

## **5 Property Negotiation and Acquisition**

The purpose of the Acquisition function is to ensure that owners of real property to be acquired are treated fairly, consistently and equitably; and to ensure that displaced persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public. To ensure timely and orderly acquisition of property rights in a manner that is efficient and cost effective and in accordance with 49 CFR, Part 24.

It is the policy of GDOT to acquire all property rights by negotiated settlement, when possible. Every reasonable effort should be made to negotiate amicably for the required property rights before condemnation proceedings are initiated.

The acquisition function is under the oversight of the General Office of Right of Way and is managed by three to four State Right of Way Program Managers located in 3 separate regions statewide. The three regions are as follows: Districts 1 & 7; Districts 3 & 6; and Districts 2, 4, & 5. There are District Right of Way Teams in each district who perform acquisition activities, as well as many Right of Way consultants statewide.

This chapter will contain 7 sections:

5.1) Pre-Acquisition; 5.2) Acquisition; 5.3) Other Acquisitions; 5.4) Certification; 5.5) Post Acquisition; 5.6) QAQC section; and 5.7) ROW Flow Chart

### **5.1 Pre-Acquisition**

**Project Assignment** - It is the responsibility of the General Office Acquisition Unit to ensure that Right of Way Project schedules are maintained, and that Right of Way is acquired and certified to meet effectively the established project Let date. This task is accomplished by making an orderly and timely assignment of the project and by monitoring acquisition activities on all assigned projects.

At the preliminary Field Plan Review and when Preliminary Right of Way plans are submitted for review and approval, the General Office Acquisition Unit requests project legal services from the Attorney General's Office, reviews current and projected Acquisition Team workloads, and with the concurrence of the State ROW Program Manager and District Pre-construction Engineer, makes project assignments accordingly. Consultant services may be employed if the District work load is too demanding.

Project assignments will be made on a statewide basis and not by geographical work areas; therefore, a team may be assigned a project located beyond the limits of operations of the District to which it is stationed. As stated above, project assignments are made at PFPR or when the preliminary right of way plans are received for review and approval. Once ROW plans have been completed, which is typically 3-6 months from PFPR, Pre-Acquisition activities can begin.

Once a project assignment is received and pre-acquisition activities commence, the acquiring Acquisition Manager is responsible for maintaining a current parcel-by-parcel status of all activities occurring on the project and for keeping the Right of Way Reporting System current in T-Pro. The Acquisition Manager is responsible for having the pertinent data updated on all assigned projects and entered into the system.

Pre-Acquisition Agent(s) are responsible for making sure all pre-acquisition related functions are properly conducted in an orderly and timely manner on a project. The Pre-Acquisition Agent (s) are responsible for all acquisition activities leading up to negotiations. These Agent(s) can be anyone or number of persons performing these task (Team Member(s), Acquisition Manager(s), Consultant(s), etc.)

#### Pre-Acquisition Activities:

1. Prepare detailed cost estimate. Once cost estimate is completed, make written request to have a reviewer assigned using "Request for Reviewer" form listed in the Appraisal folder.
2. Input property owner names and parcel numbers in T-Pro. The General Office will enter attorney and acquisition managers' name. Acquisition manager is responsible for entering Relocation Officer and Review Appraiser's name. Only true parcel numbers are entered into T-Pro, such as all parcels identified on the Right of Way plans, including acquired uneconomic remnants (R parcels), wetland mitigation (W parcels), wetland buffers (WB) and wetland mitigation credits (WC). Partial property interest such as a tenant's interest in parcel, a sign ownership, trade fixtures, etc. are not to be entered as a separate parcel; however, a note should be made to parcel comments.
3. The Pre-Acquisition Agent(s) is responsible for the initial set up of the displacee records for each project. This is accomplished by going to the initial Maintain ROW Relocation Status screen, highlight the parcel involved, and then click "add" to create a parcel/displacee record. This is later when the displacee chooses the moving method. Note: The General Office Relocation Specialist assigned to each project is entered on the "Edit Project ROW Information" screen.
4. Request Copy of Preliminary Field Plan Review Report from the Design Office
5. Request copy of Conceptual Stage Study from the Relocation Office, if relocation is involved on project.
6. Request copy of Environmental Impact Statement, if applicable, from Environmental Office or depending on the project, the District Preconstruction Office.

7. Create Project General File, Title Report folder, Sign folder and Right of Way Option folder.(can be electronic)
8. Meet and discuss the project with designer to become familiar with concept and purpose and request a set of the latest construction plans.
9. Request from General Office Right of Way Plan Unit a set of the right of way plans.
10. Determine who will be responsible for revisions of the right of way plans (OPD Project Manager).
11. Conduct project field review with set of right of way plans, becoming familiar with project and making note of the following:
  - a. Any changes or omissions in topography or new development, which will need to be shown on the Plans.
  - b. All signs, which are located within the acquisition limits.
  - c. Any buildings or major structures located within an acquisition area.
  - d. Gas stations and other sites, which have underground storage tanks and potential hazardous waste, such as laundry mats, auto repair sites, landfills, junkyards, etc.
  - e. Security chain link and/or field fencing to be replaced by roadway contractor, including gates.
  - f. Parcels involving Relocation and possible consequential displaces.
  - g. Determine parcels which need easements for building demolition (partially outside required right of way – Temporary Demolition Easement) and for removal of underground storage tanks & trade fixtures (i.e. billboards, signs, canopies, etc.).
12. Request in writing to the appropriate OPD Project Manager that the project be staked and that all new topography and development that was identified from the field review be shown on plans, along with any Demolition Easements, Fence Easements, etc.
13. Obtain a copy of the Underground Storage Tank and Hazardous Waste Site Reports from the District Preconstruction Office for the reporting of any soil contamination. If contamination is found, meet with Review Appraiser to determine if the contamination is severe enough to warrant the expense of a Phase 2 clean-up report. Obtain “Notification Data for Underground Storage

Tank” from Georgia Environmental Protection Division (404) 362-2687 to bring for discussion with reviewer at the project review inspection.

- a. In order to properly to comply, “EPD Form 7530”, Notification for Underground Storage Tanks with instruction sheets, can be located in forms (District Resources) for your use in completing the form.
  - b. Pre-Acquisition Agent(s) will be responsible for properly completing the forms on any parcels with underground storage tanks to be acquired by the Department. This form will be used to alert the Property Management Section that underground storage tanks are part of the acquisition. The Property Management Section is to be provided a copy of the form with present owners’ names, immediately after the property has been inventoried and the ownership of the tanks ascertained on the Property Inventory Forms. This action will allow the Property Management Section to better inventory and control the removal of underground storage tanks.
  - c. Once the parcel is closed, the “EPD Form 7530” should be forwarded to the Property Management office along with copies of the deed, closing statement and copy of check. The 7530 form will be provided to the Property Management section for use in removing the tanks.
  - d. Please read the instruction sheet carefully to make the proper determination of the type of underground storage tanks that require “EPD Form 7530”.
14. Notify the State Special Parcel Coordinator immediately upon identifying any pending acquisition from a State or Federal Government Agency. (Except for USACE, which is handled by the OPD Project Manager) NOTE: These properties should be identified at the Preliminary Field Plan Review (PFPR). The form entitled “Preliminary Field Plan Review Checklist” which is found in District Resources should be used when attending a PFPR.
15. Attend ROW/Utility meeting with District Utility office to determine if any utility relocations will require cost to cures, and if any utility easements will be needed on project. Provide Utility office all parcel titles with Utility easements for their review/use. This ROW/Utility meeting is now part of the project schedule, and is driven by the OPD Project Manager.
- a. Agenda/Discussion Items:
    - Identify/discuss ALL Utilities located on the project.
    - Discuss any proposed Utility relocations that will be handled thru Utility Agreements. Discuss potential Utility Easement Replacements, and how this will be handled. Discuss the possible use of ELA’s in lieu of Replacement Easements.

- Discuss Private Utilities on the project, and how they will be handled. Discuss any potential Cost to Cure (CTC) situations and illegal encroachments, which may affect the appraisal. This includes discussion on the replacement of meters, back flow preventers, service lines, sewer/septic lines, etc.
- Discuss any “Prior Rights” and “Reserved Rights” situations.
- Discuss use of Construction and Maintenance Permanent Easements for the Right to Place Utilities, I.E any conversion of easements to include Utility replacement rights.
- Discuss Property Management items (structures, billboards, parking lots, etc.), that may need Utility coordination.
- Review/Discuss Property Titles.

16. Meet with the Project Attorney

- a. Furnish a full set of Right of Way plans to attorney.
- b. Ensure that attorney does not have a conflict of interest with any parcel or owner regarding legal assistance. If a conflict exists, contact the General Office Acquisition Unit as soon as possible, for possible re-assignment or additional SAAG assignments.
- c. Discuss any questions regarding closing procedures or assistance from your team.
- d. Briefly describe concept of the project. Please reference 49 CFR 24.102(e)(2), & (3); 49 CFR 24.103(a)(2) for references to title requirements.
- e. Set due dates for Ownership Verification Reports and Preliminary Title Reports and identify, if necessary, which parcels have priority over others. Monitor progress of completion based upon the established due dates. The Ownership Verification Reports are completed on all parcels prior to the attorney completing the Preliminary Title Reports. Preliminary Title reports need to be within 6 mos. old, and it is common parcels are updated.
- f. Send SAAG a follow up letter confirming the meeting and establishing the due date(s) for the parcels.

