

March 17, 2015



RICHLAND COUNTY RIGHT-OF-WAY POLICY



Dates of Adoption and Amendment Actions

- Adopted by Richland County Council March 17, 2015

INTRODUCTION

I. DESCRIPTION AND OVERVIEW

This Richland County Right of Way Policy (the “Policy”) sets forth the right-of-way acquisition process and procedures for rights of way acquisitions by Richland County (hereinafter, the “County”). The procedures described herein shall follow where applicable the United States Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, Pub. L. 91-646, 42 U.S.C. §§ 4601 *et seq.*, and regulations there under, 49 C.F.R. Pt. 24, and the South Carolina Eminent Domain Procedure Act, S.C. Code Ann. §§ 28-2-20, *et seq.* Within each section, additional manuals or policies may be referenced to provide guidance to the County.

The County generally follows South Carolina Department of Transportation (“SCDOT”) right-of-way acquisition procedures. SCDOT right-of-way acquisition procedures comply with the South Carolina Eminent Domain Procedure Act. The County will comply with the *SCDOT Right-of-Way Manual* (latest edition) and associated manuals or documents and applicable federal and state laws and regulations. Specific procedures contained in SCDOT manuals may be referenced in this Policy. The County will also use SCDOT standard forms and documents to the extent practicable.

Right-of-way projects eligible for state and federal funding and maintenance are subject to the Intergovernmental Agreement between the County and SCDOT (“IGA”), and thereby require SCDOT involvement in the right-of-way acquisitions process. All activities related to the acquisition of rights-of-way for projects eligible for state and federal funding or maintenance will be in accordance with the terms of the IGA and applicable state and federal laws and regulations. The County will transfer the right-of-way for these eligible projects to SCDOT at the conclusion of the project.

This Policy does not supplant, enlarge or limit any rights, obligations or duties of the County under applicable federal and state laws or regulations or County ordinances relating to right-of-way acquisitions or the exercise of eminent domain or condemnation powers. Nor do the guidelines, processes or procedures contained herein establish a legal standard or give rise to private rights of action. To the extent this Policy conflicts with applicable federal or state laws or regulations or County ordinances, such laws, regulations, or ordinances control.

This Policy is organized into two sections for Right-of-Way Acquisition Procedures:

- Section 1: Projects eligible for State and Federal Funding and Maintenance
- Section 2: County Projects

It includes a description of operational procedures and provides discussion on the process by which right-of-way acquisition functions are to be accomplished.

II. PURPOSE

The purpose of the Policy is to streamline the right-of-way acquisition process by providing uniform guidance in the form of a published policy manual establishing standards, procedures and processes for right-of-way acquisitions and related activities.

No policy manual can be expected to cover all of the potential eventualities that might be encountered by County personnel involved with the right-of-way acquisitions process. This Policy sets forth general guidelines to be followed and is subject to change as may be deemed prudent. If a situation not specifically covered by this Policy should arise, County personnel should contact their immediate supervisor for guidance.

SECTION 1: PROJECTS ELIGIBLE FOR STATE & FEDERAL FUNDING AND MAINTENANCE

I. PREPARATION FOR ACQUISITION PROCEDURES

A. Right-of-Way Plan Review

The Right-of-Way Manager (“R/W Manager”), available SCDOT personnel, and County Director of Transportation or other appropriate County representative will physically visit and analyze the right-of-way project site to determine the following:

- (1) Relocation of Landowners Displaced by the Transportation Project
- (2) Acquisition/Negotiation
- (3) Appraisal standard

The review and analysis will include a thorough discussion on the various aspects and implications of the selected route on right-of-way (“R/W”) acquisitions including, but not limited to, any damages or diminution in value to the property remainder, costs to cure damages, benefits to the property, specialty appraisal requirements (signs, fixtures, equipment, *etc.*), if applicable.

After the review has been concluded, a meeting will be held with the Engineer of Record to present any recommended changes to the plans that may aid in the R/W acquisition process, yet not significantly compromise any other aspect of the project. Upon receipt of the final right-of-way plans, the R/W Manager will provide a final review to determine permission only parcels¹, acquisition parcels with and without permissions, and relocation parcels.

