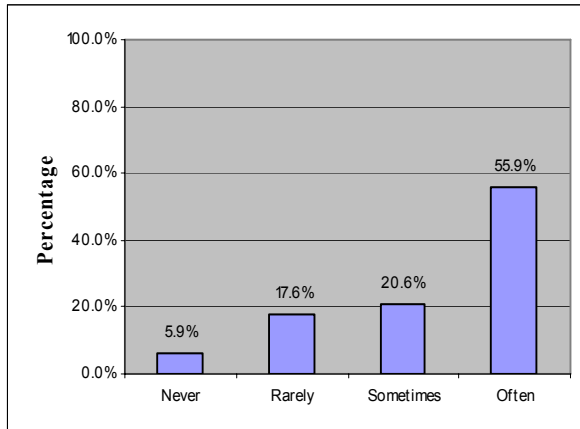
4-f. Use the same agent (e.g. consultant) for the valuation and negotiation process



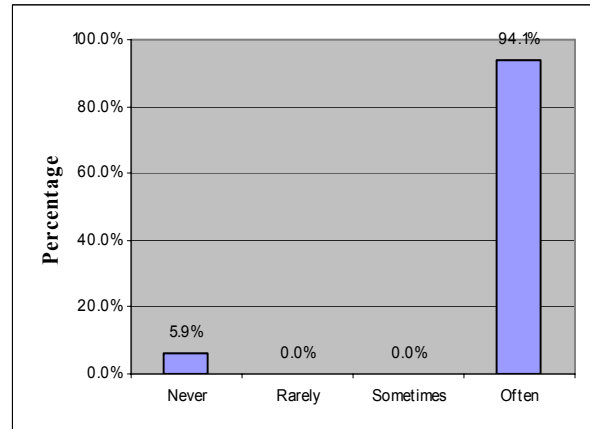


4. Please indicate how often the following practices are used during the valuation process. Please check the appropriate box.

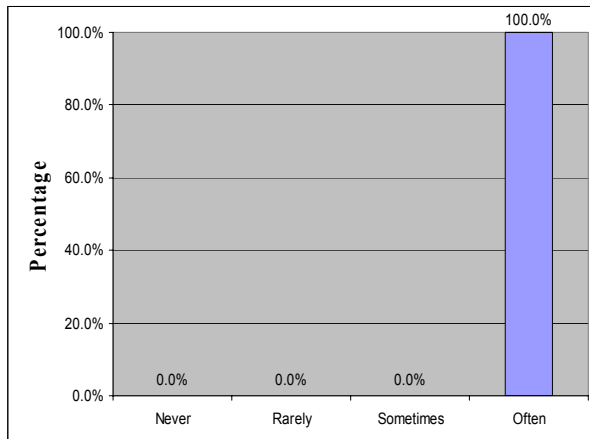
4-g. Share and discuss the project's preliminary ROW map with all property owners



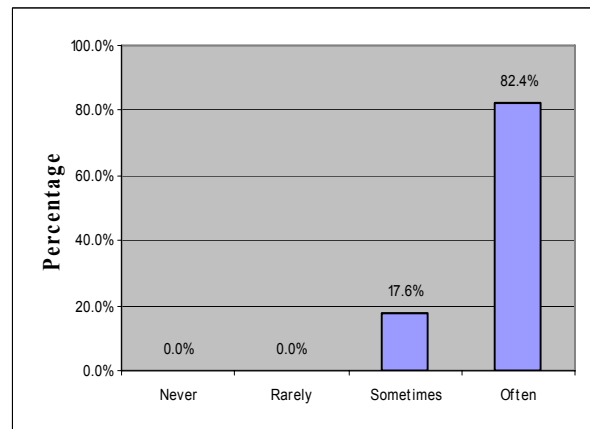
4-h. Share copies voluntarily and routinely of complete appraisal reports with property owners



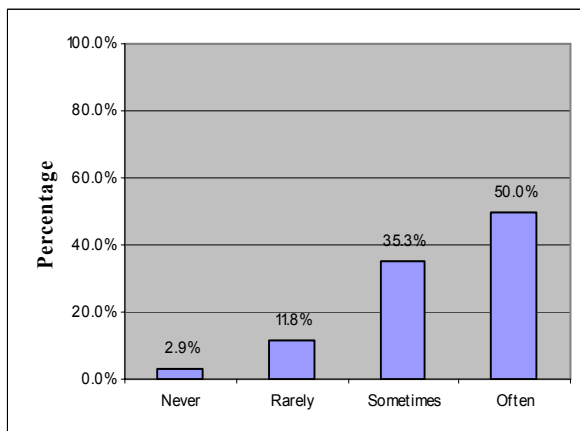
4-i. Give the property owner an opportunity to accompany the appraiser during the appraiser's inspection of the property



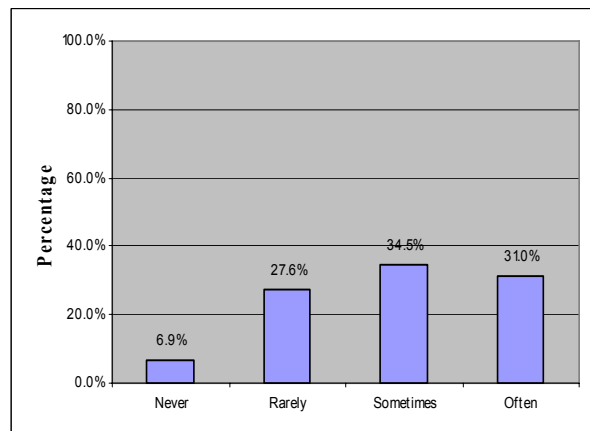
4-j. Assign projects according to appraiser's experience



4-k. Prioritize parcels according to complexity/appraisal difficulty and contract appraisals for those that are most complex first

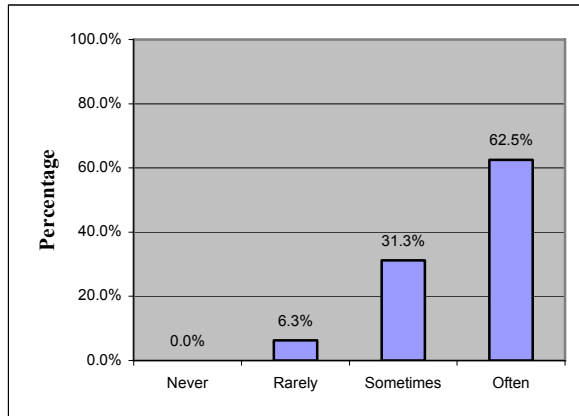


4-l. Utilize most appropriate technology (e.g. mobile device, GIS) to expedite appraisal production



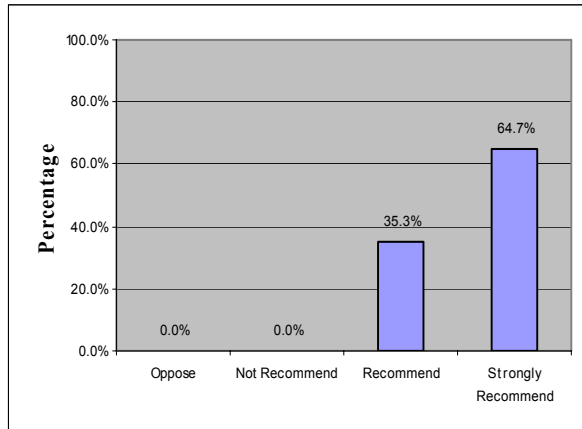
4. Please indicate how often the following practices are used during the valuation process. Please check the appropriate box.

4-m. Reduce the time-lapse between appraisal valuation date and the initiation of negotiation

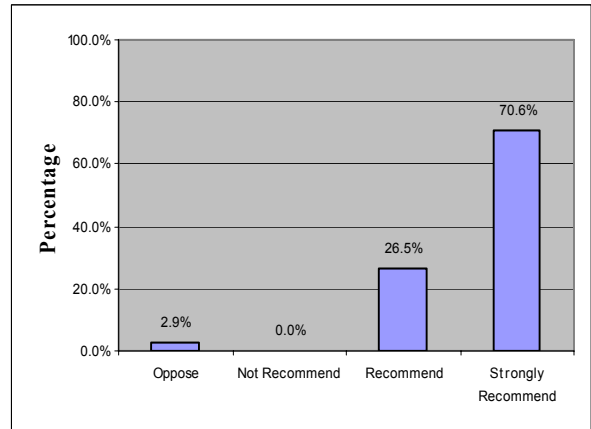


5. Please indicate if you recommend the following practices based on their effectiveness to improve the valuation process. Please check the appropriate box.

