

LAND LITIGATION

TEXAS LAND BROKERS NETWORK MEETING

PHILIP J. HUNDL

LANDOWNER CONDEMNATION/PARTITION ATTORNEY

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Hundl's Background –

Texas A & M

12thMKOT

B.S. – POSC

Tyson Foods –

Mexico

DU Law School – J.D.

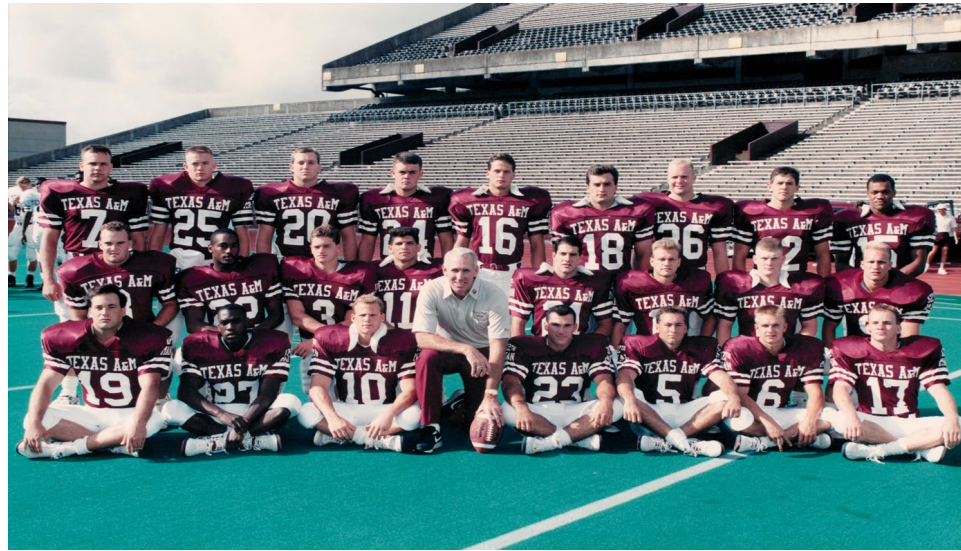
Fulbright & Jaworski

WPHK –(Law Ptnr)

Offices -

Wharton/Fort

Bend/Matagorda



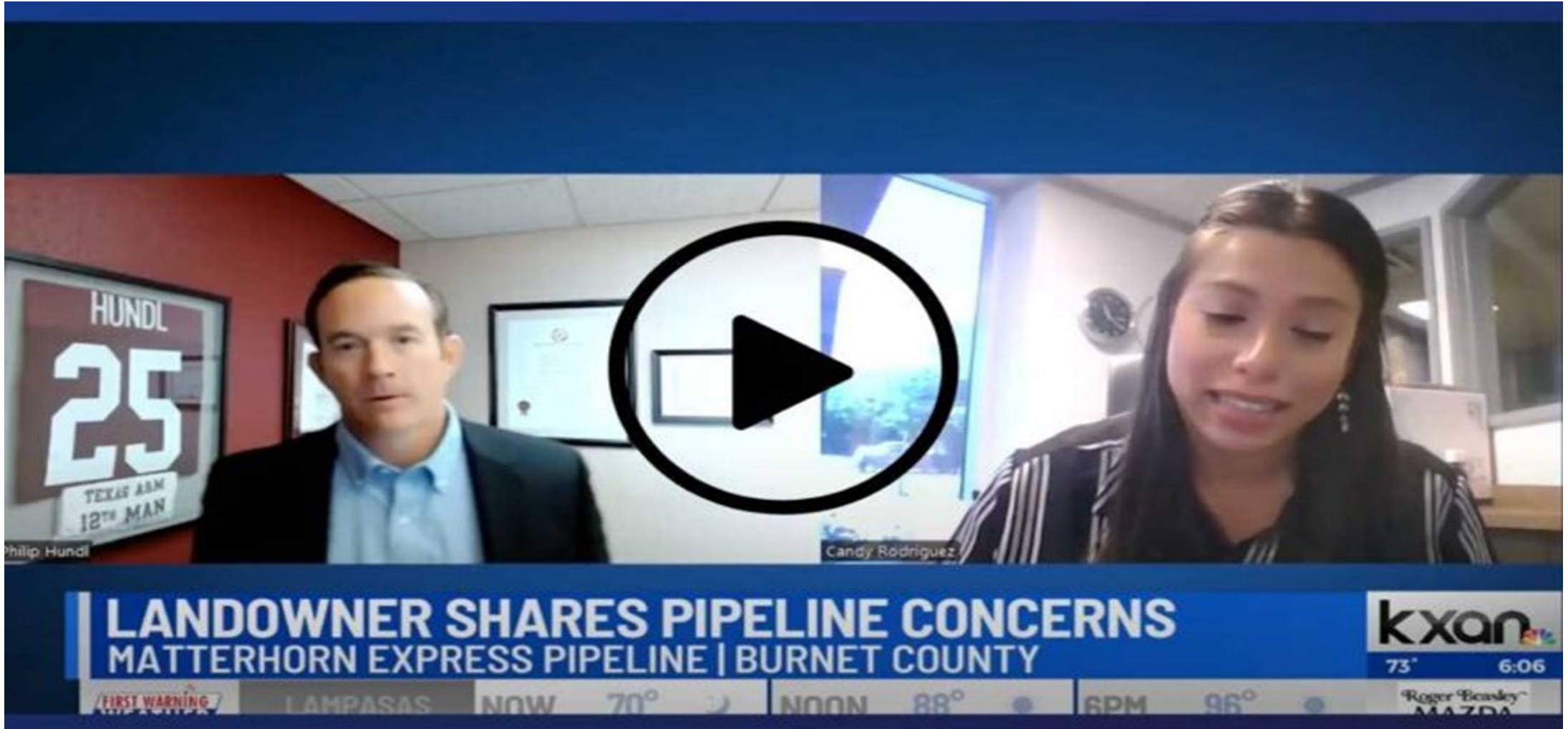
MY JOB TODAY - (AVOID CAUSING THIS REACTION!)