R/W parcels will be acquired in fee simple except where SCDOT and County may direct the acquisition of a R/W easement, in lieu of fee simple title, with respect to any portion of the R/W.

B. Agent Assignments

The R/W Manager will assign parcels to Agents based on experience and parcel complexity. Agents are employed by an entity to provide acquisition and relocation related services to individuals affected by R/W acquisitions. The Agents will familiarize themselves with the plans and will draft preliminary Landowner contact letters. The Agent will not deliver the contact letter or otherwise communicate with the Landowner² until receipt of the title opinion.

C. Request Title Opinions

Final R/W plans will be sent by the R/W Manager to the title attorney. The title attorney will examine title as directed by the R/W Manager. The R/W Manager’s directions will be based on parcel

¹ A “permission” is a right to enter property for a stated purpose granted by the Landowner to the County. A “permission only” parcel is a parcel outside the right of way that the County may need to enter to perform work upon as part of the R/W project.

² “Landowner” as used throughout this Policy shall mean a Landowner as defined by the South Carolina Eminent Domain Procedure Act, S.C. Code Ann. § 28-2-30(12).

complexity, subject to the minimum requirements set forth in Section 1, Subsection II (Title Investigations/Opinion) of this Policy.

D. Request Cost Estimates

The R/W Manager will send the final R/W plans to a SCDOT Approved Appraiser requesting cost estimates based upon the R/W Manager’s discretion as determined by the plan review. Cost estimates are a simplified version of an appraisal and are based on comparable sales located on or adjacent to the project site.

Once cost estimates are completed and reviewed by SCDOT designated personnel, it will be the responsibility of SCDOT to set just compensation for the cost estimates. Once just compensation has been set, offers can be made from the approved cost estimates on “non-complex” acquisitions under \$20,000.00. However, state law provides that the Landowner has the right to require that an appraisal be made for any acquisition, regardless of the cost estimate amount. Any complex acquisitions as defined hereinafter will require an appraisal before an offer can be made for acquisitions.

E. R/W Exhibits

R/W exhibit(s) will be prepared for each parcel and will follow the criteria established by SCDOT in the *Instructional Guide for Rights of Way Exhibits*. The exhibit(s) will be presented on 8.5” x 14” legal size paper and contain, without limitation, the following:

- Horizontal alignment
- Property Lines
- Present R/W
- New R/W
- Area of acquisition highlighted
- Project identification or number
- Parcel (Tract) No.
- New roadway design
- Existing roadway topography

The exhibit(s) will be finalized and submitted to the R/W Manager for inclusion into the final R/W file.

II. TITLE INVESTIGATIONS/OPINIONS

The title attorney will provide a 40 year title investigation in order to establish property ownership prior to contacting any Landowners, as defined by the South Carolina Eminent Domain Procedure Act, S.C. Code Ann. § 28-2-30(12). The title search will conform to the R/W Manager’s directions and the requirements set forth in this Policy and will consist of a thorough search of the tax assessor’s records, deed records, Probate records, and other pertinent sources in order to determine the current ownership of each parcel. The title opinion will include, but not be limited to:

- Current Landowner
- Property tax information
- Mortgage(s) of record
- Miscellaneous liens (state, federal, etc.)
- Property owner deed(s) and plat(s)
- Easements of record

The title opinion will list all Landowners. Title opinions are effective for a period of 90 days. Should title opinions exceed 90 days prior to the actual acquisition, conclusion or condemnation of a parcel, the title attorney, at the request of the R/W Manager, will provide an updated title opinion. The updated title opinion, also effective for a period of 90 days, will include any new information regarding mortgage(s) of record and miscellaneous liens.

Upon receipt of the title opinion, the R/W Manager will review the title opinion, and if clarification is needed on any items, the R/W Manager will discuss these items with the title attorney. The title attorney will provide a revised title opinion as needed.

Prior to filing a condemnation notice with the Court, outside counsel has the discretion to update the title opinion as needed.