17. Upon receipt of Ownership Verification, the Pre-Acquisition Agent will review each verification which the attorney reports as ‘not adequately identified’ and determine if the discrepancy is justified to warrant a plan correction. If a plan correction is required, a copy of the verification with attachments will be forwarded to the appropriate design office to make the necessary plan change. A

copy of all verifications for parcels to be appraised will be forwarded to the assigned appraiser, followed with any plan changes resulting from the review.

18. Property Management Inventory List – list/inventory all structures and site improvements impacted by the ROW limits. Submit to Property Management, Complete T-pro for Property Management required (Y - yes) or (N - no).
19. Relocation Interviews – perform interviews and provide to the Relocation Dept. Complete T-pro for Relocation required (Y - yes) or (N - no).
20. Property Owner’s Meeting – For most projects a property owners meeting will be required; however, for small non-complex projects (i.e. small bridge projects) it may not be practical to conduct this meeting. A request in writing or e-mail to the State R/W Program Manager may be submitted for a waiver of this meeting. Reference 49 CFR 24.102(b).
  - a. Secure a location and schedule a date and time for the meeting. With the approval of the State R/W Program Manager, this meeting may be held virtually .
  - b. Research owner’s names and addresses from the tax digest and tax plats.
  - c. Prepare and mail notification letter with an enclosed questionnaire to each owner (this letter may be found in the District Resources Folder). The completed questionnaire is collected at the meeting; however, if owner cannot attend the meeting, the completed questionnaire should be mailed or emailed back to the Department.
  - d. Make appropriate copies of Right of Way plans to be used during meeting.
  - e. Conduct meeting by having enough ROW Agents present to hold one on one meetings with each property owner. The Agent should be prepared to explain the project and related right of way plans and answering any questions the owners may have.
  - f. After the meeting, make copy of each owner questionnaire and furnish to the appraiser.
21. Project ride with the Review Appraiser/Project Checklist: ride the project with the Review Appraiser and perform the Project Checklist, which will determine the scope of the appraisal assignments of each parcel. The Pre-Acquisition Agent will provide the Review Appraiser with a copy of the Cost Estimate for this meeting. Negotiations from the Cost Estimate or Data Book need to be discussed as well.

## 22. Scoping Meeting with Appraisers

- a. The requirements and procedures regarding this meeting are addressed in more detail in Chapter 4, Appraisal Policies, and Procedures in this manual.
- b. Once the scoping meeting has been held, the Appraisals and any related Specialty Reports (Cost to cures/Sign Valuations/Trade Fixture Reports) can be requested through the Master Prime Valuation Company, and the Task order can be submitted by the Acquisition Manager to Procurement for Notice To Proceed approval. (NOTE: for “turnkey”, “design build”, and other non-District projects, the Valuation Services will be built into the Contracts).
- c. Input in T-Pro the assigned appraiser and appraisal due dates for each assigned parcel. Also, enter any parcels to be ‘Negotiated for Services’, or ‘negotiated from cost estimate’. Input ‘Y’ in the “NFS” field and show negotiator’s initials.
- d. Monitor progress of valuation assignments emphasizing due dates.
- e. As completed appraisals are finished, 1 hard copy and 1 electronic version should be sent to the GDOT representative identified at the scoping meeting.
- f. The hard copy is sent to the Review Appraiser for review. Once the review is complete the reviewer will send an electronic version of the 532 release and the final version of the appraisal to the acquisition team.
- g. If relocation is involved on the parcel, submit a separate copy of the appraisal to the Relocation Office.
- h. When a data book is furnished (two copies required), send one copy to the Review Appraiser and send one copy to the acquisition team.

## 5.2 Acquisition

On Federally funded projects, once the Right of Way plans have been approved and the Environmental document is approved, Right of Way Authorization can occur. This is the official start date of the ROW schedule on these projects. Strictly State Funded projects can be authorized without Plan approval or Environmental approval. If this occurs, the ROW schedule will begin once the plans are reviewed and approved.

The Office of Financial Management will update P6 Primavera for the right of way authorization activity (70400). The ROW Negotiations and Acquisition Work activity (73000) will be owned and updated by the State ROW Program Manager (the start of acquisitions will be determined by the first contact made with a property owner and the

end of acquisition will be the date the project is certified by the district). The G.O. ROW Certification activity (95400) will be updated by the Funding and Certification Office.

The Acquisition Manager is responsible for project related assignments and ensuring that all negotiations and acquisition activities are properly conducted in an orderly and timely manner. The Acquisition Manager is responsible for the certification of highway projects and ensuring that the project is acquired in compliance with both federal and state laws. The Acquisition Manager can be a GDOT employee or Consultant.

1. Right of Way Negotiator – can be a GDOT employee or Consultant.
  - a. The responsibility of the negotiator is to acquire the property rights necessary for a State Transportation System. The negotiator should be familiar with the Uniform Relocation Assistance and Real Property Acquisition procedures for Federal and federally assisted programs (49 CFR Part 24). The negotiator is responsible for representing the Department in person contacts with owners and occupants, and for making every reasonable effort to negotiate amicably a settlement.
  - b. The Negotiator should be the most knowledgeable person concerning the combined aspects of the parcel assigned to him, including all associated plans (right of way and construction), and should be able to speak to the property owner as a fully informed and authoritative representative of the Department of Transportation.
  - c. The negotiator should always present a neat, clean, and business-like appearance, and negotiations should always be conducted in a courteous, considerate manner.
  - d. For a common understanding to be reached, the negotiator should be a good listener, both asking questions and answering any questions or concerns that the owner may raise.
  - e. Undue haste in attempting to bring about a settlement, superior or patronizing attitudes, or an authoritative attitude towards the owners is prohibited by State and Federal laws.
2. Assignment and preparations for negotiations – the Acquisition Manager will assign the parcel negotiation to the Negotiator. The valuation tool being used will set the format for the offer forms to be used for negotiations.
  - a. Negotiation based upon an Approved Appraisal. The Negotiator will be provided an Appraisal and a Review Appraiser release of the Appraisal (commonly called a 532). The released Fair Market Value amount will be the

offer amount. There are various types of offers, depending on the ownership rights involved.

- b. Negotiations based on an Approved Cost Estimate value: Non-complicated parcels with a value of \$15,000 or less, and that do not involve damages may be acquired without a written appraisal using this method. This method of negotiation is used as a time saver in property acquisition, since a written appraisal is not required. However, should a settlement not be reached, an appraisal will be required for condemnation.
  - c. Negotiations based on an Approved Range of Value from a Data Book: Non-complicated parcels with a value of \$25,000 or less and that do not involve damages may be acquired without a written appraisal provided that the owner elects to “negotiate for services” (NFS) and waives the right of an appraisal. This method of negotiation can also be used as a time saver in property acquisition since a written appraisal is not required. The ‘Estimate of Appraisal Calculation’ form is used to determine the value to be offered based upon an established Data Book Value Range, previously approved by the Review Appraiser. Similar to a Cost Estimate Value, if negotiations are not successful, an appraisal will be required for condemnation.
3. Preparation for negotiations - Create parcel file, writing the Project number, P.I. number, and Parcel number at the top of folder. Place within the file all documents pertaining to the parcel, such as Ownership Verification form, Preliminary Title Report, and if appraised, the Appraisal(s) and Review Appraiser Report “R/W 532”. If negotiating from a cost estimate, include a copy of the cover sheet of the detailed cost estimate and the page that references the parcel to be negotiated. For a Data Book (NFS offer), a copy of the approved value range. Include ALL related plans (ROW and Construction).
    - Review the valuation information and the plans, making sure the acquisition areas match. If not, the valuation may need to be re-addressed. It is highly recommended that the plans be highlighted for easy interpretation and representation to the owner.
    - Review the Preliminary Title Report, confirming the owner of the property, and become familiar with any liens against the property.
  4. Prepare appropriate Negotiation Package. The standard owner negotiation package includes the following documents (Reference 49 CFR 24.102(d), and (e):
    - a. Offer Letter (Waiver Letter used for Data Book NFS negotiations): This document defines the acquisition areas and states the offer amount.

- Variations in the Offer Letter may be necessary if the parcel involves an Uneconomic remnant, Leased fee/leasehold interests, or Life Estate/Remainderman interests. When a tenant or other interest has a tabulated leasehold, life estate, or similar divided interest in the fee simple value of the property, the property owner must first give written approval for the negotiator to negotiate directly with this party. If the approval is not given, the negotiator will negotiate with the owner for the combined fee and tenant interest and the owner will be responsible for negotiation with the other party. This does not mean however that the other party should not be contacted and advised of the impending acquisition and that the owner has elected to negotiate his interest. Any compensation for improvements or trade fixtures, which are in the sole ownership of the tenant, will be negotiated directly with the tenant. Any relocation offers involving the tenant must be made directly to the tenant.
- b. Summary Statement Basis for Just and Adequate Compensation: this document further defines the offer amount and provides more detail and a breakdown of the different value components (i.e. land, buildings, etc.). This document may also include any Retention values and/or Performance Bond amounts. The market sales data sheet from the appraisal should be attached to this document.
- c. Availability of Incidental Payments Letter: this document explains certain reimbursable items that the owner can apply for, like real estate taxes and survey expenditures for example.
- d. Right of Way Option with attached plats highlighting the proposed acquisition: this document serves as the “contract” once a settlement is reached. It includes the acquisition areas and value(s), as well any Cost to Cure, Trade Fixture, Retention and/or Performance Bond values, and Uneconomic Remainder values.
- e. Brochure entitled ‘What Happens When Your Property is Needed for a Transportation Facility’: booklet describing the right of way process and what rights the owner/tenant has by law, and also provides guidance on certain relocation benefits.
- f. Receipt for Brochure: this document is certification that the Negotiator provided the owner/tenant a copy of the required Brochure ‘What Happens When Your Property is Needed for a Transportation Facility’.
- g. Acknowledgement of Plan Receipt: this document provides certification that the owner received a copy of all the related plans and has been satisfactorily informed.

h. Acknowledgement of Access Rights Form (if applicable): this document provides certification that any and all access rights involved on a parcel were fully explained.