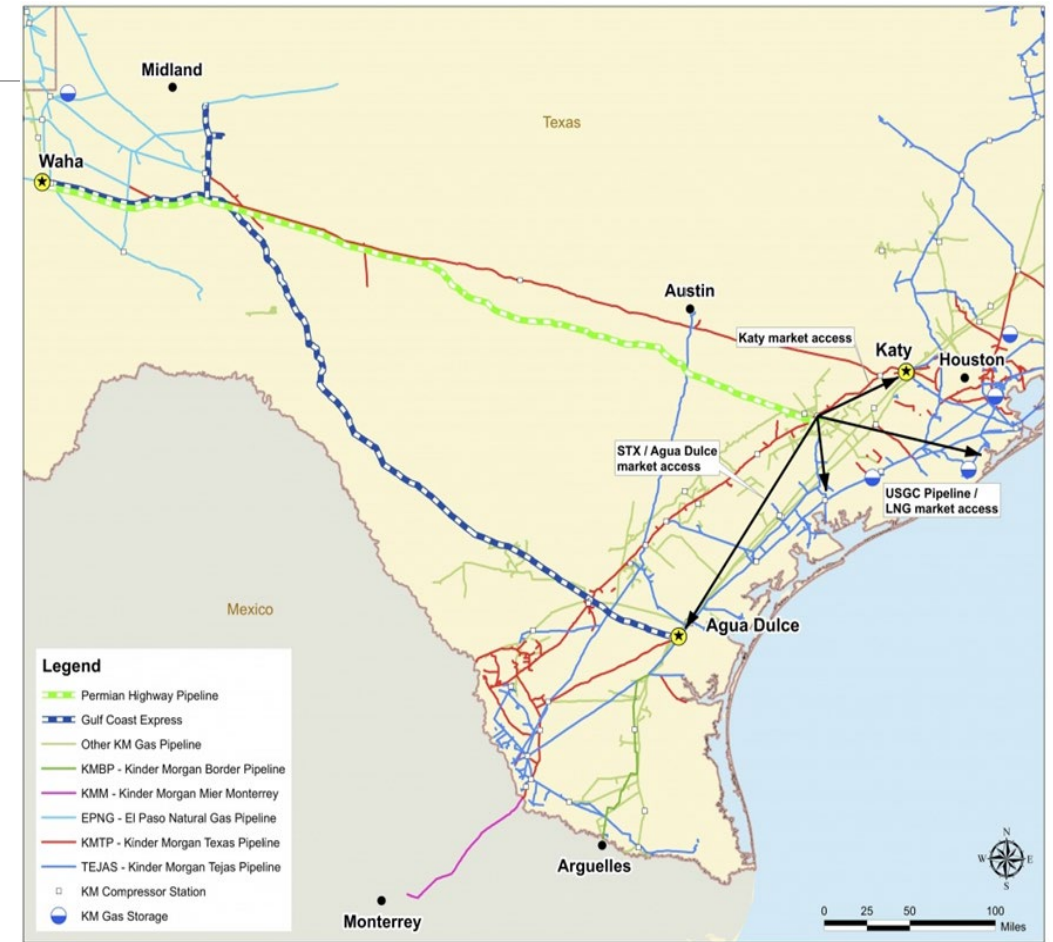
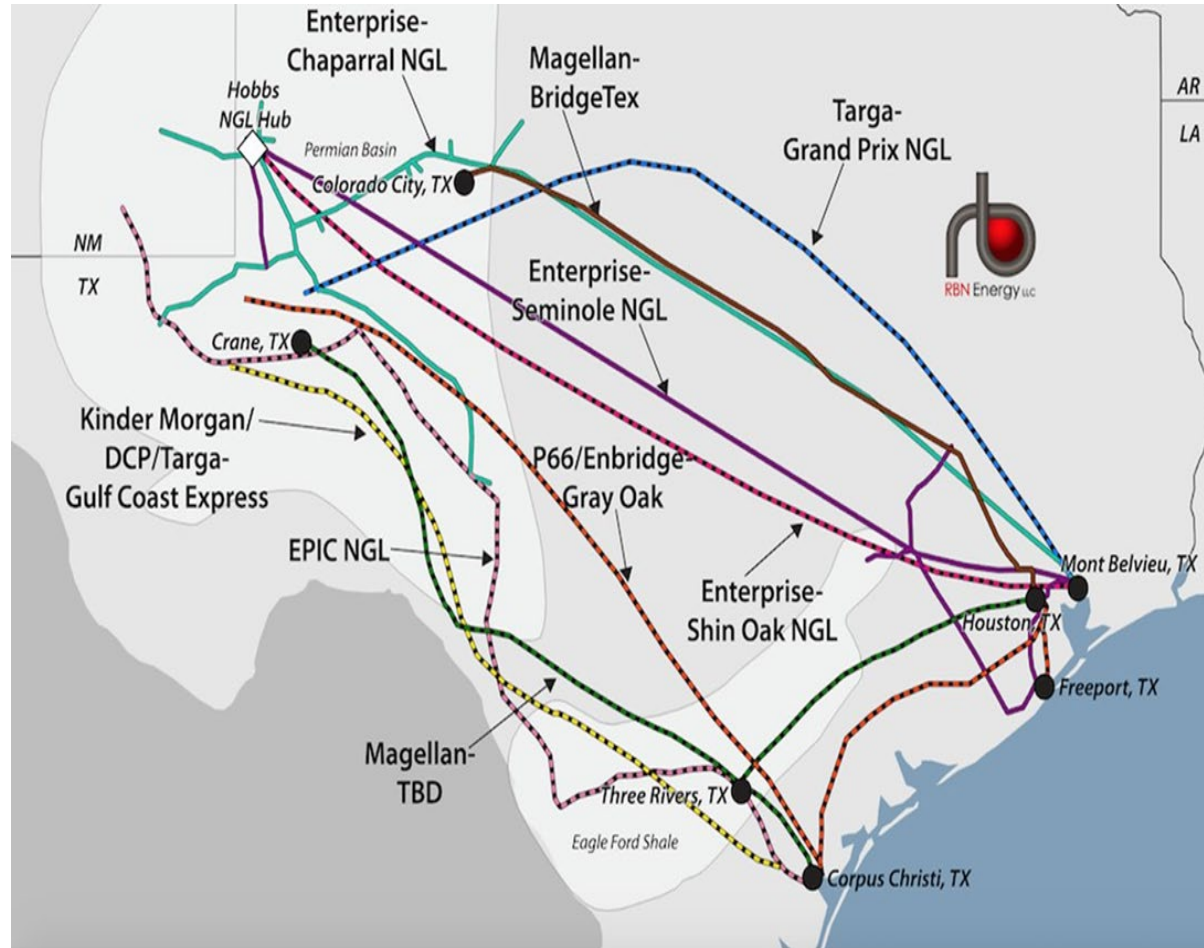
Overview