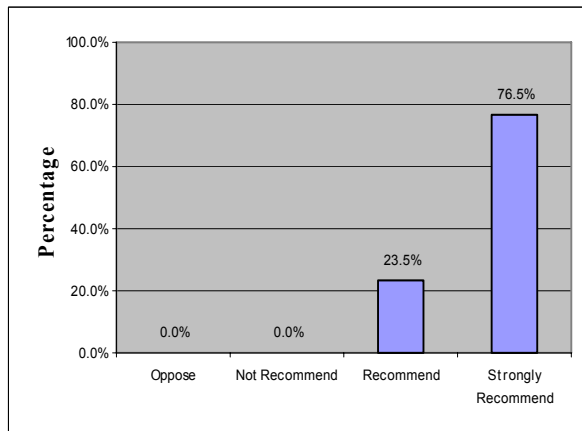
5-a. Develop training courses for staff, fee appraisers, and appraisal reviewers



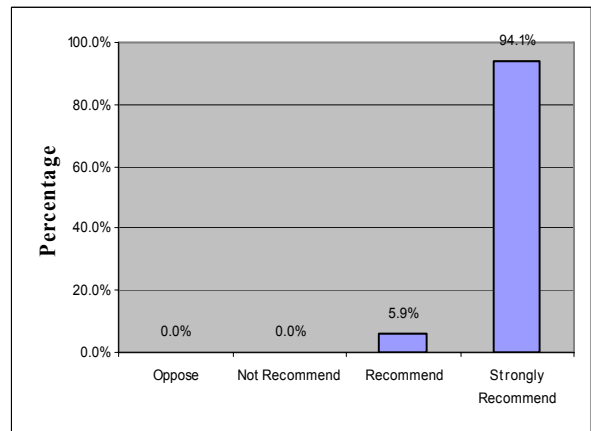
5-b. Evaluate outsourced appraisers annually on their performance



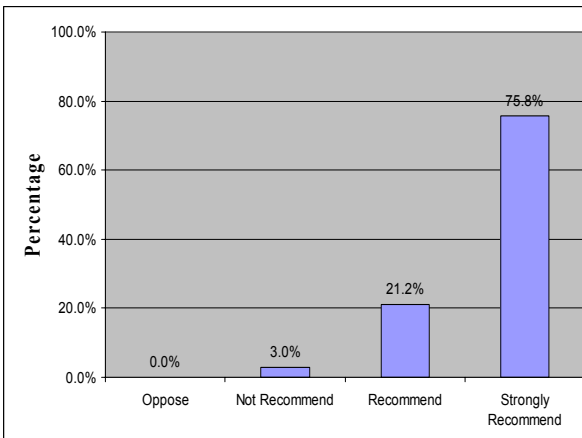
5-c. Encourage ROW staff to meet property owners in person



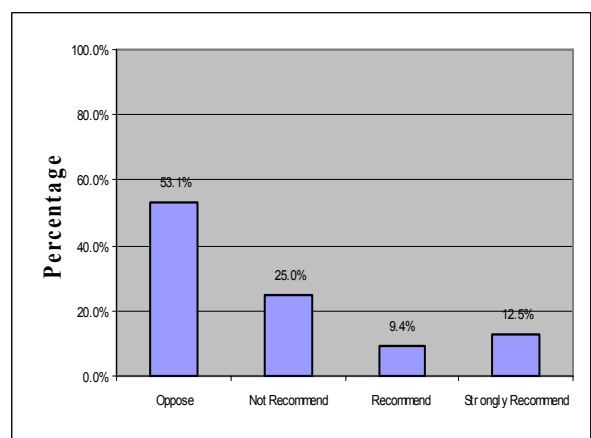
5-d. Encourage fee appraisers to meet property owners in person



5-e. Provide the outsourced appraisers with pre-appraisal information obtained by district personnel

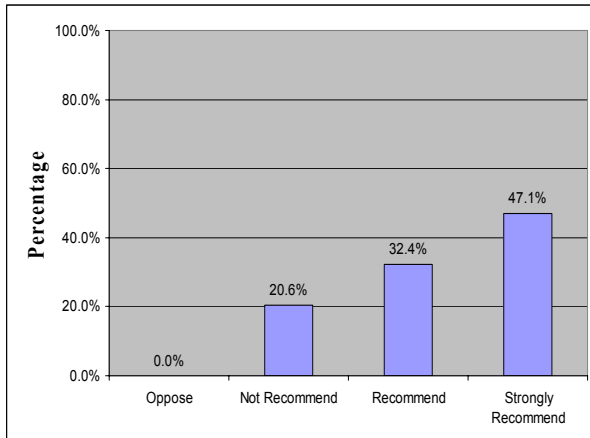


5-f. Use the same agent (e.g. consultant) for the valuation and negotiation process

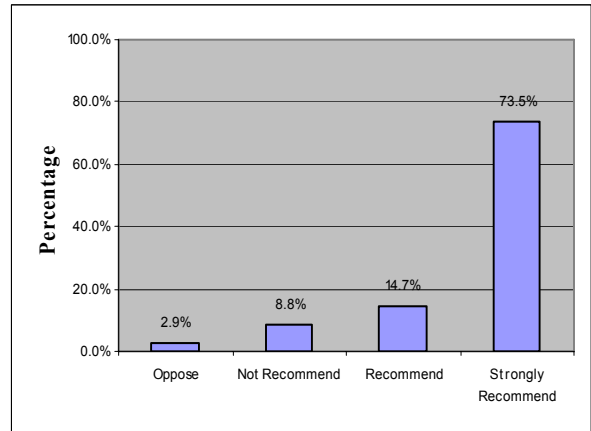


5. Please indicate if you recommend the following practices based on their effectiveness to improve the valuation process. Please check the appropriate box.

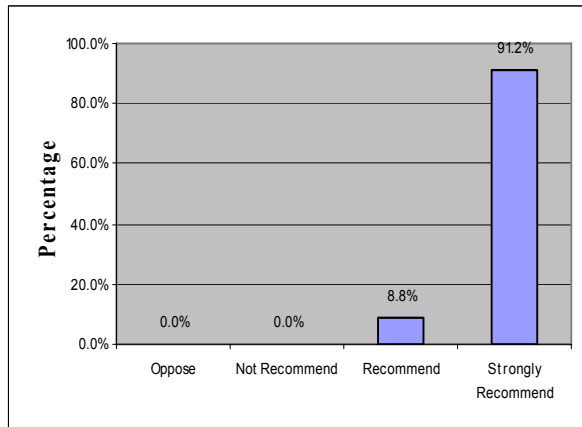
5-g. Share and discuss the project's preliminary ROW map with all property owners



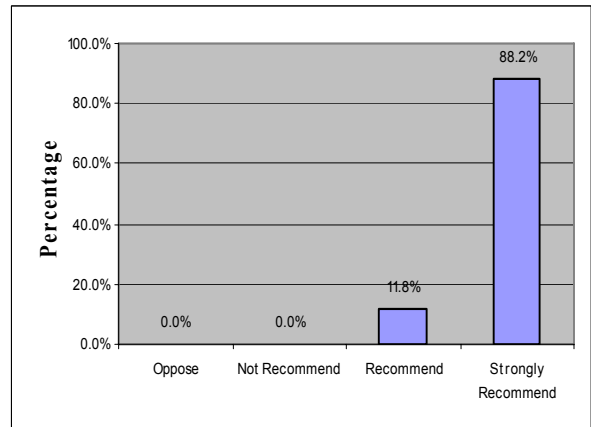
5-h. Share copies voluntarily and routinely of complete appraisal reports with property owners