\*The following is a complete list of all the forms, and the types of offers.

**Negotiation Packages\* – Offer Letters**

<p><b><u>Standard Owner</u></b></p> <ul style="list-style-type: none"> <li>• Offer Letter</li> <li>• Summary Basis</li> <li>• Receipt &amp; Brochure</li> <li>• Incidental Payment</li> <li>• Option/Plat</li> <li>• Owner's Acknowledgement</li> <li>• Receipt of Plans**</li> </ul>	<p><b><u>(2) Uneconomic Remnant Owner</u></b></p> <p>Offer Letter Summary Basis Receipt/Brochure Incidental Pmt Option/Plat Acknowledgement</p>	<p><b><u>(3) \$15,000 and Under Owner (Cost Est.)</u></b></p> <p>Offer Letter Summary Basis Receipt/Brochure Incidental Pmt Option/Plat Acknowledgement</p> <p>(Waiver/Donation letter not required)</p>	<p><b><u>(4) Leased Fee Owner</u></b></p> <p>Offer Letter Summary Basis Receipt/Brochure Incidental Pmt Option/Plat - Total Option/Plat – L. Fee Acknowledgement</p>
<p><b><u>(5) NFS Owner(Data Book) \$25,000 and Under</u></b></p> <p>NFS Offer Letter Waiver/Donation Letter Summary Basis Receipt/Brochure Incidental Pmt Option/Plat Acknowledgement</p>	<p><b><u>(6) D/W Only Owner</u></b></p> <p>Negotiation Letter Driveway Easement Receipt/Brochure Acknowledgement</p>	<p><b><u>(7) Leasehold Tenant</u></b></p> <p>Offer Letter Summary Basis Receipt/Brochure Incidental Pmt Option/Plat–L. Hold Acknowledgement</p>	<p><b><u>(8) Imp/T. Fixture Tenant</u></b></p> <p>Offer Letter Summary Basis Receipt/Brochure Incidental Pmt Option/Plat Acknowledgement</p>
<p><b><u>(9) Trade Fixture Sign Only</u></b></p> <p>Offer Letter Sign Release Receipt/Brochure Acknowledgement</p>	<p><b><u>(10) Advance Acquisition Hardship</u></b></p> <p>Hardship Offer Letter Summary Basis Receipt/Brochure Incidental Pmt Option/Plat Acknowledgement</p>	<p><b><u>(11) Advance Acquisition Protective Buy</u></b></p> <p>Same as #1, Standard Owner</p>	<p><b><u>(12) Condominium Units</u></b></p> <p>Condo Offer Letter A Condo Offer Letter B Summary Basis Receipt/Brochure Incidental Pmt Option/Plat Acknowledgement</p>
<p><b><u>(13) Townhouse Units</u></b></p> <p>Townhse Offer Letter A Townhse Offer Letter B Summary Basis Receipt/Brochure Incidental Pmt Option/Plat Acknowledgement</p>	<p><b><u>(14) State Employees or Public Officials</u></b></p> <p>Offer Letter Summary Basis Receipt/Brochure Incidental Pmt Option/Plat Acknowledgement</p>	<p><b><u>Acknowledgement of Access Rights</u></b></p> <p>To be included in all offer packages where limit of access rights are proposed.</p>	<p><b><u>Condemnation Request</u></b></p> <p>Condemnation Request Form Condemnation Service Addresses Preliminary Title Report Appraiser Affidavit (properly executed) Any special instruction</p>

\*All files are to maintain “negotiation logs”; **Separate file logs for Relocation and for each interest (i.e., signs, tenants)**

- The Negotiation Package involving a Relocation Remainder is the same package used for an Uneconomic Remnant.
- The Negotiation Packages involving Life Estate/Remainder-man interests are the same packages used for Leased Fee/Leasehold interests

\*\*Owners Acknowledgement of Receipt of Plans to be included as part of ALL offer packages

- i. Include a scalable ½ sized sheet of all applicable plans (i.e.: right of way plans, cross-sections, driveway profiles, etc.). Make sure you fully understand the acquisition and related construction details and can explain to the owner. This is critical.
  
- j. Be sure to include Retention Value and/or Performance Bond Amount (if required), on the Summary Statement Basis for Just and Adequate Compensation and the Option form.
  - Real Estate items like houses, mobile homes, commercial buildings, and other site improvements, where GDOT pays full value for the item and takes title to it, a Retention Value and Performance Bond Amount will be needed and included in the initial offer package. Negotiators can set these standard rates, which are:
    - ✓ Retention Value: 40% of the improvement value (FMV)
    - ✓ Performance Bond: 20% of the improvement value (FMV)
  
  - Certain Trade Fixtures like on-premise signs, billboards, UST's, Gas Islands/pumps, and certain other site improvements where GDOT ONLY pays moving cost and/or damages, there never will be a Retention Value. However, in some cases, if the owner wants to keep and relocate the item(s), a Performance Bond Amount will need to be established and withheld. GDOT Property Management Office will set these Bond Amounts. **These will NOT need to be included in the initial offer**, because it will be unknown at that time which item(s) the owner will want to keep.
  
  - Certain Cost to Cures that require relocation of site improvements or are required to replace DS&S items (septic/wells) will also require a Bond Amount. GDOT Property Management Office will also set these Bond Amounts. **For DS&S items, like Septic Systems and Wells, the Bond Amount will need to be included in the offer package to ensure enforcement of the cure.** For non-DS&S items (most other Cost to Cures), these will NOT need to be included in the initial offer, because it will be unknown at that time if the owner will implement the cure.
  
- k. Uneconomic Remnants - An Uneconomic Remnant is created when the highest and best use of the designated remainder(s), after the acquisition, is so limited that the remainder has only nominal value. The Right of Way Option must reflect if the uneconomic remnant is to be sold or not sold as part of the settlement. A Remainder ("R") parcel is created and shown on the right of way

plans as a separate parcel. All “R” parcels must be cleared by the environmental office before closing. If the parcel must be condemned, the uneconomic remnant will remain with the owner. General policy is that GDOT does not condemn remnants, as they are not required for the project.

5. If the parcel is a relocation be sure you have any necessary Relocation Package(s) from the Office of Relocation. For more details, see Chapter 11 (Relocation Assistance).
  - a. Availability of Relocation Benefits letter
    - Moving Payment Package
      - ✓ Residential or Business Owner, Tenant, NRO
    - Replacement Housing Package
      - ✓ ONLY Residential occupied Owner or Tenant
6. Prior to first contact, perform a ride by field review of the subject parcel. Make sure you are familiar with the acquisition area and construction features. Also make sure you are familiar with the comparable sales and/or rentals, so you can answer any questions.
  - a. Anticipate what questions or concerns the owner may have, such as proximity of roadway or construction, tree or landscaping loss, steep slopes and driveway, drainage, parking loss, affected septic system, property access, median breaks and be prepared to discuss these concerns with the owner.
7. Contact the “owner” or “other interest” and schedule the appointment. The appointment is to be made as soon as possible, typically no longer than seven business days from date of assignment. The appointment with the owner is to take place prior to any offers presented to other property interests.
  - a. First contacts should be made in person unless circumstances require the offer to be mailed, such as an out of state owner. In this case, the entire package with plans is sent by certified mail accompanied with an introduction transmittal letter. Be sure to confirm with the owner the correct mailing address. Email or Virtual offers are also acceptable in certain situations.
  - b. Verify after several days to ensure the offer package was received.
8. Negotiations - The negotiator should always keep in mind that owner contacts have three main purposes.: 1) To fully inform the owner of the pending project

2) to fully inform the owner of the necessary property rights needed from the property 3) make every reasonable effort to reach an amicable agreement.

a. Presentation to Owner - explain the Project Overview

- What will be constructed? Intersection improvement; Bridge replacement; Roadway widening; Passing lane; Other.
- Purpose: Why will it be constructed? Existing and projected traffic congestion; Nonfunctional existing design; High accident location-safety; Condition and age of existing bridge; Stacking problem; Driving visibility; Turning problem, Other.
- Timetable: When will it be constructed? Baseline/Scheduled Let Date; Projected time construction will begin; Projected time of construction
- Design Features: How will it be constructed? Number of lanes; Sidewalk; Bike lane; Limits of project; Median and median break locations; Curb and gutter for drainage; Slopes and ditch for drainage; Signalization (traffic lights); Limited access; Turn lanes; New location; Vertical curves; Horizontal curves; Other

b. Review the right of way plan sheets, cross-sections, driveway profiles, and if necessary, other construction plan sheets regarding staging, profiles, typical sections, drainage, utilities, striping, etc.