1. Condemnation / Eminent Domain
2. Partitions
3. Miscellaneous – Easements / Boundary
Line Disputes/FAQS
4. Questions

Surge in Infrastructure Projects (i.e. - Matterhorn Pipeline)



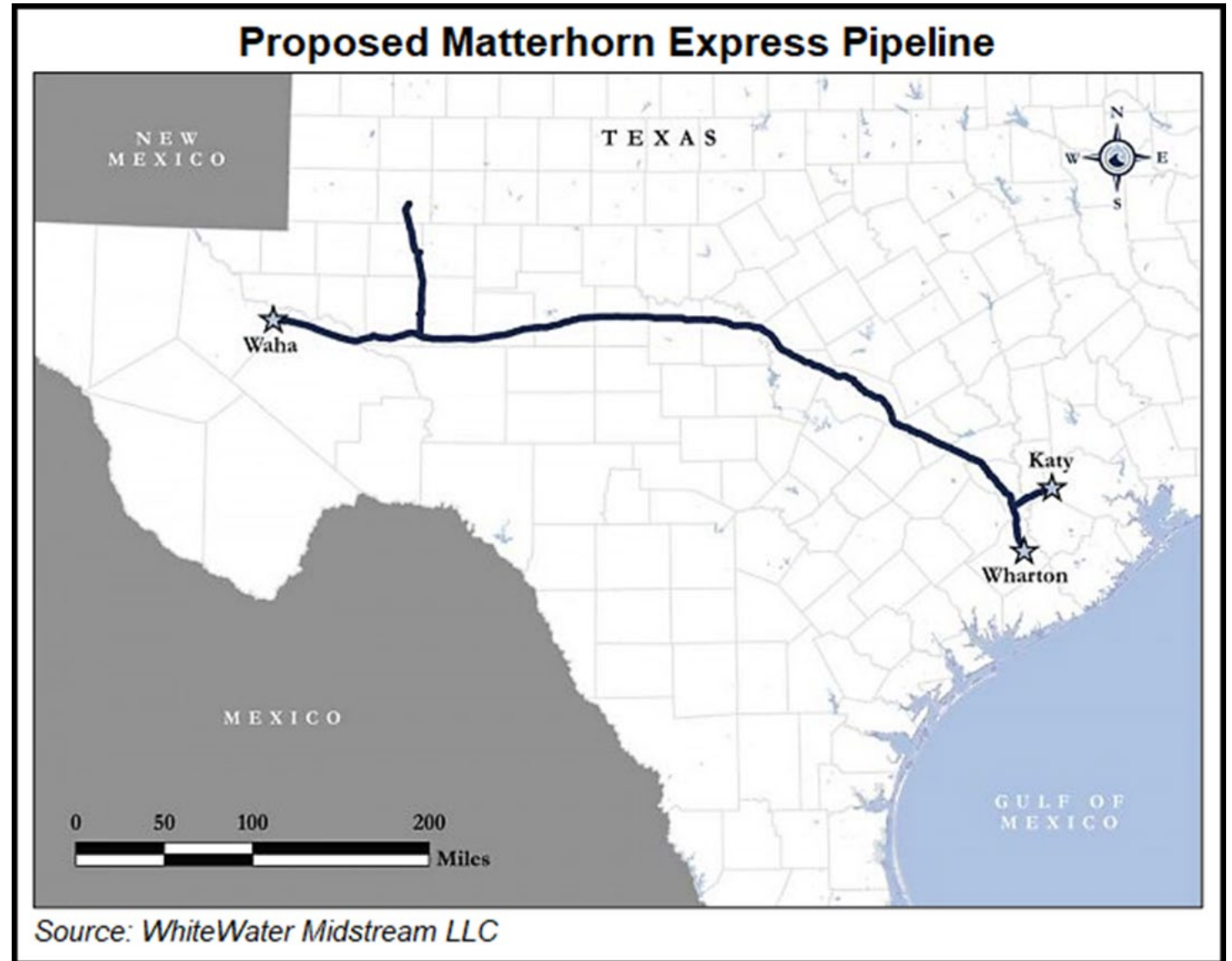
Pipeline Routes



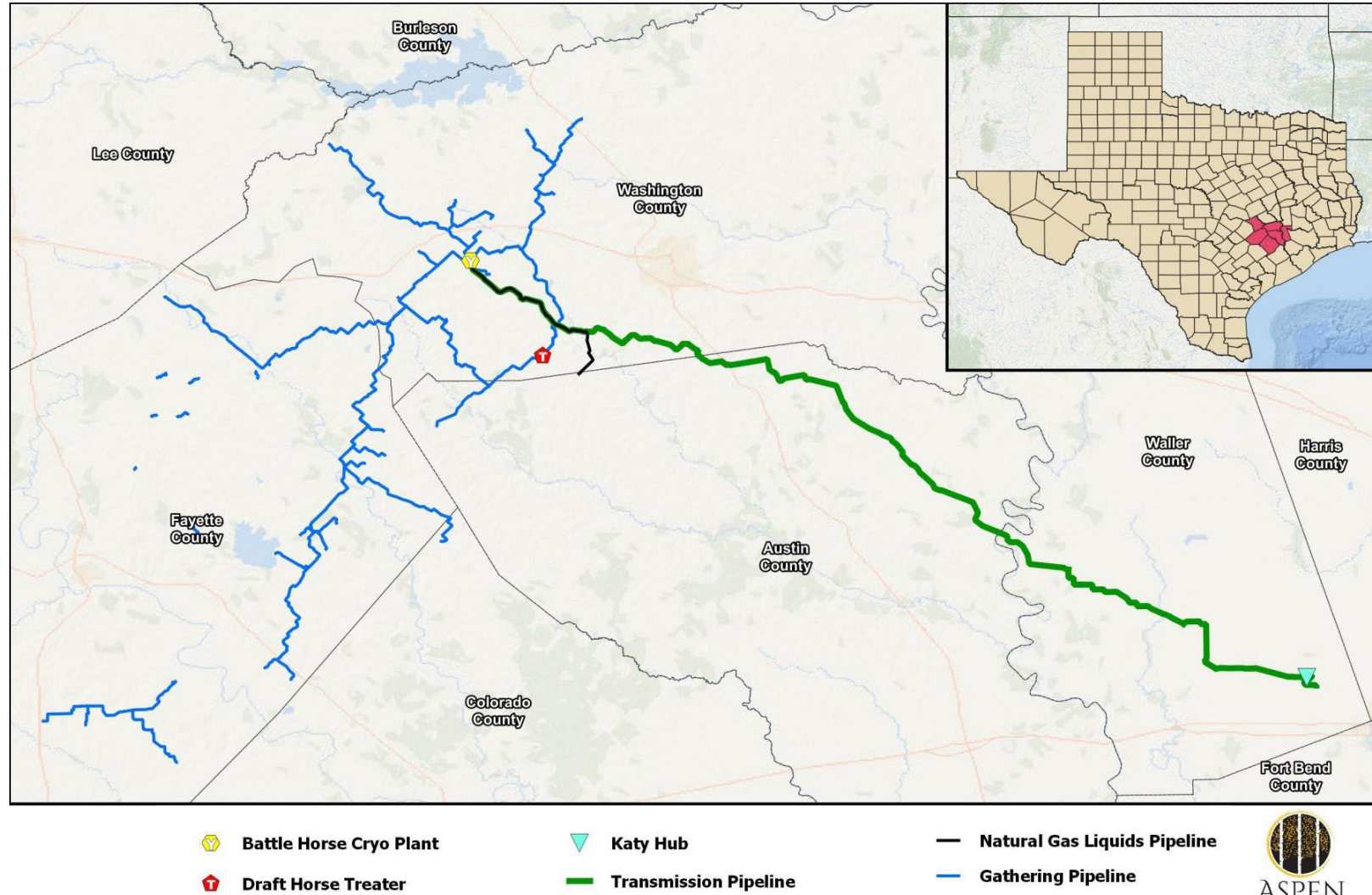
MATTERHORN – MXP ROUTE & LATERALS

410 Miles (20" – 42" Gas Line)

15 Counties



ASPEN MIDSTREAM – AMP (Austin Chalk – Washington, Fayette & Austin Counties)



Eminent Domain/Condemnation

- **Pipelines** - 30' – 75' Perm. Easements (with temp easmts, workspaces, access roads)
 - Valve Sites – (Fee Simple / Perm. Esmt)
 - Associated Power lines & Facilities
- **Highways** – TxDot (Fee Simple Takings)
- **Power Lines** - HVTL - 138kv - 345kv
- **Misc.** - Drainage, water/sewer lines



What is Condemnation?

