



Landowner Handbook  
**Pipelines**  
**101**

Texas Essential Infrastructure.  
Cleaner. Stronger. Better.

**TXOGA**

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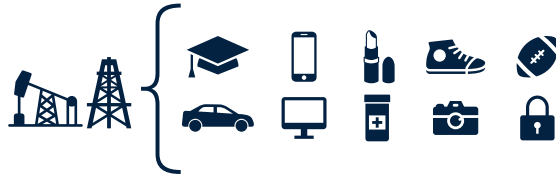
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# INTRODUCTION



For decades, Texas pipelines have safely and reliably delivered the oil, natural gas and fuels that power life. Homes, businesses, schools, agriculture, and communities large and small across Texas depend on the energy that our state’s high-tech, interconnected, secure network of pipelines transports. In fact, Texas currently has 479,798 miles of intrastate and interstate pipelines connecting Texans to their energy needs.

Texas has the ninth-largest economy in the world, sustained in large part by an energy industry that relies on robust infrastructure to deliver products, create well-paying jobs, and keep utilities affordable and reliable for all Texans. Texas is also one of the fastest growing states in the nation, and essential infrastructure is needed to meet the demands of our booming population. Every Texan relies on electric transmission lines, roads, drainage and flood control and pipelines for water, oil, natural gas and transportation fuels, and the expansion of this infrastructure is essential to the state’s continued growth and success.

Today, pipelines are smarter, more technologically advanced and safer than ever before, making them the most secure and dependable method of transporting oil, natural gas and fuel. Pipelines are also the most environmentally friendly method of moving these products, relieving traffic congestion and lowering emissions.

Pipeline infrastructure plans are reviewed and approved by many government entities before construction can begin. Regulation and oversight of pipelines are essential in ensuring compliance of safety and environmental standards. Before construction can begin, pipeline infrastructure plans are reviewed and approved by many governmental entities.

Companies and their representatives coordinate with landowners, local officials and leaders, and other interested community members many months in advance and throughout the process in order to efficiently manage expectations and guarantee transparency in communications. Well-established principles guide the eminent domain process and are designed to protect landowners while ensuring critical infrastructure projects that benefit all Texans are built.

Beyond direct compensation to landowners for right of way easements, oil and natural gas pipelines and the products they transport benefit all Texans by contributing to state and local economies.

Oil and natural gas activity across the Lone Star State generates billions of dollars annually in state and local tax revenue and state royalty revenue that fund our public schools and universities, build state and county roads, and fund our state’s savings account, known as the Rainy Day Fund. Not everyone knows that oil and natural gas are used in products we use every day such as plastics, electronics, medicines, clothing and more. Oil and natural gas infrastructure also creates jobs and supports economic growth in Texas communities.

Building the essential energy infrastructure we need is the best way to affordably and safely meet the energy demands of Texas. With our state’s abundant supply of oil and natural gas, pipelines play an integral role in ensuring these natural resources can make it from the oil fields to our communities. Home-grown Texas energy supports jobs all across our state, is cleaner and more affordable, and advances our energy security and independence.

This booklet is a guide to help you understand your rights as a landowner and the eminent domain process more fully.

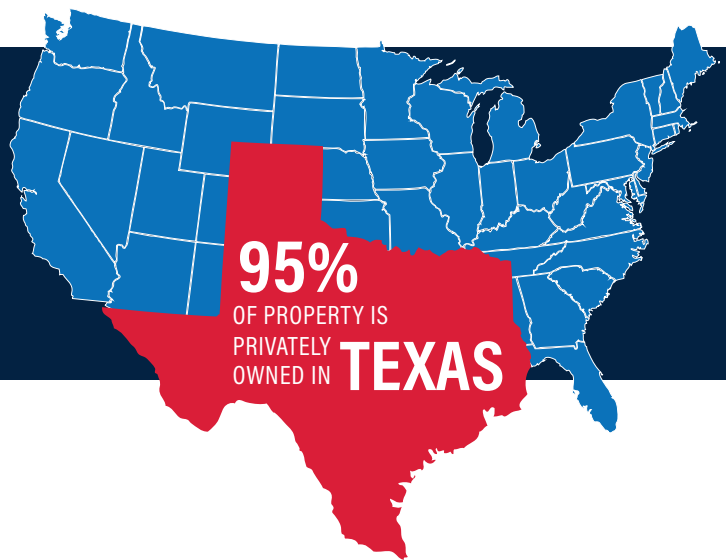
Pipeline operators have high expectations for their employees and representatives who interact with landowners and other community members. Employees and representatives are guided by the values of fairness, respect, openness, good faith negotiations, responsiveness and consistency.

- ✓ FAIRNESS
- ✓ RESPECT
- ✓ OPENNESS
- ✓ GOOD FAITH NEGOTIATIONS
- ✓ RESPONSIVENESS
- ✓ CONSISTENCY

Source: American Petroleum Institute and Association of Oil Pipe Lines

# PRIVATE PROPERTY RIGHTS AND EMINENT DOMAIN

Private property ownership in Texas is a bedrock principle. Private property ownership accounts for 95% of all land holdings in the state.



Voluntary negotiations between a landowner and a builder of a pipeline are the preferred and most frequent manner in which right of way for projects that serve the public is acquired. These voluntary negotiations generally pertain to the market price paid for the property rights necessary. This process also allows for questions to be answered from the landowner. If a voluntary agreement cannot be reached, the process of eminent domain may begin.