III. PRELIMINARY CONTACT WITH LANDOWNER

Agents will begin contacting Landowners as soon as possible after receipt of the title opinion from the R/W Manager. Agents will initiate the negotiation process by mailing a preliminary contact letter to the Landowner. This will allow the Landowner to schedule a meeting with the Agent at the Landowner's convenience. The Agent will include the following with the letter:

- Brief R/W project description
- Copy of the R/W plan sheets, highlighting the proposed acquisition on the Landowner's property
- Agent contact information

There are two types of acquisition parcels: Complex Acquisition³ and Non-complex Acquisition⁴. Priority will be given to Complex Acquisitions. The following describes the Agent's initial meeting with the Landowner on these types of acquisitions:

A. Complex Acquisitions (Compensation to Property Owner > \$20,000)

During the preliminary contact, the Agent will meet with the Landowner onsite, when reasonably possible, to discuss:

- Title information
- Property lines
- Proposed improvements
- R/W acquisition
- R/W appraisal process
- Relocation process and assistance, if applicable

A copy of the SCDOT "Highways and You" booklet will be provided to each Landowner. This booklet contains additional information on the R/W acquisition process. The Agent will also perform an onsite field review with the Landowner and provide a copy of the R/W plan sheet(s).

If permissions are required for the parcel, the Agent will obtain a signed permission form during the preliminary contact. If the Landowner is not willing to grant a specific permission, it may be necessary to convert the permission(s) to right-of-way prior to requesting the appraisal.

³ A "complex" acquisition as used throughout this Policy means an acquisition of property valued in excess of \$20,000; occupied parcels; parcels that may require significant appraisal time or engineering modifications or studies; parcels that may become improved tracts due to R/W impacts; parcels that are heirs' property; parcels that are under guardianship; parcels where guardians must be appointed because one or more of the Landowners of the parcel are minors or are incapacitated; parcels that may be subject to bankruptcy or probate proceedings; properties subject to leasehold interests; and other parcel acquisition deemed complex by Director of Transportation or other appropriate County representative.

⁴ A "non-complex" acquisition as used throughout this Policy means an acquisition of property valued at \$20,000 or less that is not otherwise complex.

The Agent will not make an offer during the preliminary contact on a complex acquisition, but will inform the Landowner that an appraisal will be ordered, and the Landowner may be present while the appraiser inspects the property.

B. Non-complex Acquisitions (Compensation to Property Owner ≤ \$20,000)

The preliminary contact by the Agent will include the items listed under Complex Acquisitions; however, the Agent will make an offer to the property owner based on a cost estimate of just compensation set by SCDOT. The Agent will explain that the Landowner may request an appraisal, and the appraised offer may supersede the cost estimate offer, even if the cost estimate offer is more than the appraised offer.

During the preliminary contact with the Landowner, if it is apparent that the Landowner does not understand how the new R/W acquisition will affect the property, it may be necessary to have the present and new R/W limits staked prior to the Agent meeting with the Landowner again. Under such circumstances, the Agent may recommend R/W staking for the specific parcel to the R/W Manager, and the R/W Manager may coordinate the R/W staking with the surveyor. If the County prefers, the present and new R/W limits for the entire project may be staked prior to the Agents making preliminary contact with Landowners. This may be necessary on controversial projects, or if during the public involvement process, multiple R/W questions are submitted.

IV. NEGOTIATIONS

The negotiations with the Landowner will adhere to applicable state and federal laws and regulations and the *SCDOT Acquisition Manual*. As such, the R/W Manager will maintain a negotiations record on a parcel-by-parcel basis. The record will be kept in a permanent form and completed within a reasonable time after each contact with the Landowner. The record shall be signed and dated by the assigned Agent.