- **Condemnation** – process by which a governmental entity (highways) or private company seizes private property for “public use”(pipeline)
- Exercises the use of **eminent domain** to acquire the property
- Power of eminent domain is usually granted by an order approving condemnation from a governmental entity
- Property owner is entitled to “Just / Fair Compensation”



Condemnation Process

1. Initial Contact by ROW Agent - Landowner's Bill of Rights
2. Initial (IOL) and Final Offer (FOL) with a 3rd Party Appraisal
3. Lawsuit – Petition for Condemnation
[Administrative Phase]
4. Special commissioners appointed (Strike by either side)
5. S C Hrg held and award of just compensation determined.
6. Either side may object to the “award”
7. If Objection filed
[Litigation Phase]
8. Civil Litigation proceeds
9. Trial by judge or jury

CONDEMNATION STEPS -

See -
txcondemnationrights.com

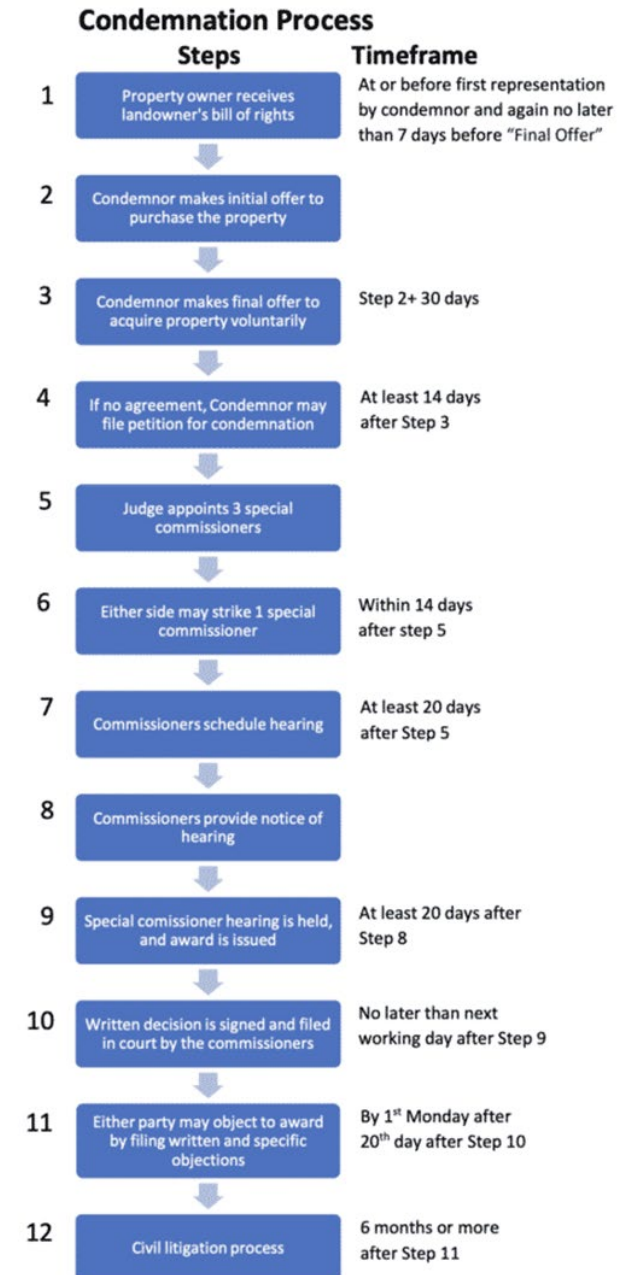
Pipelines - §

Highways

Power Lin

Misc. - C

Access roads)



Key Terms of Easements

1. TYPE OF EASEMENT – SPECIFIC VS. BLANKET
2. NON-EXCLUSIVE EASEMENT
3. EASEMENT WIDTH
4. LIMIT TO 1 PIPELINE, TYPE OF PRODUCTS TO RUN IN LINE, DIAMETER
5. DEPTH REQUIREMENT
6. SPECIFY SURFACE FACILITIES, IF, YES, > \$\$\$
7. RESERVE SURFACE USE (SPECIFY EXAMPLES OF ALLOWED USES)
8. ACCESS ROADS TO PIPELINE EASEMENT AREA
9. DOUBLE DITCHING
10. ADD DAMAGE PROVISIONS FOR EXTRA \$D
11. REQUIRE RESTORATION, SPECIFY FENCING AND ROAD REPAIRS
12. TERMINATION OF EASEMENT
13. NO ARBITRATION



Why are favorable easement terms important?

**SPECIAL COMMISSIONERS / JUDGE/ JURY –
DON'T DECIDE OR NEGOTIATE SPECIFIC EASEMENT TERMS**

**IF NO AGREEMENT IS REACHED, PIPELINE COMPANY'S EASEMENT
TERMS IN PETITION APPLY ! ! !**

Damage Calculations

VALUE OF LAND IF USED FOR ITS HIGHEST AND BEST USE

VALUE OF PART TAKEN (PERMT. EASMT) (% - FULL VALUE)
+ DAMAGE TO THE REMAINDER (EFFECT ON REST)
+ COST TO CURE
= TOTAL DAMAGES

*(**ADDITIONAL DAMAGES FOR ACCESS ROADS & TEMP. EASEMENTS,
COST TO CURE OR LOSS OF PRODUCTION)*

Land Broker - Notes

1. New Listing or EMC – land subject to pending/ anticipated condemnation?
2. Appointment as Special Commissioner – (Be Fair, Neutral & Evaluate the Worst-Case Scenario)
3. Address Treatment of Condemnation Proceeds in the EMC
4. TREC form – all \$\$\$ goes to Buyer.
5. Potential Buyer may want to be part of negotiations (non-monetary & monetary)

Land Partitions (Undivided Interests)

- An act of dividing up an estate (land) into proportional sections representing the interest of the different owners
- To Monetize the Land or Use it without interference from Co-owners.
- Two main types of partitions:
 1. Partition in Kind
 2. Partition by Sale



General Partition Procedure

1. 1st trial ➡ Court decides if land partitionable (in kind) and appoints special commissioners &/or surveyor
2. Report by special commissioner is issued
3. Either party may object to report within 30 days
4. 2nd trial ➡ Determines whether a fair division was made
5. If report set aside, partition starts over (3 new Spec. Coms.)
6. If upheld by Court, “loser” can appeal.