Just as eminent domain is used to build the roads that farmers and ranchers use to transport cotton and cattle to market, or the transmission lines that bring electricity from one part of Texas to another, pipelines use the eminent domain process to facilitate the transportation of products for public use. Texans must have water, roads, broadband internet, food, electricity, and energy, because these are products that are essential to daily life and delivered to consumers.

Private property rights and eminent domain work together to strike an appropriate balance between infrastructure for public purpose use and the protection of private property rights. For decades, landowners and public use entities have negotiated through the eminent domain process to guarantee that private property rights are respected and preserved while ensuring that needed essential infrastructure can be built. Pipelines for oil, natural gas and fuel are only one of the ways eminent domain is used to make certain the needs of a growing, thriving Texas are met through the building of essential infrastructure.

When infrastructure providers are considering a new pipeline project, they are fully committed to working alongside landowners fairly, openly and with respect. With every action, pipeline companies work to establish good relationships with landowners and communities based on honest, transparent communication regarding their work.

In Texas, the vast majority of pipeline projects obtain right of way from private property owners through open communication, cooperation and negotiations and not through the use of formal eminent domain procedures. In fact, between 2011 and 2016, over 15,000 miles of pipeline were built in Texas with over 99% of the tracts of land acquired through voluntary negotiations.

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**PRIVATE NEGOTIATION WITH LANDOWNERS IS THE PREFERRED METHOD OF ACQUIRING NECESSARY EASEMENTS OR RIGHTS TO PROPERTY FOR PUBLIC PURPOSE PROJECTS.**

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Following several years of negotiations, in 2021 the Texas Legislature passed carefully crafted, agreed-upon reforms to the eminent domain process that addressed concerns of landowners. These reforms strike the right balance between protecting private property rights while ensuring the essential infrastructure needed for a growing Texas can continue to be built, such as provisions that strengthen the Landowner Bill of Rights, require additional education and training for certified easement right-of-way agents, and provide more information for landowners earlier in the process of working with entities that are building essential infrastructure. The legislation will take effect in January 2022.

## What exactly is Eminent Domain?

Eminent domain is a process that is contained in the Texas Constitution and outlined in the Texas Natural Resources Code as the power of a state, municipality, a private person or a corporation authorized to purchase private property or certain property rights. A variety of property rights are subject to eminent domain authority actions, including air, water and land rights. Just compensation to the property owner and an undeniable proof for public necessity are both required for eminent domain authority to be granted to the purchasing entity.

# PROTECTING AND IMPROVING COMMUNITIES

## Environmental Benefits

Pipelines are the safest, most secure and most dependable method of transportation for fuel, oil and natural gas, delivering product without incident over 99.99% of the time. Pipeline infrastructure also improves our air quality and reduces traffic congestion. The creation and advancement of new technologies have made pipelines smarter and safer than ever before. The oil and natural gas industry's commitment to the environment is backed by hundreds of billions of dollars in investments and technologies that are working to improve environmental outcomes. Precision in engineering, construction, and operations, extensive monitoring, and the use of advanced inspection tools like inline smart pigs ensure the integrity of the pipe to transport products in the most environmentally secure and safest manner.

Pipeline companies' dedication to protecting and improving Texas is also exhibited through investments and philanthropic support in the communities where they operate. Donations to nonprofit organizations, backing wildlife and conservation efforts, and supporting local causes are a few of the ways pipeline operators serve as good neighbors in communities across Texas.

Companies also go to great lengths to ensure environmental, cultural and other sensitive features are protected near projects. Environmental assessments, among other

techniques, are used to comprehensively consider endangered species that could potentially be affected by projects and construction plans are designed to minimize impacts to those species. Geological assessments are conducted to ensure water is protected. Detailed professional field surveys and other studies are conducted to locate sensitive features and culturally important sites that need to be avoided during construction. The conservation and restoration of lands is of the utmost importance to companies when planning and building a pipeline project.

## Economic Benefits

Essential energy infrastructure like pipelines benefits our economy by creating thousands of jobs, keeping energy prices low, ensuring energy is reliable, and generating billions of dollars in economic benefits for state and local governments and the private sector.

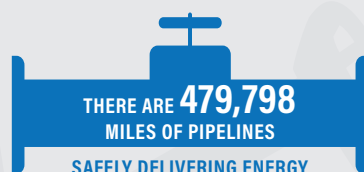
According to a study by the Texas Pipeline Association, a typical Texas county receives \$12,350 in property taxes per year for each mile of pipeline located in the county. The study also revealed the enormous economic benefits to Texas future pipeline activity will generate. Over the next 40 years, activity by the Texas pipeline industry is estimated to generate \$1.49 trillion in economic output, \$903 billion in additional gross state product, \$84 billion in state and local government revenues, and support more than 492,000 Texas jobs.

## Pipelines by the Numbers



IN THE UNITED STATES WITH CAPACITY TO TRANSPORT ENERGY FAR BEYOND ANY OTHER MODE OF TRANSPORTATION.

Source: PHMSA



SAFELY DELIVERING ENERGY ACROSS TEXAS.