The negotiation record will include:

- Correspondence between the Agent and Landowner
- Correspondence between the R/W Manager, County personnel involved in R/W acquisitions, Engineer of Record, and others
- Title Opinion
- Initial offer and counteroffer(s) (if any) based on approved Cost Estimates/Appraisals
- Cost Estimate/Appraisal
- R/W Exhibit
- Administrative Adjustment letter
- Settlement Approval letter or Letter Recommending Condemnation

The Agents, following the preliminary contact with the Landowner, will:

A. Make Offer

The majority of offers are usually made and negotiated in person between the Agent and Landowner.

All offers will be made subject to the approval authority established by County Council. County Council may revise, alter, or amend this approval authority from time-to-time in its sole discretion.

The County Director of Transportation or other appropriate County representative will review proposed settlements. If necessary due to the established approval authority, the County Director

of Transportation or other appropriate County representative must seek and secure additional approval to settle the matter.

Offer Process

- Complex Acquisitions: Hand-deliver appraisal offer letter to Landowner onsite with copy of appraisal

1) Appraisals

Only SCDOT approved appraisers will be used to perform appraisals for rights of way acquisitions by the County. Each appraisal will comply with applicable state and federal laws and regulations, SCDOT policies and procedures, and the Uniform Standards of Professional Appraisal Practices (“USPAP”).

The R/W Manager will assign parcels to the appraiser based on appraisers’ ability and experience in appraising particular types of property. The appraiser’s ability to testify successfully in court for the condemning authority will also be a consideration on parcels involving potential problems or complex issues.

The R/W Manager will contract with appraisers on a project or parcel basis with the appraisals due at an agreed upon time or in an appropriate time frame to facilitate the R/W project. The appraisers will transmit the completed appraisals to the reviewing appraiser, and at the same time, a copy of the transmittal letter and appraisal will be sent to the R/W Manager to allow the status of appraisals and appraisal reviews to be accurately monitored.

2) Review Appraisals

Only SCDOT approved appraisers will be used to perform review appraisals for rights of way acquisitions by the County. The review will comply with applicable state and federal laws and regulations, SCDOT policies and procedures, and the USPAP.

The reviewer will check each appraisal for compliance with applicable state, federal, SCDOT, and USPAP requirements and appropriate items of compensation, and will verify that the appraisal does not contain arbitrary or speculative adjustments. The accuracy of mathematics, reasoning and logic, and overall support for the value conclusion will be reviewed thoroughly. The review appraiser will provide the R/W Manager a Review Appraisal Report, Appraisal Review Summary, and a recommended just compensation offer for the property to be acquired.

The R/W Manager will submit the appraisal and review appraisal packages to SCDOT. Based on the recommendations of the review appraiser, SCDOT designated personnel will provide a response to the recommendation and set just compensation accordingly.

The R/W Manager will “spot review” the appraisals, appraisal reviews, and other information provided by the appraiser and review appraiser on a random basis as a quality assurance measure.

3) Relocation Assistance Program

Whenever an acquisition requires the relocation of a Landowner, the Relocation Assistance Program will be administered by the County in accordance with applicable state and federal laws and regulations and the *SCDOT Relocation Assistance Manual*. Qualified Relocation Agents will perform relocation activities.

The Relocation Agent, appointed by the R/W Manager, will make a R/W project relocation assessment consisting, without limitation, of:

- An analysis of the needs of residential displacee based on: the number of occupants residing in the dwelling; family size, age and gender; occupancy status (owner or tenant); the condition of the present dwelling and whether or not it meets required housing conditions; income of the household; citizenship verification; distances to employment, shopping, public facilities, *etc.*; and any special circumstances, including physical disabilities or special education needs for children.
- An analysis of the replacement housing resources available to accommodate the needs of those being displaced. The analysis will consider housing for sale and for rent.
- A review of the market for those displacees with special or unique requirements. Last Resort Housing will be considered where needed.
- A review of other Federal and local programs which may assist in providing advisory assistance and other financial assistance to displacees.
- An analysis of the needs of any businesses to be displaced.

It is important that potential displacees be contacted to review the relocation process and issues that may affect their relocation with them. For those persons unable to speak or understand English, either bilingual agents will be available or a translation service will be utilized.