- Explain the required Right of Way (area, depth and length)
- Easements (area, depth and length):
  - ✓ Permanent: for construction and maintenance of (state the purpose)
  - ✓ Temporary: for construction of (state the purpose)
  - ✓ Purpose of Easements: slope, drainage, driveway, detour, fence, sediment basin, utility, other
- Access Rights
- Explain Design Features and Effect on Parcel
  - ✓ Construction Limits – Cut “C” or Fill “F”
  - ✓ Edge of roadway pavement (sidewalk and bike lane)
  - ✓ Access due to median

- ✓ Driveway location (width and grade)
  - ✓ Access drives to remainder property
  - ✓ Roadway and drainage
  - ✓ Curb and gutter
  - ✓ Slope and ditch
  - ✓ Sediment basin
  - ✓ Drainage structure
  - ✓ Rip rap
  - ✓ Cross pipes
  - ✓ Roadway elevation
  - ✓ Steepness in grade of slopes 2:1, 4:1, etc.
  - ✓ Guardrail
  - ✓ Proximity to remainder improvements
- Items, which may be, located within the parcel's acquisition areas: signage, fencing, septic line, well, landscaping, trees, lighting, sprinkler system, buildings/structures, parking, curbing, pavement, other.

c. Review Preliminary Title Report - Confirm that they still are the owners of the property; any title exceptions; Obtain addresses and/or telephone numbers of title exceptions; Obtain account numbers of any security deeds or loans on the property; Confirm that there is not a bankruptcy; If an owner is deceased, ask if a will has been probated and in what county. Attempt to obtain names of the heirs at law and their relationship and address; names of any tenants on the property; anything else regarding the property title.

d. Appraisal Overview - Explain in general the appraisal process and procedures used by the appraiser in arriving at the value, such as the market approach and the use of comparable sales, etc. Explain that all appraisals are reviewed and approved by a Certified Reviewer Appraiser. If a cost to cure is involved, explain and review with the owner any drawings and estimates reflecting the cost to cure. Same for Trade Fixture and Sign estimates.

e. Present Offer Package:

- Plan Acknowledgement form: owner should sign acknowledging understanding of the plans
- Brochure - Explain that the Brochure is an overview of the procedures that we follow in acquiring property as well as addresses the rights of the property owner. It also outlines the Relocation Assistance Program

- Receipt for Brochure - It is a requirement that owners be provided a Brochure. Ask if they would sign the Receipt acknowledging that they have received the Brochure
  - Availability of Incidental Payments letter:
    - ✓ Explain what items at closing will be paid directly by the Department (reference 49 CFR 24.106): closing cost, recording fees, pre-payment penalties; pro-rata share of any pre-paid property taxes (total take).
    - ✓ Explain what items will be reimbursed to the owner by the Department: Property tax for that portion of property actually acquired; Reset front property pins if there are existing pins.
  - Offer Letter: State and explain the acquisition area(s) and offer amount.
  - Summary Statement of Just and Adequate Compensation – State and explain the various components of the offer, and review market data sheet. Also explain any Retention Values and/or Performance Bond amounts (if applicable).
  - Acknowledgement of Access Rights form (if applicable): if there are access rights being acquired, this form acknowledges the owner understands.
  - Option for Right of Way – state and explain all the information on the option: acquisition area(s), values, rental rate, Retention Values and/or Performance Bonds, Cost to Cures, Trade Fixtures, R-parcel, etc.
- f. Address all of the owner’s concerns; if unsure of an answer, inform the owner that you will get the answer and get back in touch with them (Be Sure That You Do This As Soon As Possible)

9. Successful negotiations:

- a. For Fair Market Value settlements, the Owner signs and dates the Option to bind the agreement. The Acquisition Manager will then approve the Option, and the parcel will begin the closing process.
- b. Administrative Settlements - An Administrative Settlement is a settlement at an amount other than the tabulated Fair Market Value (FMV) and/or any other change or alteration in the Option. If a negotiator finds merit in an owner's

counter offer, they should receive a modified option from the owner reflecting the settlement terms. All counter offers has to be submitted to management for review and approval. Please reference Chapter Six of this manual.

- If there is a counter offer for a different amount, the Property owner should cross out the Fair Market Value (FMV) and write in the counter offer amount and initial. GDOT Management will then review the counter proposal, and final approval will be based on the varying levels of approval authority (below).

✓ Approval Authority Ranges:

District R/W Team Manager:	<b>25% or \$50,000, whichever is greater</b>
Administrative Review Officer:	<b>30% or \$70,000, whichever is greater</b>
State R/W Acquisition Manager:	<b>40% or \$100,000, whichever is greater</b>
Asst. State R/W Administrator:	<b>50% or \$150,000, whichever is greater</b>
State R/W Administrator:	<b>Greater than 50% or \$150,000</b>

- Any requested special conditions of settlement should be clearly stated on the option or an attached addendum. Some stipulations may need to be reviewed/approved by other offices, for example design changes (office of Design), driveway changes (Traffic Operations), etc.

10. Unsuccessful negotiations:

- a. The Acquisition Manager will perform a final Last Contact on every parcel the Negotiator fails to settle, regardless of the amount.
  - If the FMV value is less than \$10,000, the Negotiator will send a 10-day Team Administrative Review letter. In this case, the Last Contact by the Acquisition Manager will stand as the Administrative Review for the parcel as well. If the Acquisition Manager is unsuccessful, he/she will send the owner a letter (Regret Letter) informing the owner of the Department's intent to proceed with condemnation.
  - For parcels with FMV's in excess of \$10,000, the Acquisition Manager will hold a Last Contact, and if unsuccessful will send a 10-day G.O. Administrative Review letter. The owner's Administrative Review request will then be directed to a representative (Administrative Review Officer) from the General Office Acquisition Unit (Reference Chapter Six of this Manual). If the Administrative Review Officer is unsuccessful, he/she will send the owner a letter (Regret Letter) informing the owner of the Department's intent to proceed with condemnation.

- The Acquisition Manager and/or the Administrative Review Officer should always make every effort to meet with the owner in person for the Last Contact and/or Administrative Review.

✓ The above applies to “Other Interest” on the parcel as well

11. Negotiation Record – It is required that the negotiator maintain accurate, written or typed negotiation records (reference 49 CFR 24.9). A separate Negotiation Record should be maintained for each individual interest when an offer is made. It is vital that a detailed Negotiation Record be kept for every parcel, whether negotiations were successful or not. The records need to reflect every aspect of the negotiation, outlining the entire process in detail. Poor negotiation records can become a vulnerability for GDOT should any legal action occur on a parcel. This is not only true for condemnations, where the negotiation records are used by SAAG’s in litigation battles, but also in cases where the owners sue GDOT later. This can occur even on parcels settled and closed, **so don’t think you are OK to do less documentation on settled parcels.**

12. Closing Procedures:

- a. Most closings are performed by GDOT SAAG’s; however, GDOT staff can perform simple closings of \$100,000 or less with approval by upper Right of Way Administration, along with project SAAG acknowledgment.
- b. On SAAG closings, the Owner(s) will be given the attorney’s name and notified that the attorney will contact them to schedule a closing date. The Acquisition Team will provide the SAAG with a copy of the Option, legal descriptions and plats (both colored and uncolored) and closing funds. The SAAG will prepare the remainder of the documents.
- c. Title Exceptions must be cleared by Quit Claim Deed (or other form of release) in order for the Department to receive clear title before a closing can be scheduled.
- d. Partial Take Closings Without a Lien Release (QCD) is an expedited method used for closings \$25,000 or less, provided:
  - There has been no communication held with any of the Mortgage Lien holders
  - It is confirmed that none of the Mortgage Liens are Owner Financing related
  - There is sufficient Remaining Value to cover the outstanding Mortgage Lien(s).
- e. A tenant or other interest cannot be closed prior to an owner closing if the

interest is a Leasehold, Life estate, or similar divided interest in the Fee simple value of the parcel. In these cases, when there is a division in the Fee Interest, all Interest must settle for there to be a closing. If not, condemnation for Title will be required. However, a tenant or other interest can be settled/closed (by Quit Claim Deed) separate the owner for tenant owned improvements and or trade fixtures.

f. The standard Closing Package consists of the following documents:

- Right of Way Deed, Easement Conveyance, or Conveyance of Access Rights – standard property right transfer document for GDOT
- Right of Way Remnant Deed - used only when an uneconomic remnant is being acquired (see section referencing 'Uneconomic Remnants')
- Settlement and Disbursement Statement – lists the Gross amount of proceeds from sale, minus any deductions, and states the net proceeds to owner
- Owner's Affidavit – document where owner confirm they are the true owner, and have the rights to sale the right of way
- IRS Reporting Form (used only if the Gross Proceeds are \$600 or more) – document used to report the sale/proceeds to the Government
- Real Estate Transfer Tax Declaration – P.T. 61 ( state “Exempt” in Section E, Block 1 regarding value)

g. After closing:

- If there is Property Management involved, i.e. any improvements located in the Acquisition area that require removal, the Negotiator needs to send a “Reminder Notice of Removal” letter to the owner and/or tenant for any retained items. This letter states that the improvement needs to be removed within 30 days, and the required removal date is stated on the letter. If the owner/tenant have not retained the improvements, the negotiator will send a PM 10A to the office of Property Management, advising the item(s) needs cleared/removed from the ROW
- If Relocation is involved, a “Notice to Vacate” (NTV) must be sent to the owner or tenant. The Department cannot require an Owner to vacate his property any sooner than 90 days following the date of first contact; or any sooner than 60 days following either the date of deed, whichever

is longer. Depending on which scenario is in play, the date to vacate will be stated on the NTV

h. Final Title Certificate is required on all closed parcels, including staff closings.