Source: RRC

PIPELINES DELIVER PRODUCT WITHOUT INCIDENT



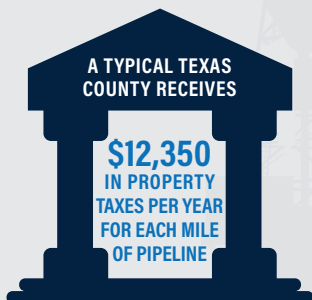
Source: AOPL

IT IS ESTIMATED THAT A 20-INCH PIPELINE RUNNING 50 MILES CAN REPLACE



**1,650 TANKER TRUCKS.**

Source: Texas Pipeline Association



Source: Texas Pipeline Association

FROM 2020 TO 2060, THE TEXAS PIPELINE INDUSTRY WILL GENERATE

**\$1.49 TRILLION** IN ECONOMIC OUTPUT



Source: Texas Pipeline Association

AND



THE TEXAS PIPELINE INDUSTRY WILL SUPPORT



**492,000** JOBS OVER THE NEXT 40 YEARS

Source: Texas Pipeline Association

# PIPELINE REGULATION AND OVERSIGHT

Texas has vigorous, comprehensive regulations in place for all aspects of oil and natural gas activity from drilling and production to pipelines and refining. Not surprisingly, Texas' approach to energy regulation has become the national and global standard bearer because the state's regulations protect the environment and promote responsible production of our state's natural resources. This reinforces that we do not live in an either/or world where we must choose between energy and the environment. We can produce more energy, grow our economy and continue to improve the environment.

Pipelines are regulated by a number of state and federal regulatory agencies, from the permitting process, to the construction process, and throughout the life of the pipeline.

## Depending on the project, pipeline operators must secure approvals or permits from the following federal agencies or bureaus:

- Department of Transportation
- Department of Interior
- National Park Service
- Fish and Wildlife Service
- Bureau of Indian Affairs
- Bureau of Land Management
- Advisory Council on Historic Preservation
- U.S. Army Corps of Engineers
- Environmental Protection Agency
- U.S. Forest Service
- National Marine Fisheries Service
- Federal Energy Regulatory Commission
- Pipeline and Hazard Materials Safety Administration

## In addition to federal oversight, the following state agencies have a hand in regulating pipelines in Texas:

- Railroad Commission of Texas
- Texas Commission on Environmental Quality
- General Land Office
- University Lands
- Texas Historical Commission

## An interstate natural gas pipeline must comply with the following laws, when applicable:

- Natural Gas Act
- National Environmental Policy Act
- Clean Water Act
- Clean Air Act
- Endangered Species Act
- National Historic Preservation Act
- Rivers and Harbors Act
- Coastal Zone Management Act

# LANDOWNER'S BILL OF RIGHTS



## What is the Landowner's Bill of Rights?

The Landowner's Bill of Rights (LOBR) was created at the direction of the Texas Legislature to help guide landowners with information regarding the land acquired by a government or private entity in Texas.

## Why do landowners receive the Landowner's Bill of Rights?

Infrastructure providers most often acquire property or easements for public purpose projects through voluntary transactions with landowners. However, they must provide landowners with the Landowner's Bill of Rights (LOBR) to help explain the eminent domain process, should the power of eminent domain need to be exercised to complete the project to benefit the public. Condemnation of property is discussed in the LOBR, but it is not the ultimate goal of entities.

A key provision in both the Texas and U.S. Constitutions that is emphasized in the LOBR is the requirement that privately held land cannot be taken without just compensation. The U.S. was founded under the firm understanding that private property rights and the principle of eminent domain is intended to strike an appropriate balance between public interest commonly held and the protection of those private property rights.

The following four pages contain the State of Texas Landowner's Bill of Rights produced by the Attorney General of Texas. It can be found on their website at [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov).



THE STATE OF TEXAS

# LANDOWNER'S BILL OF RIGHTS

This Landowner's Bill of Rights applies to any attempt to condemn your property. The contents of this Bill of Rights are set out by the Texas Legislature in Texas Government Code section 402.031 and chapter 21 of the Texas Property Code. Any entity exercising eminent domain authority must provide a copy of this Bill of Rights to you.

1. You are entitled to receive adequate compensation if your property is condemned.
2. Your property can only be condemned for a public use.
3. Your property can only be condemned by a governmental entity or private entity authorized by law to do so.
4. The entity that wants to acquire your property must notify you that it intends to condemn your property.
5. The entity proposing to acquire your property must provide you with a written appraisal from a certified appraiser detailing the adequate compensation you are owed for your property.
6. The condemning entity must make a bona fide offer to buy the property before it files a lawsuit to condemn the property—meaning the condemning entity must make a good faith offer that conforms with chapter 21 of the Texas Property Code.
7. You may hire an appraiser or other professional to determine the value of your property or to assist you in any condemnation proceeding.
8. You may hire an attorney to negotiate with the condemning entity and to represent you in any legal proceedings involving the condemnation.
9. Before your property is condemned, you are entitled to a hearing before a court-appointed panel of three special commissioners. The special commissioners must determine the amount of compensation the condemning entity owes for condemning your property. The commissioners must also determine what compensation, if any, you are entitled to receive for any reduction in value of your remaining property.
10. If you are unsatisfied with the compensation awarded by the special commissioners, or if you question whether the condemnation of your property was proper, you have the right to a trial by a judge or jury. You may also appeal the trial court's judgment if you are unsatisfied with the result.



PREPARED BY THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS





# CONDEMNATION PROCEDURE

Eminent domain is the legal authority certain governmental and private entities have to condemn private property for public use in exchange for adequate compensation. Only entities authorized by law to do so may condemn private property. Private property can include land and certain improvements that are on that property.