Relocation Agents will also perform the following non-exclusive services:

- Provide listings of comparable replacement property for sale and rent. Listings will include the name of the realtor, seller or landlord who has the available property.
- Work with realtors and lenders to explain the relocation assistance program and how each displacee's entitlements will be paid.
- Provide transportation and assistance in getting to properties that are for sale or for rent to those displacees who have no means of transportation.
- Perform decent, safe, and sanitary inspections of properties listed as comparable replacement alternatives and housing selected by the displacees.
- Verify the dwelling being occupied (either purchased or rented) meets local housing codes and ordinances and the minimum decent, safe, and sanitary regulations.
- When replacement property is purchased, attend the closing to assist the displacee and deliver the appropriate payment.
- Assist residential displacees with commercial movers when they choose to move on an actual cost basis.
- Interview the owner of a business operation to determine what special needs may be required to accommodate the business at a new location.

- Assist the business in working with local zoning requirements to obtain permits and licenses for relocation of their business.

The Relocation Agent will prepare the relocation benefit computations and supporting documentation and submit to the R/W Manager. If the R/W Manager approves the relocation package, the R/W Manager will forward it to the SCDOT Right-of-Way Office with a recommendation for approval. Once SCDOT approves, the Relocation Agent will make an offer to the displacee for any applicable relocation benefits/assistance.

- Non-complex Acquisitions: Initial offer was made during preliminary contact with the property owner based on the Cost Estimate Offer (Compensation to Landowner < \$20,000). If the Landowner elected to have an appraisal completed, it would follow the process shown under the Complex Acquisitions.

Offers by mail may be used on specific parcels where it appears feasible to do so. A packet containing information required by *SCDOT Right-of-Way Policies and Procedures Manual* and any other information pertinent to the particular parcel will be mailed to the Landowner by certified mail. If a copy of the appraisal has been previously requested by the Landowner, it will be included in the packet. The letter will contain the address and phone number of the agent and will advise the Landowner that the agent will answer any questions and/or set up an appointment to discuss matters at a specific time.

Providing specific information to the Landowner in advance of the meeting with the Agent allows the Landowner time to review the offer and the effects of the acquisition on the property, and therefore be better prepared to discuss the acquisition with the Agent. Due to the complexities of the relocation assistance program, negotiations by mail will not be used for parcels on which owner-occupied structures are located. In addition, the negotiations by mail will not be used on parcels involving complex issues as determined by the R/W Manager.

B. Offer Accepted or Countered

1) Initial Offer Accepted

Once the initial offer is accepted, the Agent will prepare a negotiation package (“Negotiation Package”) and submit it to the R/W Manager. The Negotiation Package will include the following:

- The form of any proposed titles to real estate, easements, releases for encumbrances, or any other interest in real estate that may be required
- Signed form verifying social security or tax identification number of Landowner(s)
- R/W exhibit(s)
- Request for payment form
- Acceptance of Offer form signed by the Landowner and any Lienholder (See Attachment 1)

The Agent may have the transfer documents, permissions, and/or releases signed by the Landowner if the property is being granted “gratis”. Copies of the signed documents will be submitted to the R/W Manager. The R/W Manager will record the signed documents with the appropriate Register of Deeds, and will retain such documents for transfer to SCDOT at a later date.

2) Counteroffer

On the majority of acquisitions, the initial offer is countered by the Landowner. The Agent will consider the Landowner’s counteroffer. The Agent will discuss the counteroffer with the R/W Manager prior to the Agent making a best effort to negotiate a settlement with the Landowner. If necessary and in the best interest of the County, the Agent and the R/W Manager will discuss whether or not to increase the offer in order to reach an “Administrative Settlement” with the Landowner. In support of a proposed Administrative Settlement, the Landowner must provide a legitimate reason and/or documentation for the increase in the offer amount.

The Administrative Settlement process is monitored by SCDOT, and SCDOT must approve the negotiated amount above the initial offer. The Administrative Settlement authority is subject to the authority amounts established by the Richland County Council.

Following settlement with the Landowner, the R/W Manager will prepare documentation for the file noting the Administrative Settlement. The R/W manager, SCDOT designee, and County Director of Transportation or other appropriate County representative must sign the documentation.