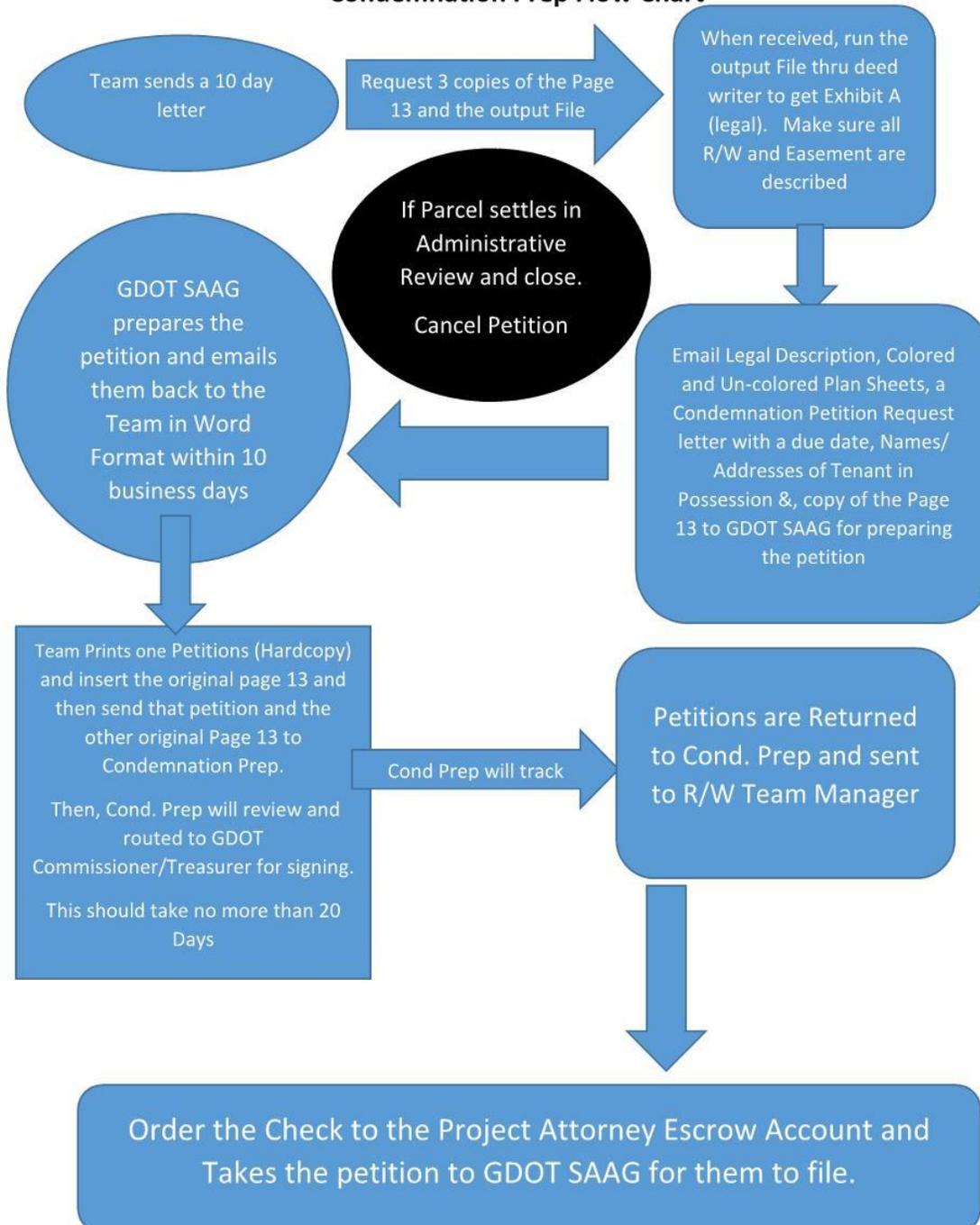
13. Condemnation - Condemnation is used only after all reasonable efforts to reach a settlement has failed. GDOT acquires the vast majority of property by deed. Property acquired through condemnation typically represents a low percentage of a project.

a. Condemnation Petitions are filed in the County Superior Court the property is located in and a check for Fair Market Value is deposited with the clerk's office. Title to the required right of way and/or any required property rights are legally transferred to the Department on the date the petition is filed. The Department receives possession of the parcel either (30) thirty or sixty (60) days from the filing date. (As indicated in the petition).

- All petition requests go to the assigned project Attorney (SAAG). The following information must be included in the petition request when requesting condemnations:
  - ✓ Legal Description for all required rights (Exhibit "A")
  - ✓ Colored and non-colored plats of parcel and data sheet(s)
  - ✓ Copy of Executed Appraiser Affidavit (page 13)
  - ✓ Names & Addresses of Condemnees
  - ✓ Names & Addresses of Tenants in Possession
  - ✓ Appraisal Review Form 532
  - ✓ Option (if applicable)
  
- The process is as follows:
  - ✓ ROW Team requests page 13's, prepares legal descriptions (Output file) and plats
  - ✓ Petition Request with the above information sent to the SAAG
  - ✓ SAAG prepares the Condemnation Petition and emails a Word DOC back to the ROW Team
  - ✓ ROW Team sends the Condemnation Petition to OGC Condemnation Prep. Dept., for review and signature routing

- ✓ OGC Condemnation Prep. Dept. returns the completed Petition back to the ROW Team, who sends to the SAAG along with funds for filing

### Condemnation Prep Flow Chart



b. After Condemnation Petition filing:

- After the filing, the owner and other named parties in the styling will be served with the condemnation petition by the Sheriff.
- Once GDOT has “possession”, if there is Property Management involve (i.e. any improvements located in the Acquisition area that require removal), the Negotiator needs to send a “Reminder Notice of Removal” letter to the owner and/or tenant. This letter states that the improvement(s) needs to be removed within 30 days, and the required removal date is stated on the letter. If the owner/tenant does not comply, the negotiator will send a PM 10A to the office of Property Management, advising the item(s) needs cleared/removed from the ROW.
- Once GDOT has “possession”, if Relocation is involved, a “Notice to Vacate” (NTV) must be sent to the owner or tenant. The Department cannot require an Owner to vacate his property any sooner than 90 days following the date of first contact, or any sooner than 60 days following the filing of condemnation petition, whichever is longer. Depending on which scenario is in play, the date to vacate will be stated on the NTV.

c. After the petition has been filed, there should be no further contact between the Owner(s) or their representative and the District Negotiator or the Acquisition Manager. Owners should be asked to have their attorney contact the attorney assigned to the project or the attorney who has filed the petition for condemnation. Any condemned parcel will be assigned to a Condemnation Specialist. These Coordinators are assigned to the General Office and are supervised by the State Right of Way Program Manager (please reference the Organizational Chart in Chapter Two of this Manual).

d. Title (Friendly) Condemnations – sometimes due to the title, it is necessary to file a condemnation to obtain clear title. The process is the same except the Last Contact and/or Administrative Review processes may not be required in these instances (because there is no monetary differences).

- In these cases, a 10-day “no appeal” letter is sent to the owner or tenant to inform them of the necessary condemnation action to clear title. The amount paid into court with the petition is the approved Fair Market Value with the affidavit signed by the appraiser.

14. Utility Disconnections - Once the Department has possession of a vacant structure, the Acquisition Agent/Manager will request that all service utilities be

disconnected. The utility company needs to know specifically that the structure is going to be demolished so that they can remove the meters wherever appropriate. Make sure that the electric company removes the meter and drops the line from the building to the street. The gas company should remove the meter and cap the line back to the street. The water company should remove the meter. It is the responsibility of the Negotiator to schedule both the disconnections and the appointment times for which this service will be accomplished. Negotiators are to meet the utility service personnel on site to prevent any confusion concerning which structure shall have service disconnected.

15. Office of Relocation - For a more thorough and detailed explanation of Relocation, please reference Chapter 11 of this manual. Reference also 49 CFR 24, Subpart C; 49 CFR 24.201 through 24.505. Relocation's main responsibility is providing relocation benefits to displaced persons (owners and/or tenants).

a. These benefits may be as follows:

- Individuals and Families
  - ✓ Moving Payment
  - ✓ Replacement Housing Payment, (owner)
  - ✓ Supplemental Rental Payment/Down Payment, (owner/tenant)
  - ✓ Incidental Payments
- Businesses, Farm Operations, Nonprofit Organizations
  - ✓ Moving Payment
  - ✓ Reestablishment Cost
  - ✓ Search Payment
  - ✓ In Lieu Payment
  - ✓ Incidental Payments
- If only a moving payment is involved, which is estimated to be \$500 or less, a Small Value Move Offer procedure can be used without going through the Relocation process.

16. Office of Property Management - For a more thorough and detailed explanation of Property Management, please refer to Chapter 9 of this Manual. Refer also to 23 CFR 710.403. Property Management's main responsibility is removing

improvements from the Acquisition areas (“clearing the right of way”). They also establish certain Performance Bond amounts.