## WHO CAN I HIRE TO HELP ME?

You can hire an appraiser or real estate professional to help you determine the value of your property as well as an attorney to negotiate with a condemning entity or to represent you during condemnation proceedings.

## WHAT QUALIFIES AS A PUBLIC PURPOSE OR USE?

Your property may be condemned only for a purpose or use that serves the general public. This could include building or expanding roadways, public utilities, parks, universities, and other infrastructure serving the public. Texas law does not allow condemning authorities to exercise eminent domain for tax revenue or economic development.



## WHAT IS ADEQUATE COMPENSATION?

Adequate compensation typically means the market value of the property being condemned. It could also include certain damages if your remaining property's market value is diminished by the condemnation or the public purpose for which it is being condemned.

## OTHER THAN ADEQUATE COMPENSATION, WHAT OTHER COMPENSATION COULD I BE OWED?

If you are displaced from your residence or place of business, you may be entitled to reimbursement for reasonable expenses incurred while moving to a new site. However, reimbursement costs may not be available if those expenses are recoverable under another law. Also, reimbursement costs are capped at the market value of the property.

## WHAT DOES A CONDEMNOR HAVE TO DO BEFORE CONDEMNING MY PROPERTY?

- ◆ Provide you a copy of this Landowner's Bill of Rights before, or at the same time as, the entity first represents that it possesses eminent domain authority. It is also required to send this Landowner's Bill of Rights to the last known address of the person listed as the property owner on the most recent tax roll.
- ◆ Make a bona fide offer to purchase the property. A bona fide offer includes an initial written offer as well as a final written offer. This process is described more fully in chapter 21 of the Texas Property Code.
- ◆ Disclose any appraisal reports. When making its initial offer, the condemning entity must share its appraisal reports that relate to the property from the past 10 years. You have the right to discuss the offer with others and to either accept or reject the offer made by the condemning entity.
- ◆ Make a final offer 30 or more days after the initial bona fide offer. The offered compensation must equal or exceed the amount listed in a written, certified appraisal provided to you. The final offer must also provide copies of the instrument conveying the property rights sought (such as the deed transferring title or the easement spelling out the easement rights) and the Landowner's Bill of Rights (if not provided previously). The condemnor must give you at least 14 days to consider the final offer before filing a lawsuit to condemn your property.

## WHAT IF I DO NOT ACCEPT AN OFFER BY THE CONDEMNING AUTHORITY?

The condemnor can start the legal condemnation process by filing a lawsuit to acquire your property in the appropriate court of the county where the property is located.

## WHAT DOES THE CONDEMNOR HAVE TO INCLUDE IN THE LAWSUIT FILED WITH THE COURT?

The lawsuit must describe the property being condemned and state the following: the public use; your name; that you and the condemning entity were unable to agree on the value of the property; that the condemning entity gave you the Landowner's Bill of Rights; and that the condemning entity made a bona fide offer to voluntarily purchase the property from you.

## SPECIAL COMMISSIONERS' HEARING AND AWARD

After the condemning entity files a condemnation lawsuit in court, the judge will appoint three local landowners to serve as special commissioners. The special commissioners are required to schedule a condemnation hearing at the earliest practical time and place and to give you written notice of the hearing.

### WHAT DO THE SPECIAL COMMISSIONERS DO?

The special commissioners' role is to determine what is adequate compensation for your property. After hearing evidence from all interested parties, the special commissioners will determine the amount of money that is adequate compensation and file their written decision, known as an "Award," in the court with notice to all parties. Once the Award is filed, the condemning entity may take possession of the property being condemned, even if one or more parties object to the Award of the special commissioners.

### ARE THERE LIMITATIONS ON WHAT THE SPECIAL COMMISSIONERS CAN DO?

Yes. The special commissioners are tasked only with determining monetary compensation for the value of the property condemned and the value of any damages to the remaining property. They do not decide whether the condemnation is necessary or if the public use is proper. Further, the special commissioners do not have the power to alter the terms of an easement, reduce the size of the land acquired, or say what access will be allowed to the property during or after the condemnation. The special commissioners also cannot determine who should receive what portion of the compensation they award. Essentially, the special commissioners are empowered only to say how much money the condemnor should pay for the land or rights being acquired.

### WHO CAN BE A SPECIAL COMMISSIONER? CAN I OBJECT TO THEM?

Special commissioners must be landowners and residents in the county where the condemnation proceeding is filed, and they must take an oath to assess the amount of adequate compensation fairly, impartially, and according to the law. The judge will give you a reasonable period to object to, or strike, one of the special commissioners. If a commissioner is struck, the judge will appoint a replacement.

### WHAT WILL HAPPEN AT THE SPECIAL COMMISSIONERS' HEARING?

The special commissioners will consider any evidence (such as appraisal reports and witness testimony) on the value of your condemned property, the damages or value added to remaining property that is not being condemned, and the condemning entity's proposed use of the property.

### WHAT ARE MY RIGHTS AT THE SPECIAL COMMISSIONERS' HEARING?

You have the right to appear or not appear at the hearing. If you do appear, you can question witnesses or offer your own evidence on the value of the property. If you intend to use appraisal reports to support your claim about adequate compensation, you must provide them to the condemning entity 10 days after you receive them or three business days before the hearing, whichever is earlier.