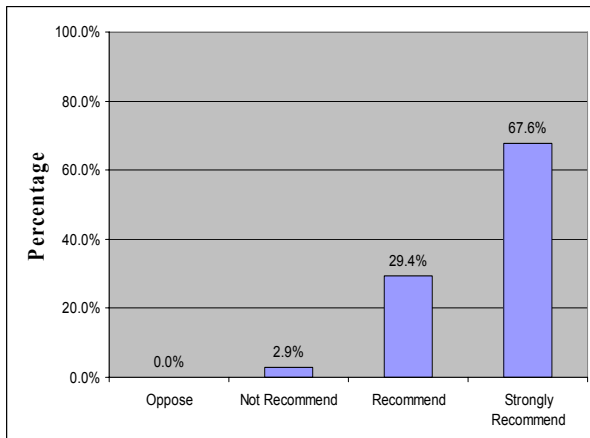
5-i. Give the property owner an opportunity to accompany the appraiser during the appraiser's inspection of the property



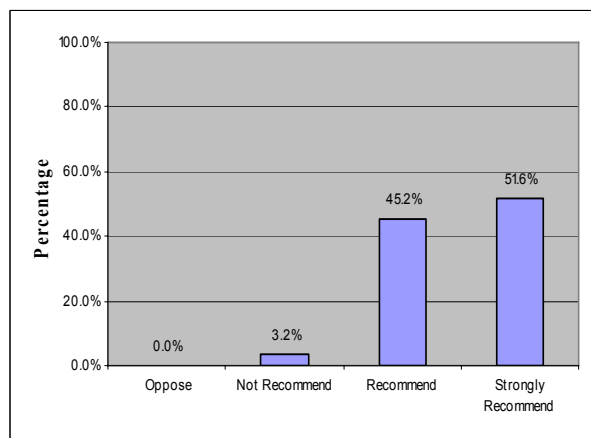
5-j. Assign projects according to appraiser's experience



5-k. Prioritize parcels according to complexity/appraisal difficulty and contract appraisals for those that are most complex first

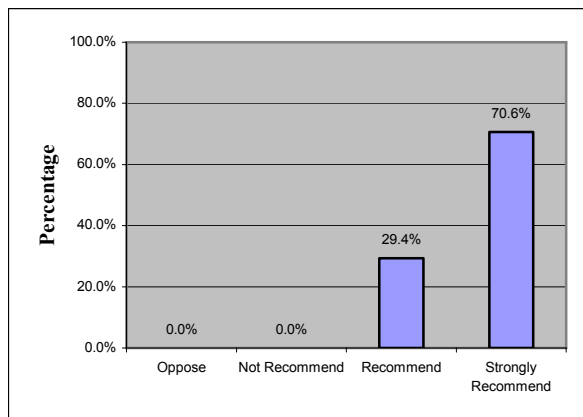


5-l. Utilize most appropriate technology (e.g. mobile device, GIS) to expedite appraisal production



5. Please indicate if you recommend the following practices based on their effectiveness to improve the valuation process. Please check the appropriate box.

5-m. Reduce the time-lapse between appraisal valuation date and the initiation of negotiation



6. Please describe any other valuation practices that you consider helpful and effective:

I have prepared a "Review Checklist" and faxed it to the appraiser for report corrections. Appraisers email their report for review before printing, saves on paper/printing.

Annual training for appraisers and review appraisers

Have the district Review Appraiser accompany the fee appraiser on initial inspection.

Meeting appraisers at a project before assignment to identify potential questions, problems with ROW map, or conflicts that the appraiser may have.

I do not recommend sharing preliminary ROW maps with owners, since at that point the state is not ready to negotiate and may not be released to acquire for months or years.

Review records concerning a parcel before approaching the landowner. Writing a property owner for a detailed description of the property can be very helpful.

Require appraisers to provide a checklist-not just a letter- reflecting that the prop. Owner was afforded the opportunity to accompany him at the inspection. Require and have the appraiser provide proof that an inspection was done. More pictures of the subject would help.

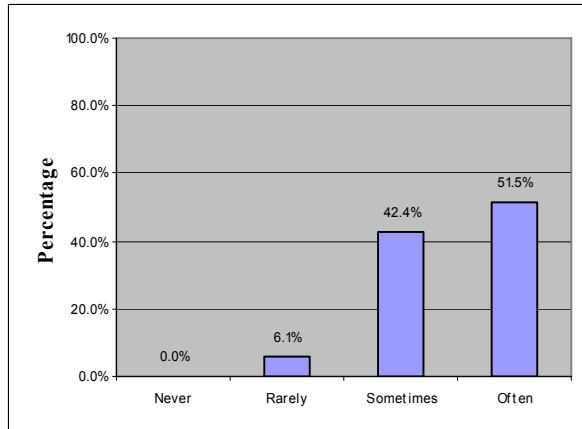
Use qualified people

Training is a must, TxDOT should implement more training on all ROW aspects, overall internal training is limited and although we depend on other sources of training TxDOT should provide training to its employees specific to their department needs, by developing internal certifications. The IRWA Association provides such training and certifications but employees must pay out of pocket membership fees, TxDOT should consider paying for these fees.

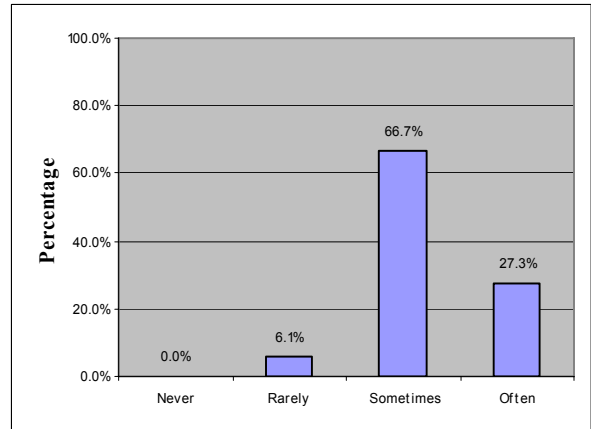
In general, the appraisers do not like the state's appraisal format. Most find it confusing and are forced to ask a lot of questions on how to complete it.

7. Please indicate the approximate frequency in which you have experienced the following problems during the negotiation process. Please check the appropriate box.

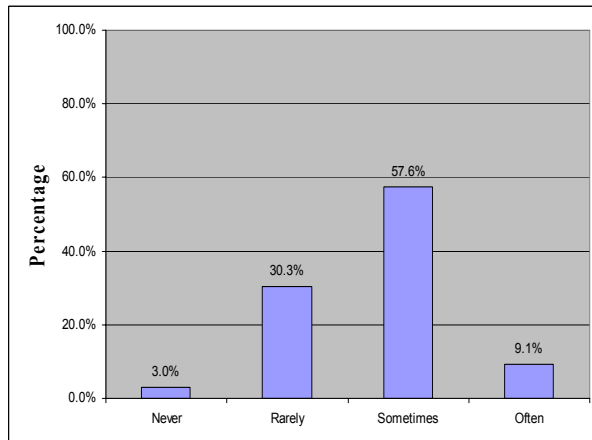
7-a. Property owners complaining of low payment



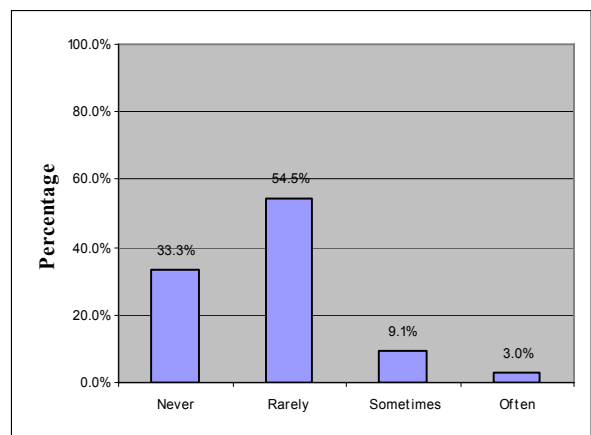
7-b. Property owners distrust of agency and/or appraisal methods