Heirs Property vs. Non-Heirs Property?

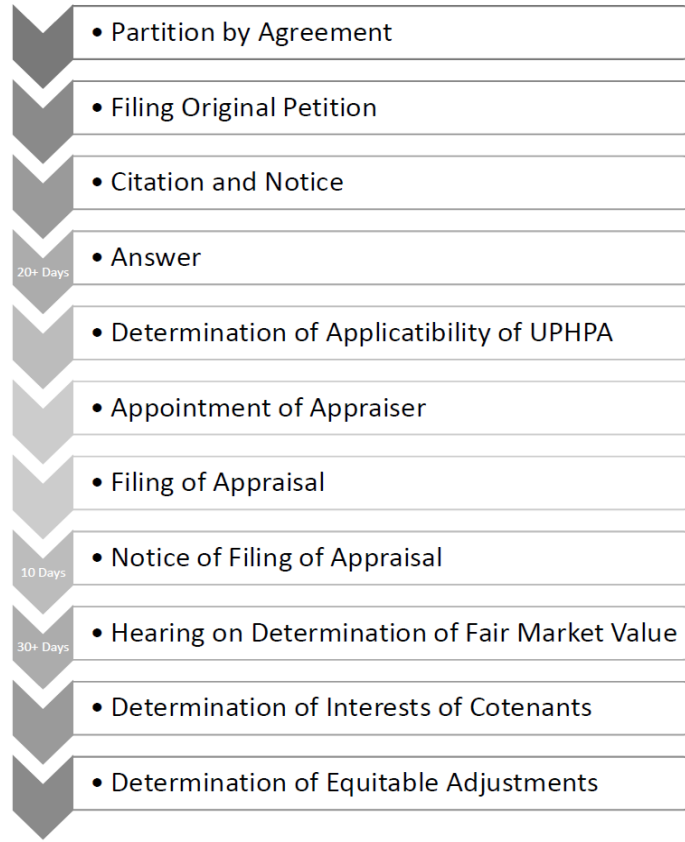
- Chapter 23A - If at least 20% undivided interest held by related persons. Texas Uniform Partition of Heirs' Property Act 2017

Chptr 23A = (more steps/more time/more expense?)

- Chapter 23 – (Original Partition Statue) Courts customarily prefer partition of kind instead of a forced sale

23A - Partition Steps

Partition - Steps and Timeline if Heirs' Property



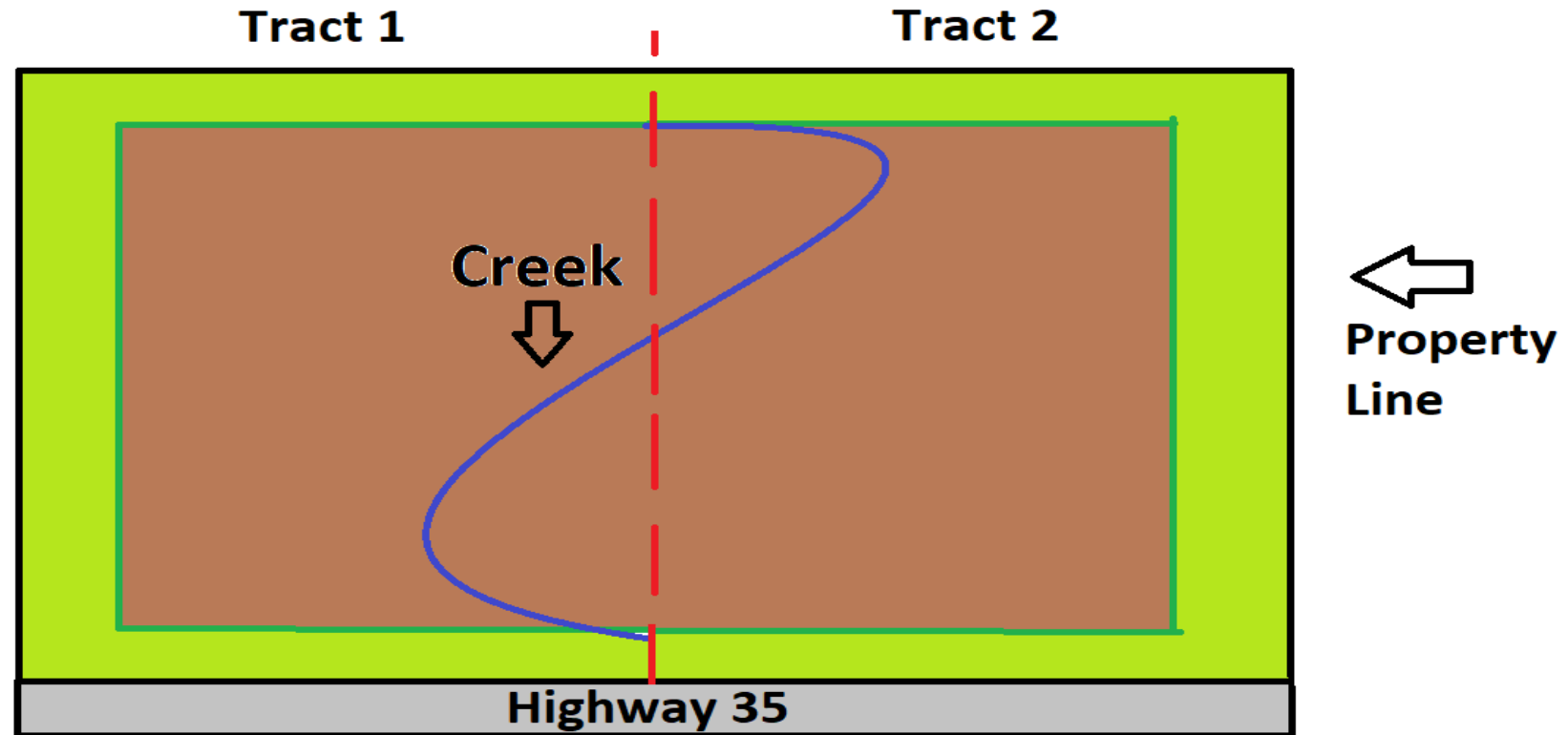
Partition in Kind (Rural Land)