### DO I HAVE TO PAY FOR THE SPECIAL COMMISSIONERS' HEARING?

If the special commissioners' award is less than or equal to the amount the condemning entity offered to pay before the proceedings began, then you may be financially responsible for the cost of the condemnation proceedings. But, if the award is more than the condemning entity offered to pay before the proceedings began, then the condemning entity will be responsible for the costs.

### WHAT DOES THE CONDEMNOR NEED TO DO TO TAKE POSSESSION OF THE PROPERTY?

Once the condemning entity either pays the amount of the award to you or deposits it into the court's registry, the entity may take possession of the property and put the property to public use. Non-governmental condemning authorities may also be required to post bonds in addition to the award amount. You have the right to withdraw funds that are deposited into the registry of the court, but when you withdraw the money, you can no longer challenge whether the eminent domain action is valid—only whether the amount of compensation is adequate.

## OBJECTING TO THE SPECIAL COMMISSIONERS' AWARD

If you, the condemning entity, or any other party is unsatisfied with the amount of the award, that party can formally object. The objection must be filed in writing with the court and is due by the first Monday following the 20th day after the clerk gives notice that the commissioners have filed their award with the court. If no party timely objects to the special commissioners' award, the court will adopt the award amount as the final compensation due and issue a final judgment in absence of objection.

### WHAT HAPPENS AFTER I OBJECT TO THE SPECIAL COMMISSIONERS' AWARD?

If a party timely objects, the court will hear the case just like other civil lawsuits. Any party who objects to the award has the

right to a trial and can elect whether to have the case decided by a judge or jury.

### WHO PAYS FOR TRIAL?

If the verdict amount at trial is greater than the amount of the special commissioners' award, the condemnor may be ordered to pay costs. If the verdict at trial is equal to or less than the amount the condemnor originally offered, you may be ordered to pay costs.

### IS THE TRIAL VERDICT THE FINAL DECISION?

Not necessarily. After trial any party may appeal the judgment entered by the court.

## DISMISSAL OF THE CONDEMNATION ACTION

A condemnation action may be dismissed by either the condemning authority itself or on a motion by the landowner.

### WHAT HAPPENS IF THE CONDEMNING AUTHORITY NO LONGER WANTS TO CONDEMN MY PROPERTY?

If a condemning entity decides it no longer needs your condemned property, it can file a motion to dismiss the condemnation proceeding. If the court grants the motion to dismiss, the case is over, and you can recover reasonable and necessary fees for attorneys, appraisers, photographers, and for other expenses up to that date.

### WHAT IF I DO NOT THINK THE CONDEMNING ENTITY HAS THE RIGHT TO CONDEMN MY PROPERTY?

You can challenge the right to condemn your property by filing a motion to dismiss the condemnation proceeding. For example, a landowner could challenge the condemning entity's claim that it seeks to condemn the property for a public use. If

the court grants the landowner's motion, the court may award the landowner reasonable and necessary fees and expenses incurred to that date.

### CAN I GET MY PROPERTY BACK IF IT IS CONDEMNED BUT NEVER PUT TO A PUBLIC USE?

You may have the right to repurchase your property if your property is acquired through eminent domain and:

- ◆ the public use for which the property was acquired is canceled before that property is put to that use,
- ◆ no actual progress is made toward the public use within 10 years, or
- ◆ the property becomes unnecessary for public use within 10 years.

The repurchase price is the price you were paid at the time of the condemnation.

## ADDITIONAL RESOURCES

For more information about the procedures, timelines, and requirements outlined in this document, see chapter 21 of the Texas Property Code. The information in this statement is intended to be a summary of the applicable portions of Texas

state law as required by HB 1495, enacted by the 80th Texas Legislature, Regular Session. This statement is not legal advice and is not a substitute for legal counsel.

# GLOSSARY OF TERMS

The following glossary includes common terms used during the eminent domain process. Though many of these terms contain highly technical and legal information, we are providing easy-to-understand definitions of these terms.

## **Adequate Compensation**

Adequate compensation – sometimes also referred to as “just compensation” – includes the market value of your property being acquired for use, as well as certain damages if your remaining property’s market value is impacted by the imposition of the easements acquired.

## **Bona Fide Offer**

An entity with eminent domain authority that wants to acquire real property for a public use must make a bona fide offer. The requirements for a bona fide offer are contained in Chapter 21 of the Texas Property Code and include, among other criteria, an initial offer made in writing, a final offer made in writing on or after the 30th day on which the initial offer was made, a written appraisal from a certified appraiser, and a copy of the Landowner’s Bill of Rights.

## **Common Carrier**

Also known as a public use pipeline, a pipeline qualifies as a common carrier if built to serve, and is available to serve, the general public, such as transporting crude to be refined into consumer goods, natural gas to be used for commercial heating and cooling, or fuel to be consumed by motorists.

## **Condemnation (or Condemnation Proceeding)**

Condemnation proceedings are used if a landowner and the entity acquiring land for public use cannot come to an agreement on the market value of the tract of land under consideration or the terms of an easement agreement, or if a landowner is unlocatable after a diligent courthouse record search and public notice. The condemnation proceeding begins when a final offer is rejected, and is governed by a set of procedures including a filing of a petition in the proper court by the acquiring entity, the appointment of three disinterested property owners as special commissioners, and an informal hearing before the special commissioners. Because the hearing is informal, landowners may represent themselves and an attorney is not required for legal representation. Following the informal hearing, the special commissioners will render a decision as to the amount of compensation the condemning entity owes for the property right acquired and for the reduction in value of the landowner’s remaining property, if any. If either party is unsatisfied with the compensation awarded by the special commissioners, they have a right to a trial by a judge or jury. In Texas, non-governmental entities may only use this process if the project is for a public use.