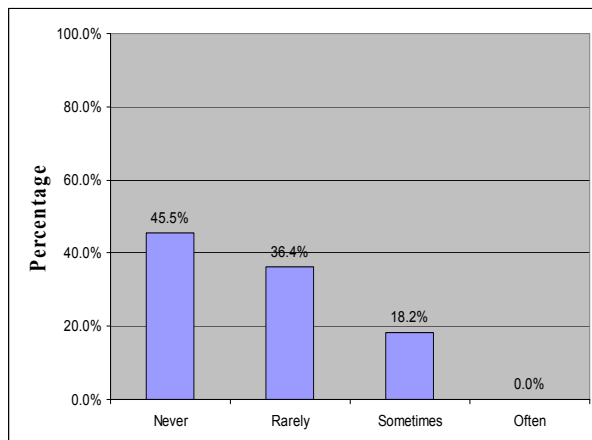
7-c. Property owners complaining of a slow negotiation process



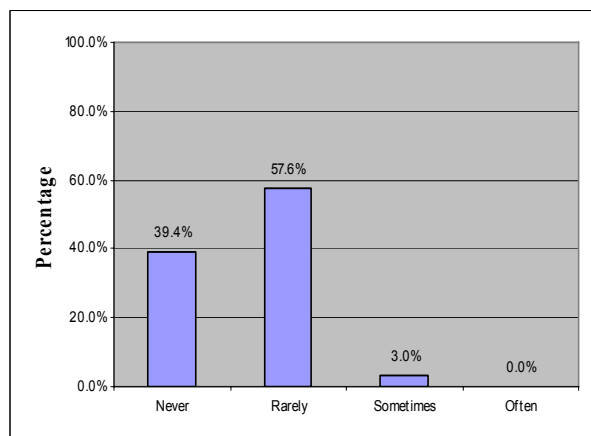
7-d. Property owners complaining of ROW brochures being too technical and hard to understand



7-e. Negotiator not contacting the property owners in person

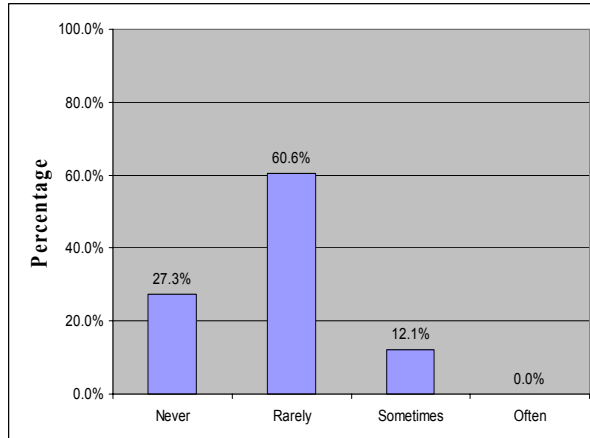


7-f. Negotiator not being courteous or professional

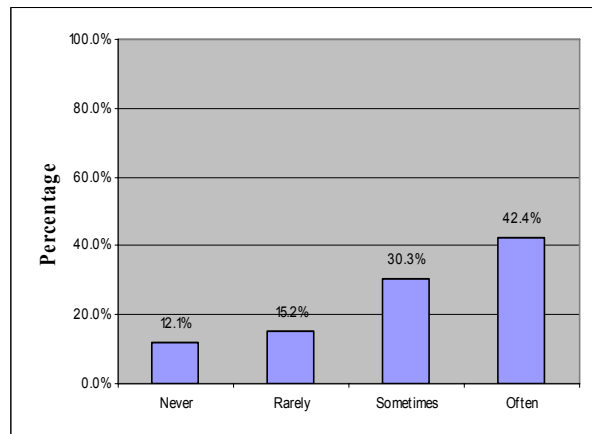


7. Please indicate the approximate frequency in which you have experienced the following problems during the negotiation process. Please check the appropriate box.

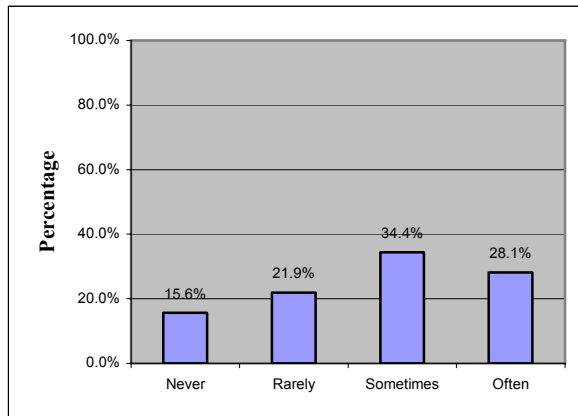
7-g. Negotiator not keeping owners updated of the status of the process



7-h. TxDOT time limitation (i.e. 30 days) for property owners being insufficient in order to present a counteroffer

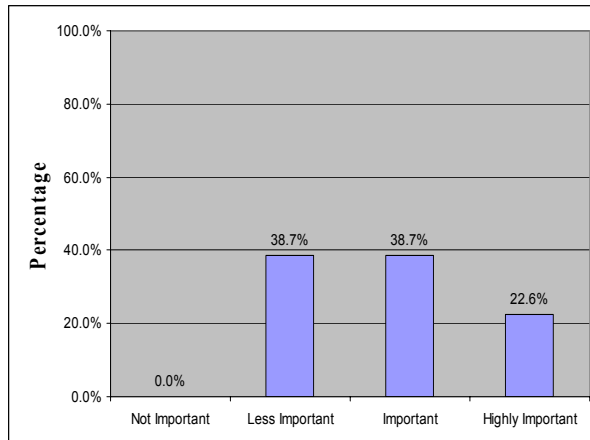


7-i. All administrative settlements over \$50K being reviewed by the Division office, even when the counteroffer differs by only a few percentage points

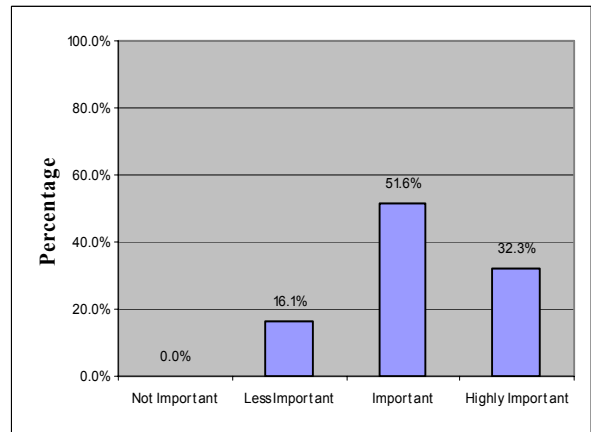


8. In your experience, what is the importance of the following problems during the negotiation process? Please check the appropriate box.

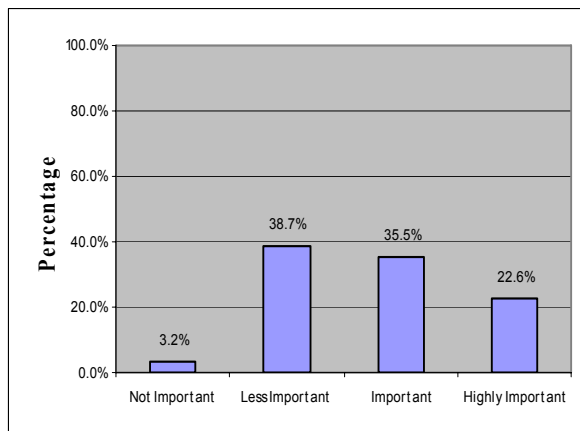
8-a. Property owners complaining of low payment



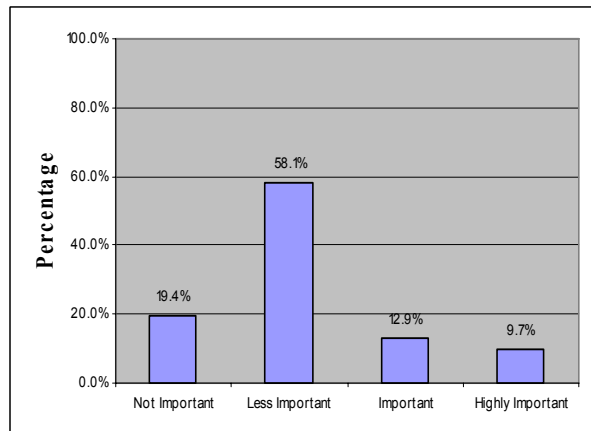
8-b. Property owners distrust of agency and/or appraisal methods