- At closing, the owner is given a “Reminder Notice of Removal” letter allowing 30 days for the owner/tenant to remove the improvements. The deadline date should be stated on the letter. After verification that the site is satisfactorily cleared, an executed Right of Way Clearance Report (PM-7) and copy of the Closing Statement is submitted to the Property Management Office, releasing any Performance Bond amounts to be returned to the owner/tenant. Any remaining improvements past the deadline are considered abandoned, and subject to removal by GDOT.
- If the owner does not remove the necessary improvements, Property Management will become involved. The Acquisition team will send a PM 10A to Property Management listing all the improvements needing removed. Property Management will then acquire the necessary services to perform the removal.

### **5.3 Other Acquisitions**

1. Property Donations: Pursuant to federal regulations 24.102 and 24.108 of 49 CFR and following discussions with the Federal Highway Administration, this is to advise that the Department’s policy concerning property donations have been modified as addressed below.
  - a. Unsolicited Donation - If federal or state funds will be used to acquire or reimburse the cost of right of way, the Department and Local Government Agencies may accept donations from a property owner prior to Right of Way Funding Authorization only if the donation is initiated by the property owner and not solicited by the agency. The solicitation of donations by an agency is considered the initiation of property negotiations, which cannot occur prior to Right of Way Funding Authorization. A property donation cannot pre-determine the project’s alignment.
  - b. Solicited Donation - If federal or state funds will be used to acquire or reimburse the cost of right of way, the Department and Local Governmental Agencies may solicit and accept donations from a property owner after Right of Way Funding Authorization only if a preliminary project right of way cost estimate is completed and documented in the project file. A written appraisal is not required prior to the solicitation of property donations.
  - c. If 100% local funds will be used to acquire right of way with no federal or state reimbursement but Preliminary Engineering and/or Construction costs will be reimbursed by federal and/or state funds, the above

conditions still apply. The solicitation of donations may be initiated following the approval of both the environmental document and the right of way plans.

- ✓ For any of the above situations, the owner must be made aware that they are entitled to receive compensation for the property and must sign the Georgia Department of Transportation “Waiver Letter” waiving their right of compensation should they elect to donate and release the agency from this obligation. If the owner elects to donate but also requests an appraisal for tax purposes, the parcel is to be appraised and submitted for review.
  - ✓ Prior to accepting any donations, the parcel should be tested by the Office of Material & Research (OMR) for soil contamination or hazardous waste if there is evidence of underground storage tanks or other potential sources of contamination. Upon review of the completed contamination report and the level of any found contamination if any, the Design Project Manager will determine if the parcel will still be necessary for project construction (contaminated or not) or if the parcel can be eliminated with a design change. If the Design Project Manager determines that the parcel will still be necessary, the donation to the Department may proceed.
2. For Railroad, Ga Power, State, and Federal owned parcels, (except for USACE, which are handled by OPD) GDOT’s Special Parcel Coordinator will handle negotiations. Please notify this agent as soon as possible when one of these parcels is discovered. These are the most time consuming of all the parcels, and often times requires coordination from several different departments, so time is critical.
3. Negotiation with State Public Officials or Department Employees
- Any transaction between a full-time or part-time elected public official and a state agency involving the sale of real property to the state or a state agency does not constitute a conflict of interest if the sale is through eminent domain (O.C.G.A. § 45-10-25 (a) [1]) or if the sale price is less than \$250 (O.C.G.A. §§ 45-10-22 [b] [2], 45-10-24 [b] [2]). GDOT cannot negotiate with any GDOT employees or elected officials of the state of Georgia. A condemnation petition must be filed for these types of parcels.
  - Prior to filing a condemnation action on a piece of property on a federal-aid project, the Georgia Department of Transportation is required by federal regulation to attempt to negotiate a purchase.

While such a negotiated purchase is under the threat of condemnation, there has been no interpretation of whether the words “through eminent domain,” as used in O.C.G.A. § 45-10-25 (1) (1), mean a sale under threat of condemnation or require that a condemnation action be filed. Because the conflict of interest portion of the Code (O.C.G.A. Title 45, Sec. 2, Part 1) was passed to prevent public office being “used for private gain other than the remuneration provided by law” (O.C.G.A. § 45-10-21 [a]; see, (O.C.G.A. § 45-10-28), the latter meaning would be the accepted one.

- It is recommended that public officials or employees decline the offer, which the Department of Transportation is, required to make prior to condemnation and require that the parcel be condemned. This would clearly fall within the purview of the exception. Of course, if official or employee is satisfied with the amount paid into court as estimated just and adequate compensation at the time the condemnation is filed, they would not be required to file an appeal; however, it is recommended.

#### 4. Procedures for Acquisition of Right of way from Cemeteries or Burial Grounds and Relocation of Burials.

- a. In the past it has been Departmental policy for the Office of Right Of Way to handle all elements, legal and otherwise, pertaining to the acquisition of lands from cemeteries and burial grounds and were required, the disinterment and re-interment of individuals, for the sole purpose of providing additional right of way or permanent easements for the Department. State legislation Official Code of Georgia Annotated (OCGA) 36-72), “Abandoned Cemeteries and Burial Grounds,” 1991, as amended, requires that additional information concerning cemeteries, and burial grounds be gathered and taken into consideration and that a permit be issued prior to land use conversion.
- b. OCGA 36-72 should not be inferred to supersede compliance with Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended, the Native American Graves and Repatriation Act, 1990, (P.L. 101-601); OCGA 12-3-620, OCGA 31-21-6, 1992; OCAG 44-12-260, OCGA 44-12-280, or OCGA 44-12-300, 1993.
- c. The Office of Environmental Services (OES) will gather the necessary information required to submit an application for the issuance of a permit by the superior court having jurisdiction except where otherwise noted below. The actual permit application and subsequent submission of the application will be completed by the Office of Right of Way. In the event right of way or permanent easement(s) is to be acquired by any other agency, authority, or political subdivision of the state, it shall be said

entities responsibility to obtain such a permit. Office of Environmental Services will provide available project information to such entity as requested.

- d. Applications for a Permit shall include, at a minimum, the following information supplied by Office of Environmental Services except where otherwise noted:
  - ✓ Evidence of ownership of the land on which the cemetery or burial ground is located in the form of a legal opinion based upon a title search. The title search should also document all references to cemeteries or burial grounds including maps or other descriptive reference where abandoned family cemeteries or Native American burial grounds are not separately titled. The title search will be conducted by the Office of Right of Way. One copy of the results of the title search will be provided to Office of Environmental Services for use by the project archaeologist and genealogist.
- e. An archaeological Report of Investigation or Letter of Findings will be prepared by the Departmental Archeologist stating the number of graves believed to be present and their location.
- f. A survey shall be prepared showing the location and legal boundaries of the cemetery or burial ground based on the title search. In the event there is no previously defined cemetery boundary, the Department archaeologist's report of Letter of Findings will include a boundary description based on the results of the archaeological survey. The property survey will be conducted by the District Office of Pre-Construction at the request of Office of Environmental Services.
- g. A plan shall be prepared by a qualified genealogist for identifying and notifying the descendants of those buried or believed to be buried in such cemetery. If those buried or believed to be buried are of aboriginal or American Indian decent, the genealogist will notify the Department archaeologist in order to coordinate notification of the Council on American Indian Concerns and other interested tribal groups and to assure timely compliance with additional state and federal legislation appertaining to Native American interments and associated burial objects. Office of Environmental Services will contract with a qualified genealogist; and,
- h. A proposal for mitigation or avoidance of the effects of the planned activity on the burial ground shall be prepared by Office of Environmental Services and shall specify the method of disinterment, the location and method of disposition of the remains, the approximate cost of the process, and the approximate number of graves affected. The Department archaeologist

will coordinate with the Office of Construction and supervise the mitigation plan if it includes disinterment of human burials. Additional procedures for the application of a permit will be conducted by the Office of Right Way and include the following:

- i. Implement the genealogist plan for identifying and locating descendants provided by Office of Environmental Services no later than the date the application is submitted to the superior court having jurisdiction;
- j. Ensure that all provisions of the permit are fulfilled;
- k. Coordinate all appeals of the permit and ensure that all necessary steps have been completed to rectify permit application deficiencies; and,
- l. Provided Office of Environmental Services with one copy of the permit for project files.

5. Procedures for Making Offers on Townhomes and Condominium Units

a. CONDOMINIUMS

<b><u>COMMON AREA (Required RIGHT OF WAY)</u></b>								
(Owned by Association and all 300 Individual Unit owners)								
<b><u>1</u></b>	<b><u>2</u></b>	<b><u>3</u></b>	<b><u>4</u></b>	<b><u>5</u></b>	<b><u>6</u></b>	<b><u>7</u></b>	<b><u>8</u></b>	<b><u>100</u></b>
<b><u>100 Units</u></b>				<b><u>100 Units</u></b>				

- OFFER
  - ✓ Request meeting with President of Association & all unit owners to present & review offer for common area acquisition.
  - ✓ Association and all individual owners (300) are contacted and provided with Letter "A (posted in District Resources).
  - ✓ This letter states what the Total Value of the Common Area is (take area), and what damages, if any, to the remaining common area.