## **Condemning Entity**

An entity with eminent domain authority.

- **Governmental Entity:** means this state, including a board, commission, department, office or other agency of Texas state government
- **Political Subdivision:** includes a county, municipality, municipal utility district, water control and improvement district, and other types of water district
- **Non-governmental entity:** means a privately held non-profit or for profit organization not classified as a “governmental entity”

## **Easement**

A legal interest in real property that conveys use of a portion of an owner’s property which allows them the right to use the land, or an area above or below it, for a specific limited purpose (such as to lay a pipeline underground.)

**Eminent Domain**

The inherent power of a governmental entity or qualifying private entity to take privately owned property, especially land, or an interest therein, and convert it to public use, subject to just compensation for the taking.

**Final Offer**

The final offer by the entity to the landowner to compensate for the tract of land needed for right of way for a public use project, such as a pipeline project. It must be made on or after the 30th day after the date on which the entity makes a written initial offer to the property owner. The entity making the offer must also provide along with the final offer 1) a copy of a written appraisal from a certified appraiser of the value of the property being acquired and the damages, if any, to any of the property owner's remaining property, 2) a copy of the deed, easement, or other instrument conveying the property sought to be acquired, 3) and a copy of the Landowner's Bill of Rights. The final offer must be equal to or greater than the amount of the written appraisal obtained by the entity, and the property owner is allowed 14 days to respond to the final offer.

**Initial Offer**

An entity with eminent domain authority that wants to acquire real property for a public use must present in writing an initial offer to the landowner, which is the price that the entity is offering to pay the landowner in order to acquire the property interest needed for the public use project.

**Market Value**

The most probable price for a specified interest in real estate that would be achieved if the property were placed on the open market for sale. Inherent in the definition is that the property would have ample exposure to market participants for a reasonable time, neither the seller or buyer are under undue duress or compulsion to enter into a specific arrangement, and that both parties are fully knowledgeable of general market conditions and the uses for which the property can be used.

**Pipeline**

A pipe or system of pipes used for the transportation of a product. Types of oil and natural gas pipelines include, but are not limited to: transmission lines, distribution lines, gathering lines, and production lines.

**Public Use**

A use which the public is entitled to share indiscriminately in as a matter of right. A use is public when the public obtains some definite right or use in the undertaking to which the property is devoted. What is important in the public-use determination is the character of the right inuring to the public, not the extent to which the public's right is exercised.

There are two aspects to the "public use" requirement. First, the condemnor must intend a use for the property that constitutes a "public use" under Texas law. Second, the condemnation must actually be necessary to advance or achieve the public use.

**Right Of Way**

A pipeline Right of Way (ROW) is a strip of land usually about 25 to 150 feet wide containing, most often, a buried pipeline. Because pipelines require regular observation, assessments, and maintenance to maintain the safety of its operations, the ROW is kept clear of trees, structures and other encroachments that might interfere with the safe operation of the pipeline and the pipeline company's access to the line.

**Right Of Way Agent**

Sometimes also called an Easement or Right of Way (ERW) agent or ROW agent, this is a person who registers with the Texas Real Estate Commission and negotiates easements on behalf of a company, government agency, or property owner for use in obtaining a right of way or easement.

**How can I tell if the company that wants to cross my land has the power of eminent domain?**

Common carrier and gas utility pipelines have the statutory right of eminent domain, according to the Texas statute. The Railroad Commission of Texas can inform you as to the reported status of a pipeline as either a gas utility or a common carrier. For information on gas utility pipelines, call the Railroad Commission's Gas Utility Audit Section at (512) 463-7022. For information on other pipelines, call the Commission's Pipeline Safety Department at (512) 463-7058.

Additionally, the Texas Comptroller of Public Accounts has an online eminent domain database for public and private entities with eminent domain authority to report specific information to the Comptroller to post. For more information, visit, <https://comptroller.texas.gov/transparency/local/eminant-domain/>

**How deep does a pipeline have to be buried?**

The top of a natural gas transmission pipeline generally is at least 30 inches (2.5 feet) below the ground's surface when installed, but that can vary depending on the size of the line, soil type and the terrain. Crude oil or refined products, such as gasoline, pipelines that are within 50 feet of a structure must be buried to a depth of 48 inches (four feet) and such pipelines must be buried when built.

**Can land with buried pipelines be used for farming and ranching?**

Following pipeline construction, the temporary right of way or easement is restored as closely as possible to its original condition so that crop production and raising livestock can safely resume on land with underground pipelines. When a pipeline is installed, farmers are compensated for use of their land and may negotiate to be paid for any losses resulting from any disruption to crop production or grazing. Depending on the terms of the easement, the acquired right of way may be eligible for continued use by the landowner such as for farming and ranching purposes.

**Will I need professional guidance for eminent domain?**

Attorneys are not required and most of the time are not needed. In Texas, the vast majority of pipeline projects obtain rights of way through open communication, cooperation and negotiations rather than through the use of condemnation. In fact, between 2011 and 2016, over 15,000 miles of pipeline were built in Texas with less than 1% of the tracts of land acquired going to a special commissioners hearing.

However, citizens are always afforded the ability to seek the services of an attorney, a real estate licensee, or a certified real estate appraiser. For more information on obtaining an attorney, contact the State Bar of Texas attorney referral service at 1-800-252-9690 or visit the State Bar website. Information on the registration of Right of Way Agents can be found on the Texas Real Estate Commission (TREC) website.