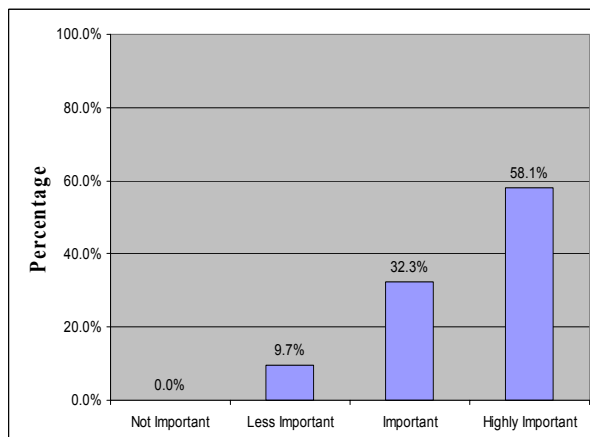
8-c. Property owners complaining of a slow negotiation process



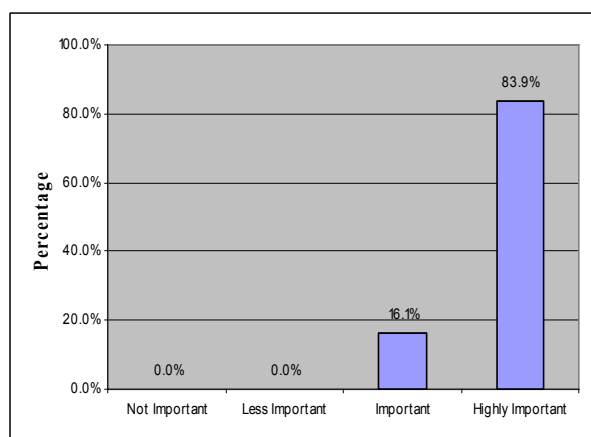
8-d. Property owners complaining of ROW brochures being too technical and hard to understand



8-e. Negotiator not contacting the property owners in person



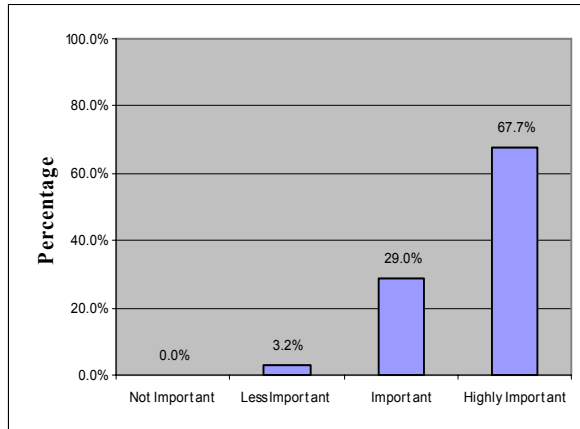
8-f. Negotiator not being courteous or professional



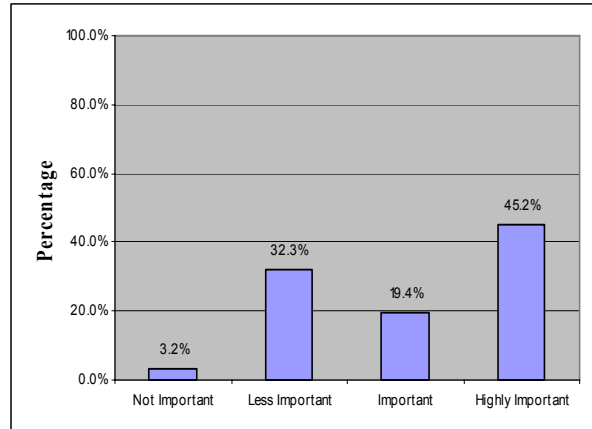


8. In your experience, what is the importance of the following problems during the negotiation process? Please check the appropriate box.

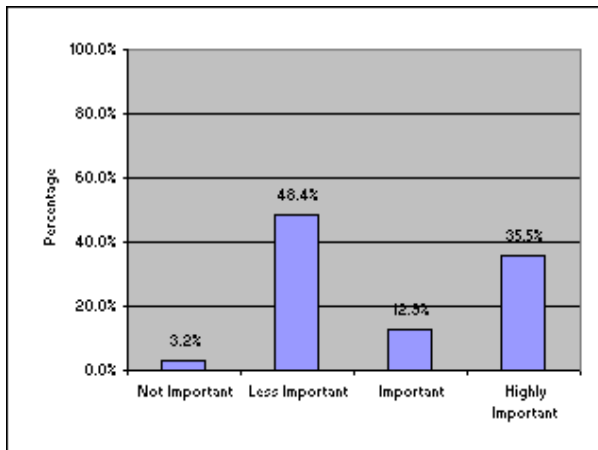
8-g. Negotiator not keeping owners updated of the status of the process



8-h. TxDOT time limitation (i.e. 30 days) for property owners being insufficient in order to present a counteroffer



8-i. All administrative settlements over \$50K being reviewed by the Division office, even when the counteroffer differs by only a few percentage points



9. Are there any other problems that you have experienced during the negotiation process? Please describe these here:

Offer letter should include a statement that "a request for an extension of time must be received in writing within 30 days" of the offer. Some owners don't know they can request an extension of time to prepare a counteroffer.

The problems that would take a lot of time was title curative problems and curing these problems

Getting title commitments in a timely manner

Most owners in out district complain about slow payment

It is very difficult to explain the need for the property to the owner without a set of construction plans

Some attorneys prohibit appraisers from inspecting properties. I think this is to receive a low value that increases (sometimes drastically) later and also increases the attorneys' fee since their % is based on the difference between initial offer and final award, settlement or jury verdict. These landowners follow their attorneys' instructions to the "fee" but don't realize they are hurting themselves in the process. Some attorneys also attempt to get relocation assistance included in condemnation awards to get their % of fee increased. This is a difficult issue to resolve after the fact.

Sometimes a negotiator can be too aggressive at the first meeting. Rather, the agent should attempt to uncover the owner's concerns. Then an attempt to ease or solve these concerns may advance the acquisition.

When property owners complain of low payment due to a valid inadequacy in the appraisal, it becomes very important. Differences of opinion can be settled administratively (counter offer), however, when a faulty appraisal is discovered during the negotiations, it not only creates a mistrust in the property owners, but the negotiation process must be stopped until a new appraisal is obtained. Often this results in months of delay.

Gaining trust—if they experience negative situations they develop negative attitudes towards negotiators before we have even begin the process

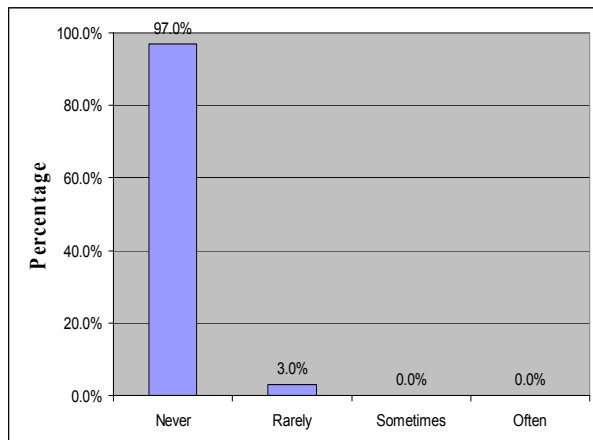
Plans change after starting the negotiation process

Sometimes you deal with owners who have never seen an appraisal report, providing them a copy of a 100-page report confuses them more. Recommended that a two-three page supplement report be given to them, prepared by the appraiser, outlining the most important information such as the value of the whole and part to be acquired, and explanation of damages, and reference the pages where this information could be found in the appraisal report. This similar to what most appraisers give out in ED hearings so the Commissioners have something to review. This could be helpful to most property owners.

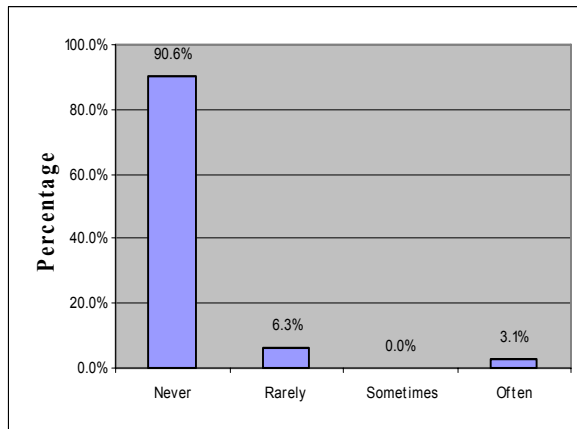
Many land owners feel that the time period from when they first hear about the project until the offer is made is excessively long. They are usually right—it can be several years.