- ✓ This letter also states what their pro rata share of the take is (Ex.: 1/300).
- ✓ Advise that any potential impact to individual units will be addressed with individual unit owners separately.
- ✓ All individual owners who have potential damages, as a result of the acquisition, (Units 1-100) will receive letter “B” (posted in District Resources).
- ✓ NOTE: ALL 300 unit owners and Association will have to sign QC or we will have to condemn.
- ✓ NOTE: Advise the Board that they can act on behalf of all property owners if they obtain a proxy or assignment of the individual unit owner’s interest. Advise that the Department’s attorney will have to review proxy or assignment prior to dissemination to all owners to confirm that it meets all the legal requirements for closing,

- CONDEMNATION

- ✓ File fair market value and consequential damages to Common Area only.
- ✓ No damages will be filed for individual condominium units. In order for condominium unit owners to get damages, they will have to file an Inverse Condemnation.

b. TOWN HOMES

<u>COMMON AREA (Required RIGHT OF WAY)</u> (Owned by Home Owners Association)								
<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>100</u>
<u>100 Units</u>				<u>100 Units</u>				

- OFFER

✓ REQUEST MEETING WITH PRESIDENT OF HOME OWNERS ASSOCIATION \*TO PRESENT & REVIEW OFFER FOR COMMON AREA ACQUISITION

- Offer Letter “A” is sent to Home Owners Association for common area.
  - ✓ If Town Home board advises that individual homeowners have an interest in the common area and are a real party in interest, seek a legal opinion from the Department’s attorney before proceeding.
  - ✓ Advise that any impact to individual units will be addressed with individual unit owner separately.
- If there is potential damages to units (Units 1-100) as a result of the Department’s acquisition, Provide Letter “B” (to impacted units only). Owners will not sign Quit Claim. They will sign “Release” and Settlement Statement.
  - ✓ Owners in the other 200 units (that have no damages resulting from the Department’s acquisition) will not receive either letter from Georgia Department of Transportation.
- CONDEMNATION
  - ✓ File fair market value and consequential damages to Common Area only.
  - ✓ No damages to individual units will be filed into court. Owners of Town Homes will have to file Inverse Condemnation to receive damages.

6. Advanced Acquisitions - The purchase of property, as an early acquisition or an advanced acquisition, is governed by the Official Code of Georgia Annotated, Title 32; the Uniform Relocation Assistance, and Real Property Acquisition Policies Act of 1970, as amended; and, by federal law through 23 CFR 710.501 and 23 CFR 710.503.

- a. Map 21 for Federally Funded Early Acquisition - The focus of this policy is the ability for the Acquiring Agency to use federal funds for right of way acquisition prior to completion of NEPA for the overall projects as a method to accelerate project delivery. The Map 21 policy does not provide any new federal funds; the changes just make the early acquisition costs eligible activities.

- The Map 21 policy allows federal participation in advance of right of way acquisition if certain conditions are met:
  - The State Certification must be in writing and it needs FHWA concurrence.
  - Any right of way interest purchased in advance must be for transportation purposes,
  - Any right of way interest purchased in advance cannot influence the outcome or alternatives considered during the future project's NEPA process,
  - The purchase of any right of way interest must not cause any significant environmental impact (to the property),
  - Acquisitions must be approached without the threat of condemnation (e.g. it is a willing-seller transaction),
  - The early acquisition will not reduce or eliminate relocation benefits (e.g. the acquisition is NOT voluntary as defined in 49 CFR 24.101(b)(1),
  - The acquisition complies with applicable Federal laws and regulations,
  - The right of way acquisition is treated as a stand-alone project with a separate (parcel specific) NEPA document.
  - A stand-alone project is included in the STIP for the advance/early right of way acquisition
  - FHWA authorization is required prior to starting right of way acquisition
  - Demolition of improvement or other irrevocable actions cannot occur until overall project's NEPA documentation for the project is complete and the need for the right of way is documented.
  - Acquisition of property interest must be incorporated into a project eligible for surface transportation funds within 20 years.
- b. Advanced Protective Buying - The purpose of an Advanced Protective Buying is to protect the proposed roadway corridor of a programmed project against new development, thereby reducing future right of way, and project cost.
- The following criteria must be satisfied in order to meet the for a Protective Buying Acquisition:

- ✓ A letter to the State Right of Way Administrator outlining the situation and circumstances, which form the basis of protective buying request
- ✓ A site plan indicating proposed imminent development of the property and approved by the local approving authority (county or city).
- ✓ And/or a building permit approved by the local approving authority (county or city).
- The only exceptions that may be considered are those requests initiated by management or one of the Department's design offices.
- In the event the environmental document has been approved for the project, the State Right of Way Administrator can review and approve the acquisition and it does not have to go to the Federal Highway Administration for their review and approval. If the environmental document is not current within twelve (12) months, it must be reevaluated and brought current within twelve (12) months at the time of approval and subsequent offer to purchase. Should the project environmental document not be approved, the request for a Protective Buying must be reviewed and approved by the Federal Highway Administration. An environmental document for the specific property must be cleared and within twelve (12) months current at the time of approval and the subsequent offer to purchase.
- Upon approval of the acquisition:
  - ✓ An Acquisition Manager will be assigned, and the appraisal process can begin.
  - ✓ Legal assistance will be requested from the State Attorney General's Office.
  - ✓ The Department's intent to acquire will be advertised in the newspaper.
  - ✓ The Acquisition Manager will prepare a cost estimate and make a request for funding to the General Office.
  - ✓ Upon authorization of funding, the Acquisition Manager will be authorized to proceed with the offer.
  - ✓ Georgia Department of Transportation will exercise the authority to condemn if a settlement is not reached after an administrative review is conducted.

### c. Advanced Hardship Acquisition

- The purpose of a Hardship Acquisition is to alleviate a hardship to the owner due to health, safety, or financial reasons. The following criteria must be satisfied in order to meet the requirement for a Hardship Acquisition:
  - ✓ A letter to the State Right of Way Administrator outlining the situation and circumstances, which form the basis of the Hardship request
  - ✓ Written justification and documentation, which support the hardship acquisition in the context of health, safety, or financial reasons and sets forth a unique, undue hardship in comparison to others on the project.
  - ✓ Documentation that the property failed to sell when it was placed on the open market at fair market value, within a time period that is typical for properties not impacted by the project.
- Upon receipt of adequate written justification and documentation, the approval and acquisition process follows the same process as Protective Buy above.
- The owner will be allowed an administrative review to see if a settlement can be reached prior to the termination of negotiations. The State Right of Way Administrator reserves the right to waive the administrative review process.
- In the event a negotiated settlement cannot be reached between the Department and the property owner, all negotiations will cease, and the property will be acquired within the normal project schedule.

## 5.4 Project Certification and Project Transition Meeting

1. Project Certification - the Acquisition Manager is responsible for certifying each assigned project including a statement of compliance to the General Office Acquisition Unit. The purpose of the Certification process is to verify the timely and orderly acquisition of property rights necessary for Georgia Department of Transportation projects and to ensure that the acquisition of said property rights was in compliance with both federal and state law, and Department of Transportation policies and procedures. The Certification of right of way projects is regulated by the official Code of Federal Regulations: [www.fhwa.dot.gov](http://www.fhwa.dot.gov); reference 23 CFR 635.309 for Physical Construction Authorization.

a. There must be a Right of Way Certification for all projects prior to baseline/scheduled LET date. In order to submit a Certification, the following conditions must be met: The plans must be approved; a statement is required from the State certifying that all individuals and families have been relocated to decent, safe and sanitary housing or the State has made available to the relocatees adequate replacement housing in accordance with Federal Highway Administration directives; all necessary right of way, including control of access rights when pertinent, have been acquired including legal and physical possession. Condemnation cases may be pending in court, but legal possession has been obtained. All occupants have vacated the lands and improvements and the State has physical possession and the right to remove, salvage or demolish these improvements and enter on all land.

b. District Certifications are due to the G.O. Right of Way office thirteen weeks prior to the LET date and are due to Engineering Services eleven weeks prior to the LET date as listed on the Critical Events schedule. A monthly reminder memo is created and distributed with due dates for Certifications to Acquisition Managers, Consultant Coordinators and Local Government Coordinators. If this date cannot be met, the Funding and Certification office should be notified immediately. All Certifications must have the same format and be accompanied by a:

- Preconstruction Status Report,
- ROW Project Status Report (T-Pro)
- Relocation Advisory Service Certificate
- T-Pro Relocation Status Report
- Property Management Inventory List
- Copies of all Right of Entries & Options w/Special Stipulations
- Copy of cover sheet highlighting outstanding parcels.
- Consultant/Appraiser/Attorney Rating Forms (this attachment should be sent separately)

c. T-Pro should be updated to include all pertinent information including the property's deed book and page number (includes parcels closed via regular acquisition as well as condemned parcels) after the official filing. If the deed book and page number is not available, this information should be entered once it is made available. A copy of the certification should be sent to the Funding and Certification office, Property Management and Relocation Offices. Once the Certifications are received, Federal and State Aid Certifications are created based on verified information from each of the offices. Property Management and Relocation Certifications are requested if needed. Property Management Certifications must include all improvements, as well as signs and trade fixtures within the right of way. All improvements must be removed prior to Letting or detailed on the Property Management Certification as clearing and grubbing items (Signs should be removed 31 days after closing or condemnation ). Certifications

are then thoroughly reviewed and signed by the State Right of Way Administrator and submitted to Engineering Services with distribution to the Federal Highway Administration, District Offices, Project Manager and the Acquisition Manager.

d. NR Certifications should include a verification form signed by the Project Manager to verify no Right of Way is required. The project cannot be certified without it.