**What happens to my land during and after a pipeline is installed?**

After construction, land that was acquired as a temporary right of way is restored to make sure that the vegetation is returned as closely as possible to its original condition. Agricultural lands will be properly restored using approved restoration techniques designed to encourage full productive reuse of the agricultural lands. Land representatives will meet directly with the landowner to assess any particular issue or concern regarding the specific property for items such as crops or structures to ensure each property is addressed appropriately. Pipeline construction is typically completed in six to eight weeks.

## How do operators decide where to put a pipeline?

Pipeline companies talk to stakeholders and balance many factors that inform a route selection process. For example, operators map their routes to avoid highly populated areas, environmentally sensitive areas, habitats, and culturally significant sites. Where practicable, they try to follow existing routes and right of ways to minimize these impacts.

## What is a Right of Way and how is it determined?

A strip of land usually about 25 to 150 feet wide containing the pipeline is known as the pipeline right of way (ROW). The ROW is generally conveyed as an easement and:

- Enables the construction of the project;
- Enables workers to gain access for construction inspection, maintenance, testing, or emergencies;
- Maintains an unobstructed view for frequent aerial surveillance; and
- Identifies an area that restricts certain activities to protect the landowner and the community through which the pipeline passes, as well as where the pipeline itself is located.

## What can I expect during pipeline construction?

Crews and inspectors work closely with local communities and landowners throughout the construction process to promote safety and to minimize disruptions. The working space needed during initial construction may be temporarily wider than the permanent right of way. After the right of way is cleared and leveled, crews dig a trench or if necessary, bore under waterways, railroads or roads. Individual pieces of pipe are laid out end to end along the right of way. A hydraulic bending machine may be used to bend the pipe to fit the terrain. The pipes are welded together and inspected by x-ray. The joints are coated with anti-corrosion materials. The welded pipe is lowered into the trench and valves and other fittings are installed on the pipe. Filtered topsoil is used to pad the pipe to keep rocks from resting on it. By agreement, topsoil that was removed and stored during construction is replaced in the sequence in which it was removed and the land is recontoured. Before operating, the pipeline is pressure tested using water, and inspection tools are sent through the pipeline to ensure integrity.

## Are pipelines safe?

Pipelines are an extremely safe way to transport energy. Product delivered via pipeline has a safety arrival record of 99.99%. Safety starts with rigorous construction standards, high-quality building materials and expert engineering. Once operational, pipeline operators keep pipelines safe through consistent monitoring from control rooms, regular visual and aerial inspections, and through use of high-tech tools like smart pigs that travel inside pipelines to evaluate the pipe's integrity, detecting issues long before they become a problem.

## Who oversees pipeline safety?

Pipeline companies are responsible for the safety of pipelines, operating under a comprehensive series of regulations from construction to operation and maintenance. Federal or state pipeline inspectors evaluate whether operators are being diligent in meeting regulatory requirements, conducting proper inspections, and making necessary repairs.

The U.S. Department of Transportation's Pipelines and Hazardous Materials Safety Administration (PHMSA) issues pipeline safety regulations addressing construction, operation, and maintenance, inspects pipeline operators, and enforces against violations of pipeline safety laws and regulations. PHMSA regulates interstate and intrastate hazardous liquids transmission pipelines. PHMSA may approve certain state agencies to exercise interstate inspection authority and/or intrastate inspection and enforcement authority. States may issue regulations over intrastate pipelines if they are consistent with federal regulations. These state pipeline safety agencies are usually members of the National Association of Pipeline Safety Representatives (NAPSR).

The Railroad Commission of Texas Pipeline Safety Department works to enforce compliance with federal and state laws and regulations by pipeline operators. These regulatory responsibilities extend to operators of intrastate gathering, transmission, distribution, and master-metered systems. The Pipeline Safety department is responsible for the enforcement of damage prevention regulations involving the movement of earth (excavation) surrounding for intrastate and interstate pipeline facilities.

## What should I do if a pipeline leak occurs?

Pipeline operators have multiple ways to detect leaks, from computer-based leak detection systems to regular patrols of the pipeline right of way, and detect most pipeline leaks themselves. Pipeline control rooms monitor safety indicators like changes in pressure, flow and volume along the pipeline, using sophisticated systems with many inputs. Control room personnel are trained to shut down a pipeline at the first sign of a leak and contact emergency responders. However, you may also detect a spill in your neighborhood by using your senses of sight, smell and sound. Please report if you see, smell or hear any of the following:

- Dead discolored vegetation, that is normally green, along a pipeline right of way, or see pools of liquid not usually present along the pipeline right of way, or see a cloud of vapor or mist not usually present along the pipeline right of way;
- An unusual odor or scent of petroleum along a pipeline right of way; or
- An unusual hissing or roaring sound along a pipeline right of way.



## How do pipelines cross water bodies?

Pipelines are buried in trenches underneath rivers, lakes and other water bodies. Horizontal directional drilling can bury the pipeline 100 feet or more beneath the bottom of a waterbody, never coming into contact or close to the water itself. Pipelines can also sometimes travel along bridges or be anchored to the bottom of a water body.

## How often do pipeline incidents occur in water crossings?

In rare circumstances, flooding can wash away a portion of a riverbed leaving a pipeline exposed and susceptible to breakage. This is called scouring. A recent PHMSA study found 0.3% of pipeline incidents over the last 20 years had loss of cover at a water crossing as a contributing factor.