10. Please indicate how often the following practices are used during the negotiation process.

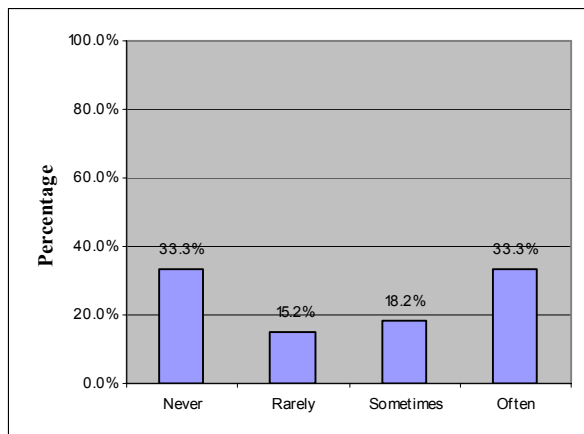
10-a. Allow the same person to perform the valuation and negotiation for any given parcel



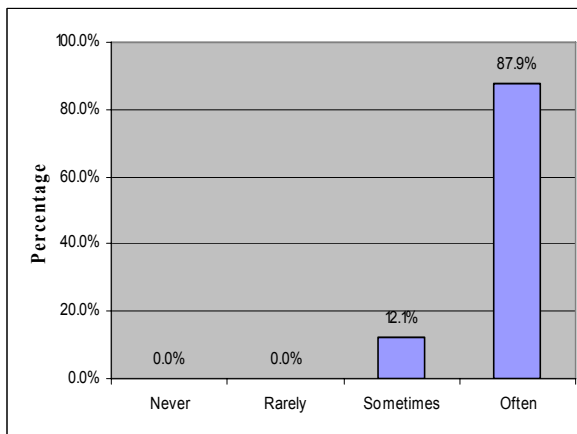
10-b. Use incentive programs for early completion of the negotiation process



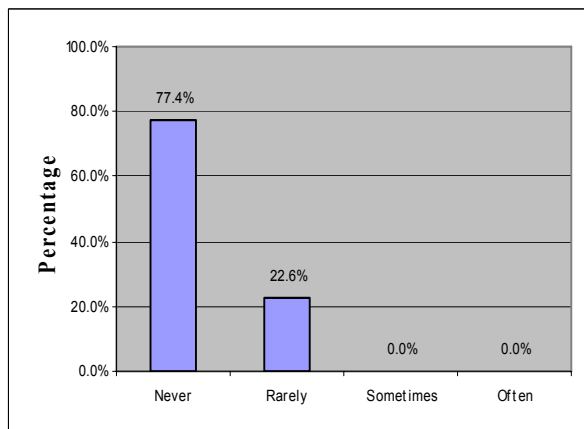
10-c. Require negotiators to meet owners prior to the beginning of the negotiation process, in order to discuss the project, the ROW acquisition process, and justification of valuation results



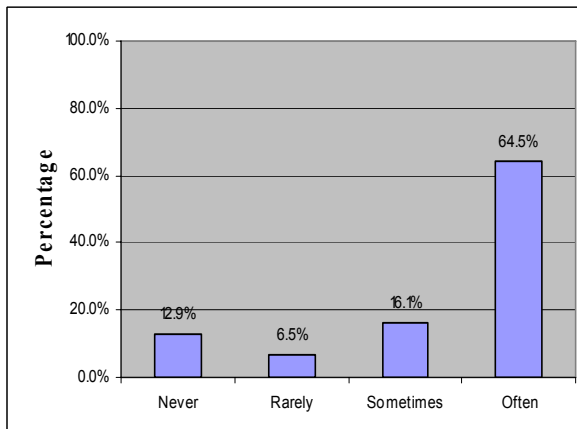
10-d. Require negotiators to present and discuss the offer in person



10-e. Use a closing manual which lists pertinent contacts, phone numbers, and directions to and inside the courthouse in order to reduce staff time at courthouse



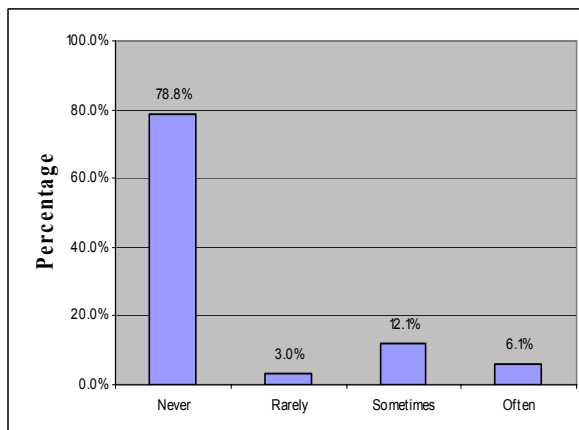
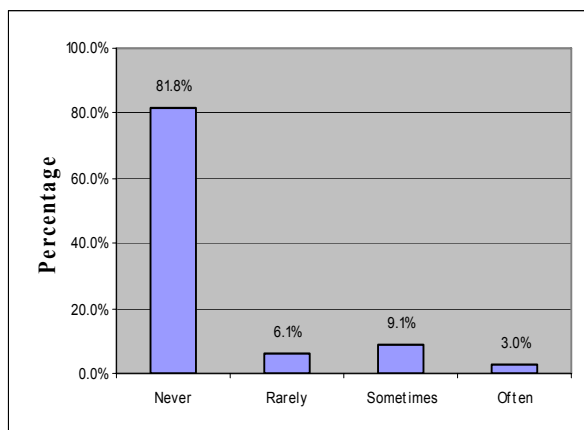
10-f. Conduct an 'open-house' event explaining the right-of-way acquisition process for a specific project to the public



10. Please indicate how often the following practices are used during the negotiation process. Please check the appropriate box.

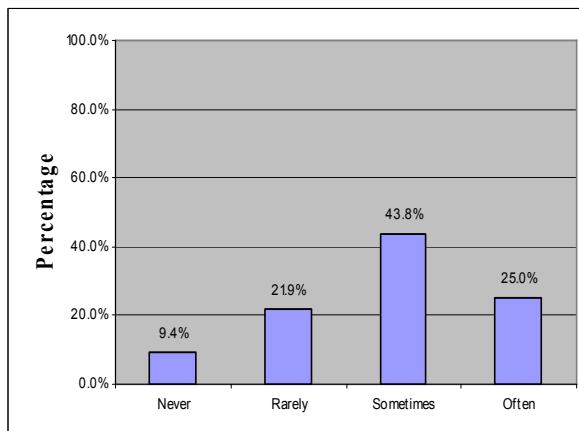
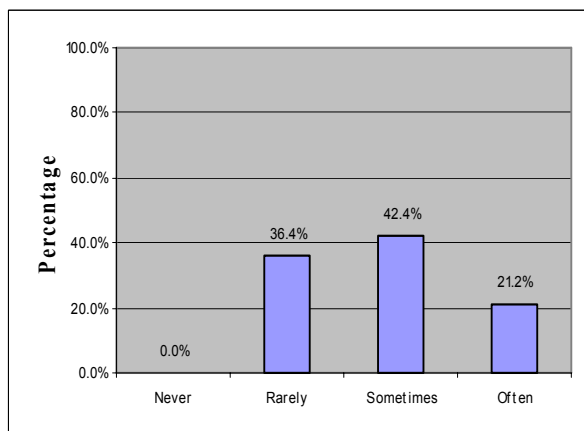
10-g. Use a streamlined process to provide immediate payment to property owner for low value property rights

10-h. Create a guidebook to assist property owners on writing an appropriate counteroffer