- Occurs when the division provides each owner a proportionate share
- Applicable to cases where the property is easily dividable
- Can be complex since equal splits are difficult
- Courts customarily prefer partition of kind instead of a forced sale.

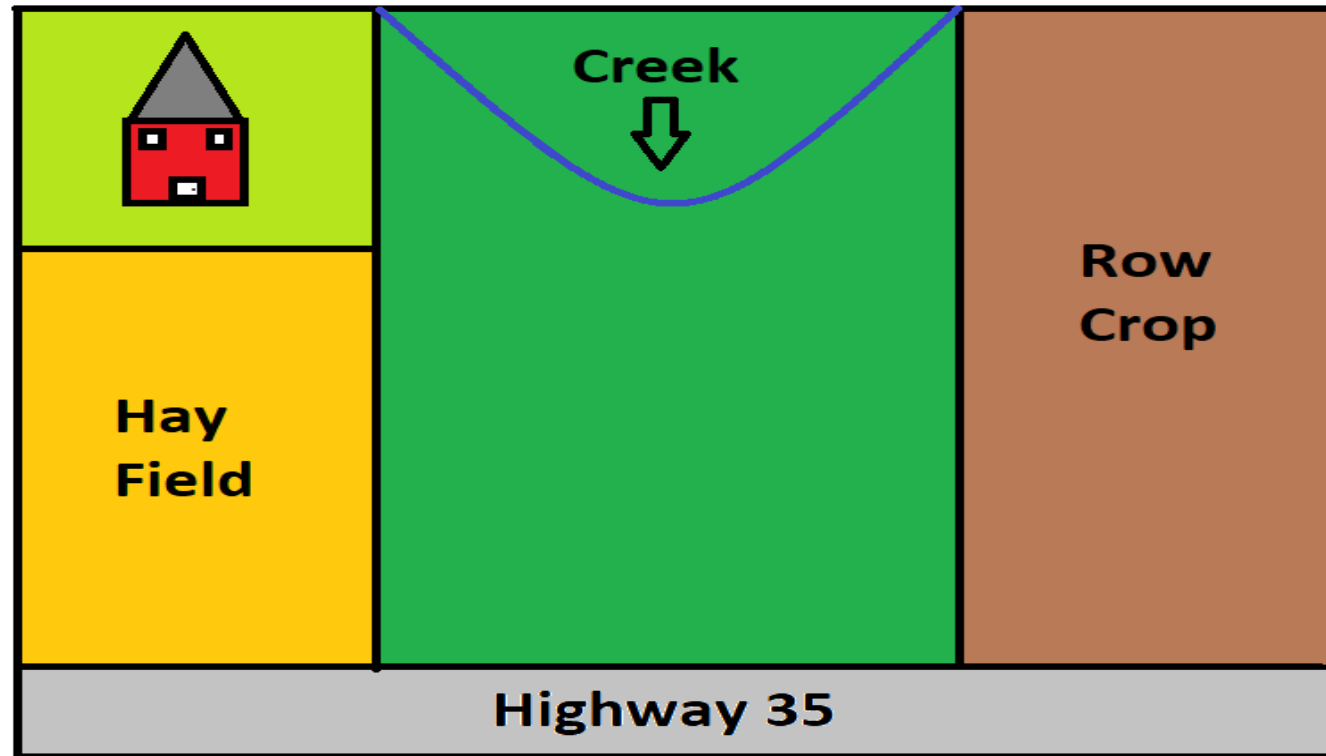
Question

If you own $\frac{1}{2}$ of 100 acres, how much do you own?