Actions operators take to protect water crossings include:

- Surveying crossings to determine depth of cover and identifying those prone to erosion and water channel changes – annually on priority crossings, after significant flood events; at least every 5 years all crossings are resurveyed;
- Developing metrics to determine priority crossings based on: depth of cover, channel migration & scour potential, debris potential and consequences;
- Choosing permanent mitigation action and executing according to priority ranking: Horizontal Directional Drills, new trenched crossings below scour depth, additional fill, rock drops or concrete matting and/or bank stabilization;
- Utilizing real-time monitoring programs for flood events, using resources like USGS Water Alert System where available;
- Managing pipeline integrity with in-line inspection using smart pig tools to scan for dents or other damage to pipelines; and
- Consistently monitoring pipelines for changes in pressure or flow rate with leak detection technology.

## How do pipeline operators protect the environment during a natural disaster?

Pipelines have a strong track record of safety and have not experienced widespread leaks as a result of natural disasters. Computer-aided pipeline monitoring can rapidly detect issues so that operators can quickly shut down pumps and close valves to isolate segments, if necessary, during a natural disaster.

# CONCLUSION

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“AS SOMEONE WHO HAS SPENT MUCH OF MY LIFE ADVANCING THE RIGHTS OF PROPERTY OWNERS AND HAVING BEEN A PART OF THE MOST RECENT LEGISLATIVE IMPROVEMENTS, I HIGHLY VALUE THE IMPORTANCE OF PROPERTY OWNERSHIP. PROTECTING THESE RIGHTS AND PROVIDING FOR ESSENTIAL INFRASTRUCTURE DEVELOPMENT ARE FUNDAMENTAL TO ALL TEXANS. THE SIZE AND COMPLEXITY OF THE WORLD’S NINTH LARGEST ECONOMY REQUIRE EXPANDING OUR ROAD CAPACITY, GAS, ELECTRIC, INTERNET, AND WATER UTILITIES TO DELIVER ESSENTIAL PUBLIC SERVICES TO THE STATE’S 29.1 MILLION AND GROWING RESIDENTS. JUST COMPENSATION, HONEST COMMUNICATION AND FAIR TREATMENT OF LANDOWNERS ARE PARAMOUNT TO PRESERVE PRIVATE PROPERTY OWNER RIGHTS AS NECESSARY INFRASTRUCTURE NEEDS ARE MET. MEMBERS OF THE TEXAS OIL & GAS ASSOCIATION BELIEVE ALL OPERATORS SHOULD AT MINIMUM MEET THESE BASIC STANDARDS.”

**-TODD STAPLES**

*President of the Texas Oil & Gas Association*

*Texas Agriculture Commissioner 2007-2014*

*Texas Senator 2001-2007*

*Texas Representative 1995-2001*

*Texas Real Estate Broker 1986-present*

# RESOURCES & ACKNOWLEDGMENT

**Texas Oil & Gas Association (TXOGA)**

[www.txoga.org](http://www.txoga.org)

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**American Petroleum Institute (API)**

[www.api.org](http://www.api.org)

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**Association of Oil Pipe Lines (AOPL)**

[www.aopl.org](http://www.aopl.org)

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**Texas Pipeline Association (TPA)**

[www.texaspipelines.com](http://www.texaspipelines.com)

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**Federal Energy Regulatory Commission (FERC)**

[www.ferc.gov](http://www.ferc.gov)

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**Interstate Natural Gas Association of America (INGAA)**

[www.ingaa.org](http://www.ingaa.org)

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**Pipeline 101**

[www.pipeline101.com](http://www.pipeline101.com)

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**Pipeline and Hazardous Materials Safety Administration (PHMSA)**

[www.phmsa.dot.gov](http://www.phmsa.dot.gov)

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**Railroad Commission of Texas (RRC)**

[www.rrc.state.tx.us](http://www.rrc.state.tx.us)

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**Office of the Attorney General (OAG)**

[www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov)

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**Texas Department of Agriculture (TDA)**

[www.texasagriculture.gov](http://www.texasagriculture.gov)

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**National Association of Pipeline Safety Representatives (NAPSR)**

[www.napsr.org](http://www.napsr.org)

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**U.S. Army Corps of Engineers (USACE)**

[www.usace.army.mil](http://www.usace.army.mil)

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**U.S. Department of Agriculture (USDA)**

[www.usda.gov](http://www.usda.gov)

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**U.S. Environmental Protection Agency (EPA)**

[www.epa.gov](http://www.epa.gov)

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**U.S. Fish & Wildlife Services (FWS)**

[www.fws.gov](http://www.fws.gov)

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The Texas Oil & Gas Association (TXOGA) is a statewide trade association representing every facet of the Texas oil and gas industry including small independents and major producers. Collectively, the membership of TXOGA produces in excess of 80 percent of Texas' crude oil and natural gas, operates over 80 percent of the state's refining capacity, and is responsible for the vast majority of the state's pipelines. In fiscal year 2020, the oil and natural gas industry supported more than 400,974 direct jobs and paid almost \$14 billion in state and local taxes and state royalties, funding our state's schools, roads and first responders. The mission of the Texas Oil & Gas Association is to promote a robust oil and natural gas industry and to advocate for sound, science-based policies and free-market principles.



[www.txoga.org](http://www.txoga.org)

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