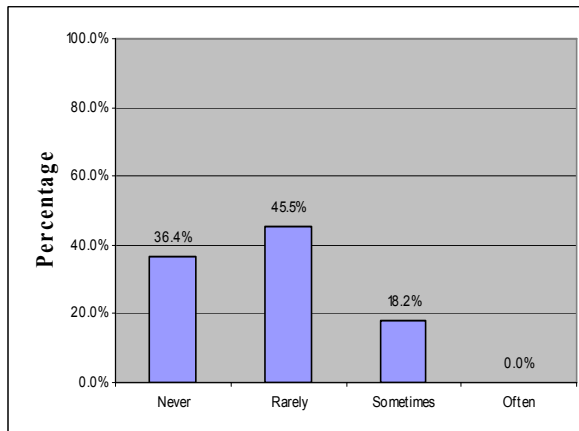
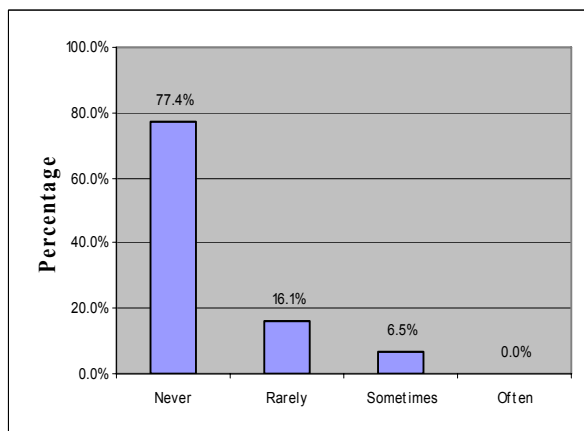
10-i. Allow more than 30 days for owners to present a counteroffer

10-j. Encourage negotiators to assist property owners on preparing and negotiating a counteroffer



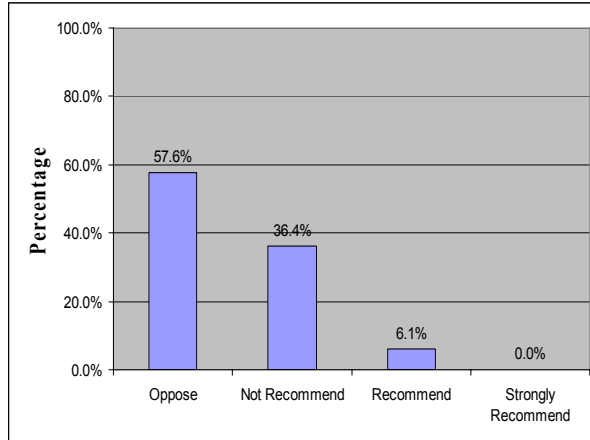
10-k. Employ land consolidation (which is when remainder parcels are purchased on either side of a new highway leaving the owner with a consolidated property)

10-l. Employ land exchange, which is exchanging previously purchased property outside the acquisition area for the needed parcel

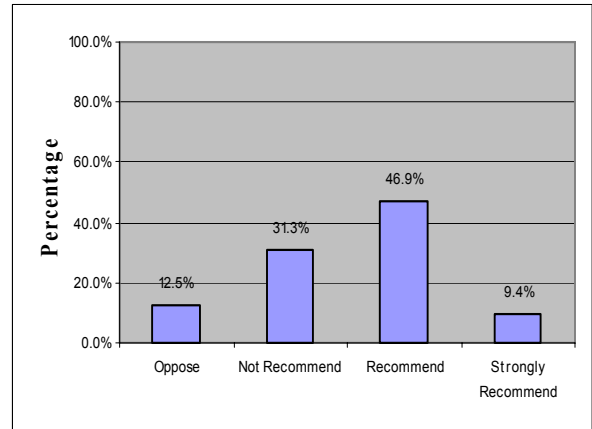


11. Please indicate if you recommend the following practices based on their effectiveness to improve the negotiation process.

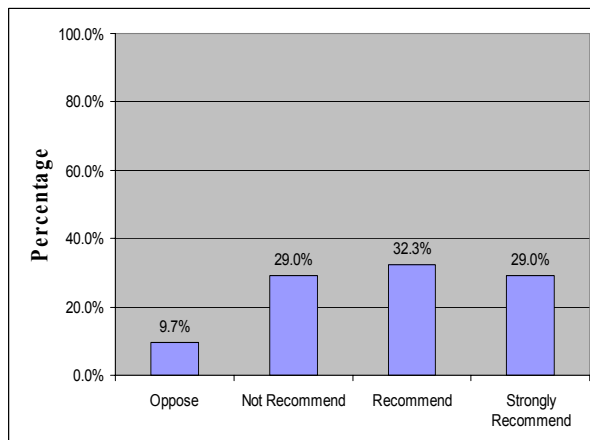
11-a. Allow the same person to perform the valuation and negotiation for any given parcel



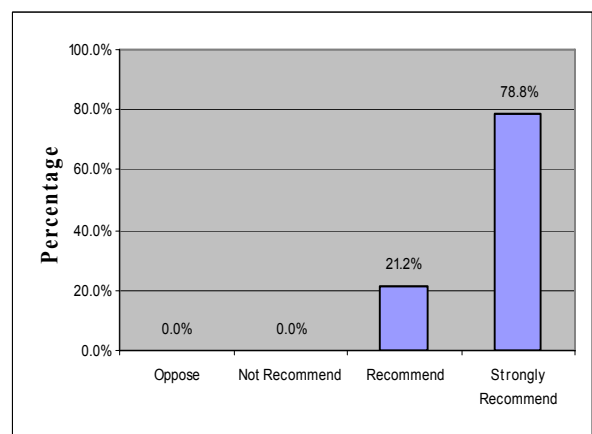
11-b. Use incentive programs for early completion of the negotiation process (e.g. incentive payments for early completion and penalty for late completion)



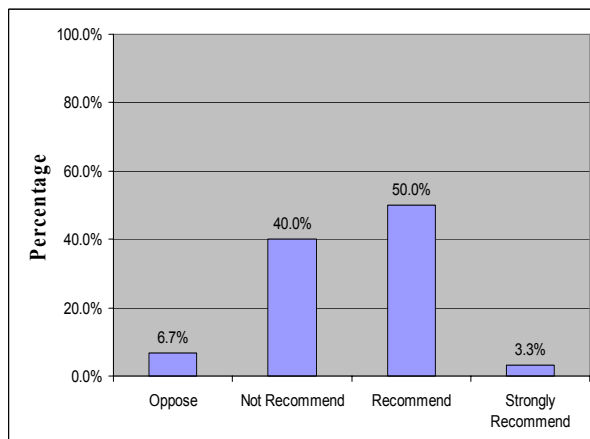
11-c. Require negotiators to meet owners prior to the beginning of the negotiation process, in order to discuss the project, the ROW acquisition process, and justification of valuation results



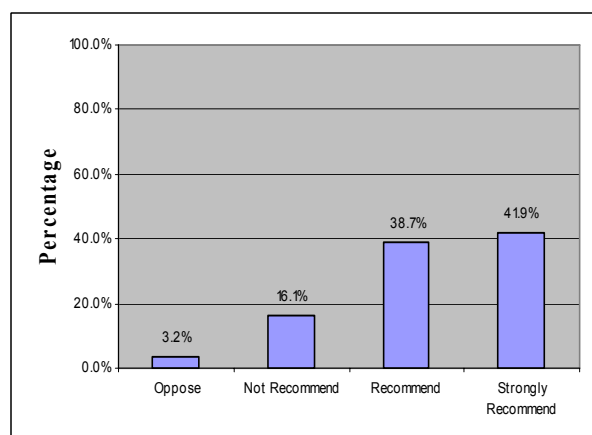
11-d. Require negotiators to present and discuss the offer in person



11-e. Use a closing manual which lists pertinent contacts, phone numbers, and directions to and inside the courthouse in order to reduce staff time at courthouse