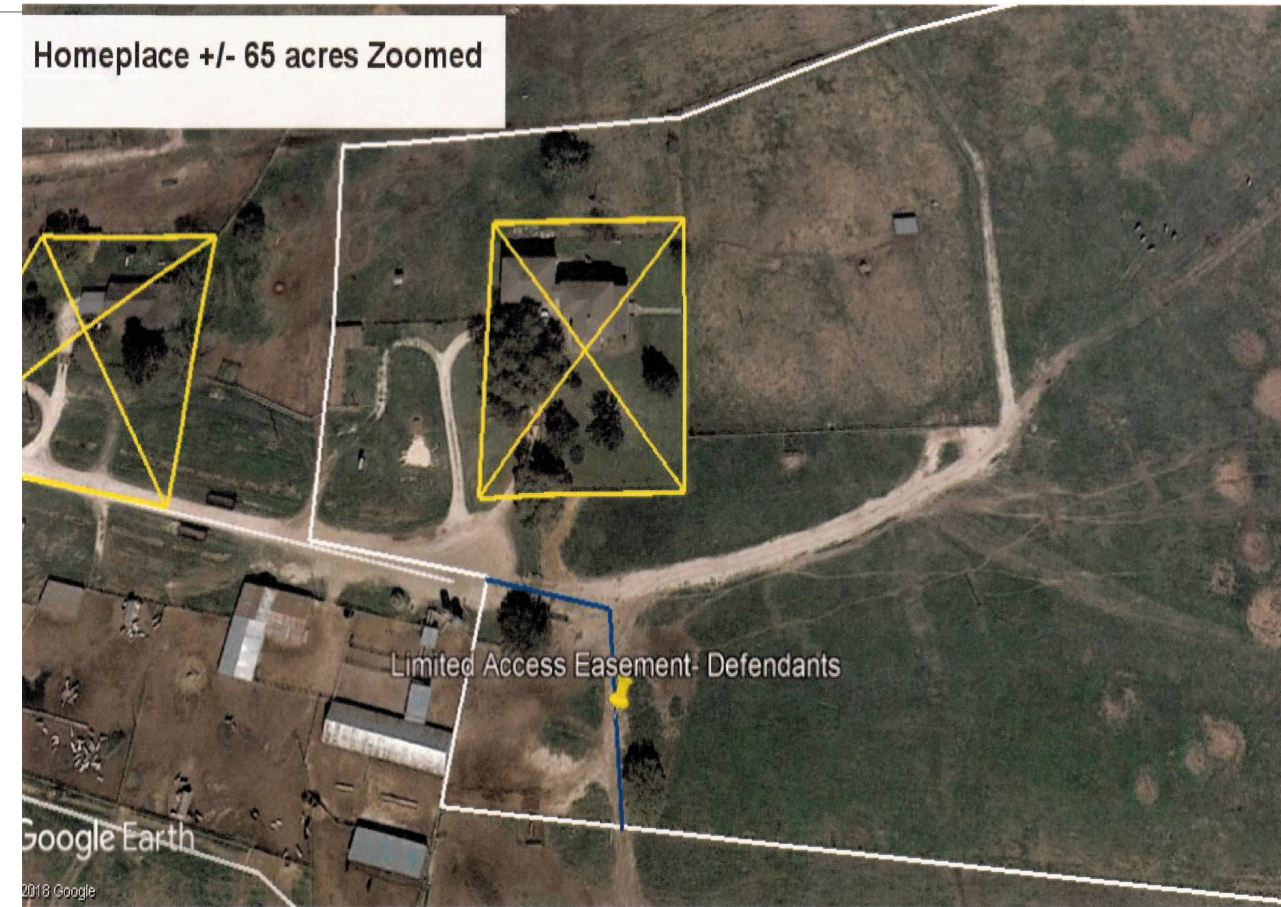
Partition in Kind = 50 Acre Tracts?



Partition in Kind = Acres? Equal Value!



Reality is Slightly Different



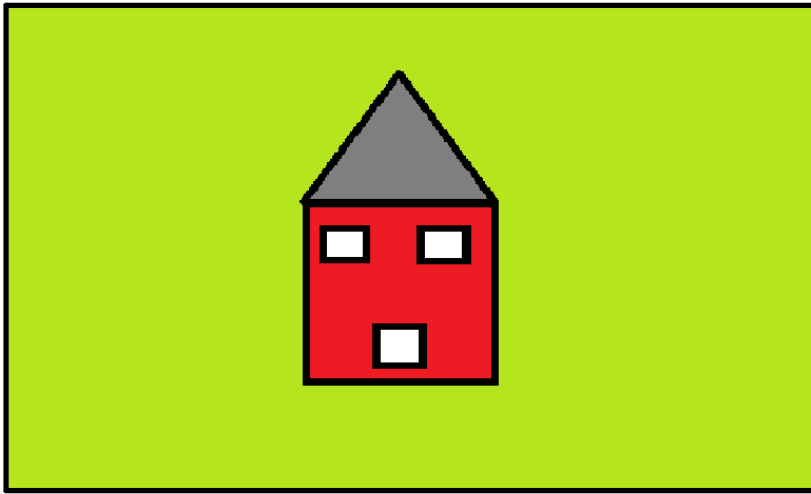
Partition by Sale (Land with House)

- Property is sold and the associated profits are split amongst the owners
- Occurs when the land cannot be physical divided

EXAMPLE - HOUSE ON A LOT

- Eliminates disputes regarding who received the better share

Partition by Sale



12
Landowners?

Land Broker - Notes for Partitions

1. Agreed Partition – Excellent !!!
Memorialize the Agreement!!!
2. Get Creative with Solutions. (Coin Flip, Dice Roll)
3. Appointment as Special Commissioner – Keep on Open Mind & Encourage Parties to Mediate or Else!
4. Appraisal for Settlement purposes only.
5. Buying Undivided Interests – Buyer Beware of the Extra \$\$\$
Lenders Aren't Fans of Undivided Interests

FAQs - Property Lines/Fences

- *Do I have the right to mark my boundary?*
- *What's the effect of an "Encroaching Fence"?*
- *How wide is a property line?*

1. If property line uncertain - get a survey.
2. If joint fence – enter written boundary agreement.
3. If not joint fence - request a temporary easement to build and maintain fence.
4. Beware of adverse possession/ouster claims (land or easement)

More – FAQs/Cautionary Tales

1. Beware - Old pipeline easements that allow for “pipelines”

Atmos Pipeline Projects – Utilizing Old Blanket Easements for New Projects

2. Landlocked Property – (Easements by Estoppel, Necessity, Prescription)
Read – *Fort Worth & Western RR v. Albert* (18th CA – 2022)
3. “Handshake” Road Use Agreements – Use vs. Maintenance vs. \$\$
4. Title Commitments – Exceptions, Timely Objections and Buyer Review.

**HOW DID I DO? (I KNOW I'M NOT JOHNNY
FOOTBALL!!)**



For More Information on Eminent Domain and Partitions:

Questions ???



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