2. Project Transition Meeting - After a project is let for construction, the Project Engineer will hold a Transition Meeting. The Acquisition Manager is required to attend this meeting, give the Project Option Folder to the Construction Project Engineer, and provide all pertinent details that will assist the Project Engineer in regards to the project. This folder is to contain a copy of all settlement Options, a list of all parcels condemned. It will be helpful to inform the Construction Engineer of any concerns expressed by particular Owners during negotiations. If there are any Special Stipulations on the Options – or any agreements that were talked about – the Construction Engineer will need to know about all such matters. It is a common occurrence to receive calls from the Construction Engineer or his staff during the construction phase of a Right of Way project.

## 5.5 Post-Acquisition

### 1. Condemnation/Litigation Activities

a. Depositions, Hearings, and Trials - Condemnation Specialist are assigned to cover all condemnation parcels statewide. Their function is to assist the project attorney in any condemnation matter and coordinate with them so that all required material is forwarded to them. The Condemnation Specialist will send any request for required information or information that the attorney asks for, to the Acquisition Manager or to the Negotiator of the parcel, if needed. Typically, attendance at legal proceedings is required, such as depositions, Special Masters Hearings, meetings with the Project Attorneys and other Department personnel, and condemnation trials.

### b. Condemnation Valuation Expert Witness Procurement Process

- There should always be a “litigation witness scoping meeting and discussion” held between GDOT and the SAAG to assure all are on the same page, prior to requesting any expert witnesses, including appraisers and their possible updates for court. This not only pertains to appraisers, but also business loss experts, noise experts, environmental experts, engineer experts, etc. This REQUIRED discussion should include the SAAG, Condemnation Specialist assigned to your project, their State ROW Program Manager, and the project’s assigned Review Appraiser. This scoping discussion can be held virtually or by conference call,

and most of the meetings are not very long. This is required before procuring any witnesses.

- Once scoping occurs and witness(es) is/are agreed to, the SAAG along with the Condemnation Specialist can then solicit the needed Expert Witness Service. Some of the witnesses are obtained by the assigned Condemnation Specialist (i.e. appraiser, cost-to-cure engineer, etc.) and some of the witnesses must be coordinated with and obtained through the project's assigned P.M. (i.e. consultant designer of record, consultant environmentalist of record, etc.) Often, the Condemnation Specialist will be able to use the Department's own staff as a witness (i.e. Office of Program Delivery's Project Manager, Office of Design Policy and Support's engineer, Office of Design's design engineer, Office of Traffic Operations engineer, etc.) and therefore will not need to go through certain Procurement steps as stated above. The Condemnation Specialist is responsible for ensuring that proper GDOT/State Procurement Processes and Procedures are being followed. GDOT has previously established approved ranges for expert witness services that the Condemnation Specialist will use for approval recommendations.
- Once the Notice to Proceed has been given and accepted by the Consultant, it is understood that the Bid Amount is the Contract price for the assignment or service. Invoices are to be submitted in a timely manner, and any invoices over and above the Contract price are subject to denial. To avoid this, the Condemnation Specialist needs to be informed ASAP of any unforeseen circumstances that may require additional work/services, and a written detailed explanation and estimate of the additional services will be required for review and possible approval. An Notice to Proceed also will need to be issued PRIOR to the additional services occurring beyond the original scope and bid proposal.

## **5.6 QAQC (Quality Assurance Quality Control)**

The acquisition phase of a Right of Way project interfaces with every Chapter in this manual. As such, there is much overlap with all other units involved with the entire Right of Way process. Mention is made here of the Code of Federal Regulations (CFR) requirements that identify how the Department shall remain in compliance during the acquisition phase (reference 23 CFR 710(c)(4)). Mention is as well made here that in all activities undertaken during the Right of Way phase of a project, any policies, procedures, or regulations that we follow are designed to prevent fraud, waste and mismanagement (reference 49 CFR 24.4(c)). This is not meant to be a complete and exhaustive list of compliance requirements for this concern. It is the responsibility of the Negotiator or the person that is acquiring property for the Department to research the applicable portions of Code of Federal Regulations and to understand how and why we are to remain compliant. Should any questions or concerns related to compliance surface and are not understood, then those questions are to be discussed with the successive management levels within the Department. Should upper management need direction or clarification over compliance issues, such will be addressed

with the appropriate Federal Highway Administration contact person.

Negotiation records are to be complete, detailed and thorough and much emphasis is placed on records to be such (reference 23 CFR 710(f)). Negotiation records are reviewed during the audit phase of the project. This audit may be performed at any time; as such, the complete, detailed and thorough records are to be maintained at all times. Detailed negotiation records and their importance are stressed during training classes conducted by this Office.

The Department is to monitor not only our activities, but also those activities of others, whether Local Sponsor or Consultant, to ensure compliance is followed (reference 23 CFR 710(h)). Such activities as random and complete audits of files and any training classes conducted by this office help assure compliance issues are being met.

Acquisition personnel must give the Owner the chance to be present with the appraiser at the time the Owner's property is inspected to discuss any questions or concerns they may have, and also to walk the acquisition area during the appraisal process and again at the time the offer is made to the Owner. This requirement is the same whether the property is appraised or if the Negotiation for Services method is to be followed (reference 49 CFR 24.102(b) and (c)). These issues are covered at all training classes covering appraisals and negotiations; are policies of the Department; and, are mandated by law.

Following the completed review and release of the appraisal, further discussed in Chapter Four, the Negotiator is to prepare the offer package at the determined Fair Market Value and present this offer to the Owner(s) or their representative(s). All required and necessary forms are presented at the time the offer is made. All offers are required to be made by personal contact. Only after an unproductive, exhaustive search is made to contact the Owner may the offer be mailed with the approval of the supervisor. All information is presented and discussed with the Owner (reference 49 CFR 24.102 (d) through (f)). These requirements are to be documented in the negotiation records; are discussed at training classes covering these issues, and, are to be highlights of any random or complete project file audit.

Owners are allowed a reasonable amount of time to review any negotiation information. The Department must consider any information from the Owner. The Department may not take any undue action to induce an Owner into an agreement (reference 49 CFR (f) and (h)). Again, these concerns are to be documented in the negotiation records, are discussed at training classes covering these issues, and, are to be highlights of any random or complete project file audit.

Should an acquisition agreement not be reached, the Department has established procedures for handling what in the past has been identified as an Administrative Settlement n/k/a the General Office Administrative Review. Chapter Six of this manual talks about this process (reference 49 CFR 24.102(i)).

Payment to the Owner for either the established fair market value, the agreed upon

settlement amount; or, the payment into the Clerk of Superior Court for the established fair market value is to occur at the time the deed is signed or at the time the condemnation petition is filed into Court. Such is standard procedure and policy (reference 49 CFR 24.102(j)). This information is reviewed during an audit and may also be reviewed by personnel utilizing the electronic tracking currently in place at the Department.

The Department has a formal condemnation process and procedure, much of the information available in this Chapter, which see (reference 49 CFR 24,102(l)). Condemnation information is not only available in the Department on a parcel-by-parcel basis, but certain documents are available to the public at the Clerk of Superior Court office as well.

Reviews, or audits, are an integral part of any acquisition process. Each Local Government project is subject to a complete file audit before any reimbursement is made to the Local Sponsor. File audits, whether for a Local project or a Georgia Department of Transportation project, are a routine procedure. This audit may be performed at random during the acquisition phase, or, may be performed at the end of the project. Any person involved in any way during the acquisition of right of way must understand that audits may be performed at any time by the Department or by the Federal Highway Administration. This activity may be performed even if there are no federal funds being utilized during the Right of Way phase; the auditing of acquisition files may take place if there are federal funds being utilized in any phase of a project, whether it may be in the Pre-Engineering or in Construction phase. Audits are performed by the appropriate unit for the information being reviewed (i.e.: by the units of Relocation, Property Management; Appraisal and Review; Acquisition and Local Government).

Training is as well an integral part of the acquisition process. The Office of Right of Way conducts training for Local Sponsors, Georgia Department of Transportation Right of Way staff and Right of Way Consultants. Power point presentations are available for review and for training purposes. Training is at times conducted by one unit in particular (i.e.; the unit of Relocation for specialized purposes), or, by combined units conducting comprehensive overviews for an all-day training session.

As mentioned earlier, the acquisition phase of Right of Way interfaces with every other Chapter in this Manual. It shall be the responsibility of the acquisition person to become familiar with Code of Federal Regulations and all requirements thereto. The Quality Assurance Quality Control information contained in many of these Chapters reflects that Code of Federal Regulations requirements are documented for not only our use and knowledge, but for the entire general public as well. Hyperlinks have been used throughout this Manual to directly take the reader to the particular Code of Federal Regulations information being talked about. With the use of computers, this same information is readily available to anyone doing a search. Using any widely available search engine (such as Google or Yahoo), simply start entering the information (i.e.: 49 CFR 24...) and the information will become readily available on the screen.

**Policies and Procedures of the Department in this chapter may be waived, altered, or modified at any time and at the full discretion of the Department**

**and FHWA as necessary to accomplish the overall goals and objectives of the Department and FHWA, and as long as any waivers, alterations, and modifications of said policies and procedures are not in direct violation or contradiction with state and federal codes, of which will rule over any recommended waivers, alterations, or modifications.**

## **5.7 ROW Flow chart**