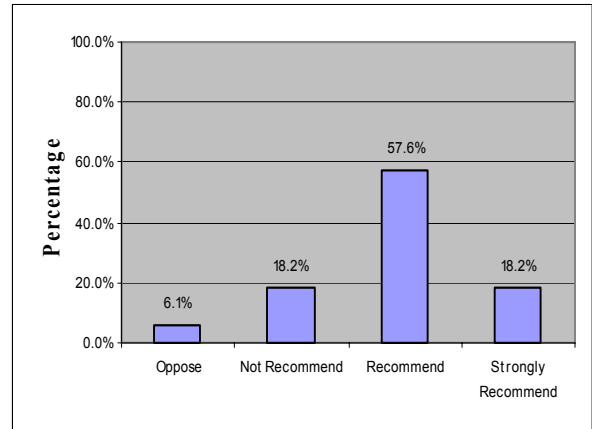
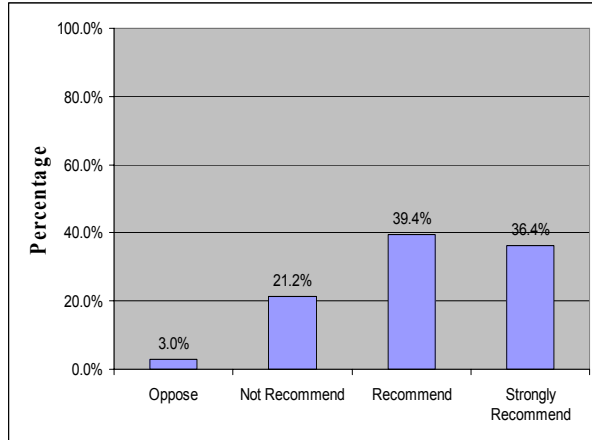
11-f. Conduct an 'open-house' event explaining the right-of-way acquisition process for a specific project to the public



11. Please indicate if you recommend the following practices based on their effectiveness to improve the negotiation process. Please check the appropriate box.

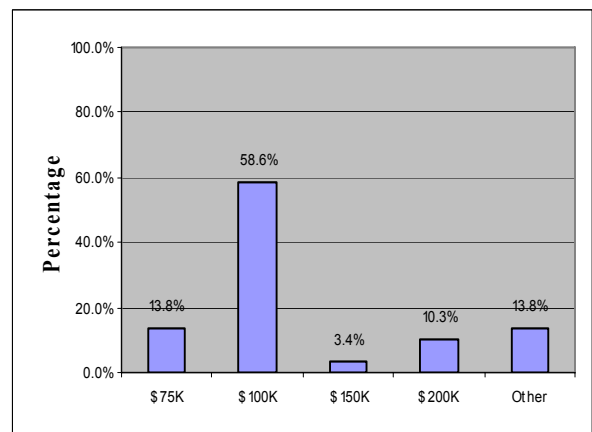
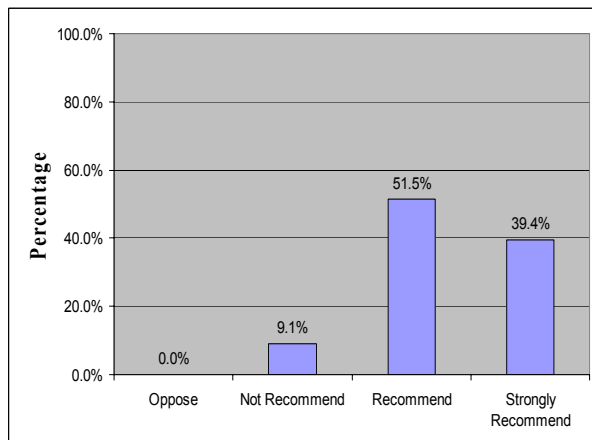
11-g. Use a streamlined process to provide immediate payment to property owner for low value property rights

11-h. Create a guidebook to assist property owners on writing an appropriate counteroffer



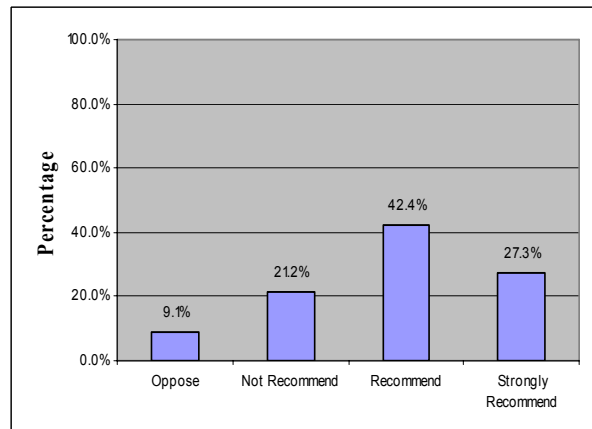
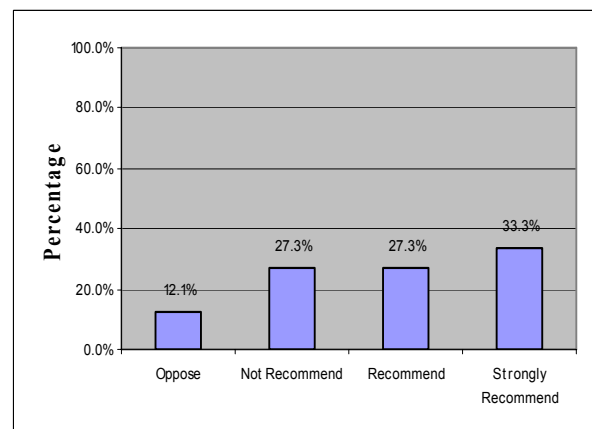
11-i. Increase the limit on the value of the property that is not subject to review by the Division office

11-i.' If you recommend or strongly recommend this practice, to what amount should the limit be increased?



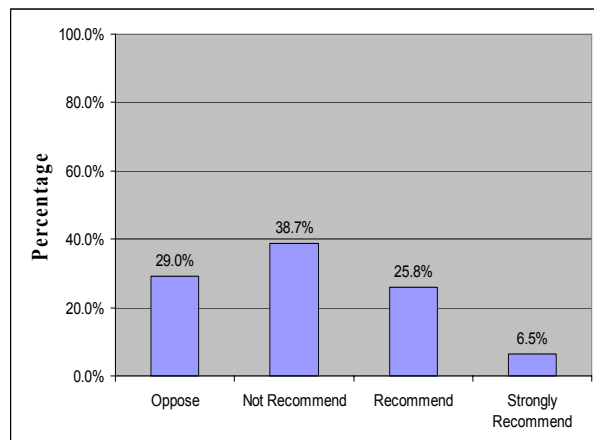
11-j. Allow more than 30 days for owners to present a counteroffer

11-k. Encourage negotiators to assist property owners on preparing and negotiating a counteroffer

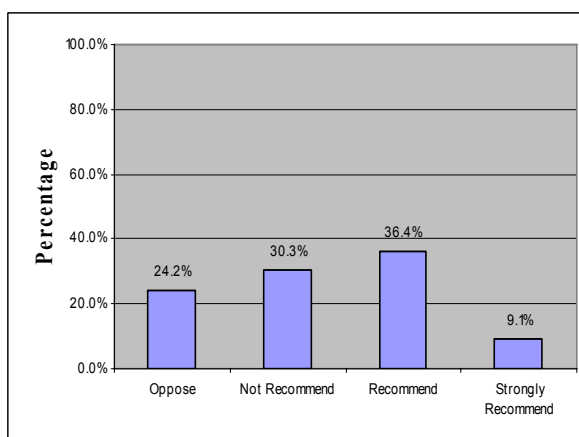


11. Please indicate if you recommend the following practices based on their effectiveness to improve the negotiation process. Please check the appropriate box.

11-l. Employ land consolidation (which is when remainder parcels are purchased on either side of a new highway leaving the owner with a consolidated property)



11-m. Employ land exchange, which is exchanging previously purchased property outside the acquisition area for the needed parcel



12. Please describe any other negotiation practices that you consider helpful and effective:

If possible, use more than one title company on a project to expedite title services. On projects located far from home district office, we had a laptop computer with small printer to instantly prepare conveyance documents for owners' signature—saved time and travel.

Having ROW agents at public meetings in the planning stages of a project to answer questions

Allow districts to approve hardship and protective buy requests since we are closer to the problem and have more of an understanding of the specific situation. I hate it when a sick elderly couple wants me to buy their home and relocate them before one dies, and I cannot get the division to approve this as a hardship.

Treating the negotiation process as a problem solving process can be effective. This can often solve or reduce the property owner's objections to an acquisition.

Finished set of plans

The counter offer has been very helpful, it provides the owner/TxDOT the ability to settle acquisition and avoid condemnation, reducing the cost of acquisition and cost of the project.

The administrative settlement process has been helpful. Best to settle dispute over small amount than go to ED.