Once the counteroffer has been accepted by the Landowner, the Agent will submit a Negotiation Package to the R/W Manager.

V. FINALIZE NEGOTIATIONS

Finalizing negotiations is a two-step process. The first step is requesting issuance of a check in payment of the compensation due to the Landowner, and the second step is the transfer of title from the Landowner to the County concurrently with delivery of the check to the Landowner.

A. Payment Process

The R/W Manager will forward the Negotiation Package to the County Director of Transportation or other appropriate County representative requesting issuance of the required check made payable to the Landowner. Typically several payment forms will be bundled into one request and submitted bi-monthly to the County designee for processing.

B. Transfer of Title

At closing of the transaction for the property interest being acquired, the Agent will obtain execution of documents by the Landowner conveying to the County fee simple title, easement(s), required releases for encumbrances, or other required property interests. Title will be conveyed to the County, free and clear of liens and encumbrances, except permitted encumbrances. Concurrently with the execution of such documents, the Agent will deliver to the Landowner a check in the appropriate amount as compensation for the R/W acquisition. Once the transaction has been closed, the R/W Manager will record documents transferring property interests to the County with the appropriate Register of Deeds. The documents conveying title shall be retained by the R/W Manager for transfer to SCDOT at a later date.

Upon completion of construction of the R/W project by the contractor and acceptance of completion of construction by SCDOT and County, the R/W Manager will convey title to rights-of-way acquired for the project to the SCDOT, as required.

VI. CONDEMNATION/EMINENT DOMAIN

Condemnation actions and the exercise of the state’s eminent domain powers are governed by the Constitution of the State of South Carolina, the South Carolina Eminent Domain Procedure Act, and applicable federal laws and regulations. The South Carolina Eminent Domain Procedure Act sets forth the exclusive procedures for the exercise of eminent domain power in this State. S.C. Code Ann. 28-2-20, -60, and -210. To the extent this policy conflicts with this Act, the Act controls.

All possible efforts within the County’s scope of work will be made to avoid condemnation actions. Where possible, a minimum of two (2) personal contacts, no less than three (3) overall contacts, and additional contacts as needed will be made with the Landowner in a timely manner in an effort to negotiate the purchase of the necessary right-of-way.

Most condemnations involve the Landowner’s disagreement with the just compensation offer. Prior to filing the condemnation action, a senior Agent, the R/W Manager, and/or another designated person will contact the Landowner personally or by letter in an effort to settle the case. The Landowner will be requested to provide a value estimate of the property being acquired, along with any supporting documentation and data, for consideration of additional compensation.

Information provided by the Landowner will be reviewed by the R/W Manager, who may solicit input from the appraiser, review appraiser, negotiator, engineer, or others. If a higher offer is determined to be justified, approval will be requested from SCDOT designated personnel and County Director of Transportation or other appropriate County representative. If a problem may be solved by a change in the plans, the Engineer of Record and R/W Manager will be consulted to determine if there are any engineering solutions that will resolve the issues. Changes that do not significantly compromise any other aspect of the project may be made where possible.

Before condemnation action is initiated on those parcels with title problems,⁵ the Agent will make every effort to clear title and avoid condemnation.

Mediation may be considered as an alternate solution to condemnation actions on a case-by-case basis, if time allows. The Director of Transportation or appropriate County representative and appropriate SCDOT personnel must approve the use of the mediation process. The County will be responsible for the costs associated with mediation.

In the event condemnation appears imminent, the R/W Manager will request approval to initiate a condemnation action from SCDOT designated personnel and County Director of Transportation or other appropriate County representative. Both SCDOT and County Director of Transportation or other appropriate County representative must approve initiation of a condemnation action. A list of parcels that appear to require condemnation (“Parcel List”) will be provided to SCDOT designated personnel and County Director of Transportation or other appropriate County representative. The Parcel List will include the following for each parcel:

- Project identification or name
- Landowner’s contact information, or contact information for Landowner’s counsel, if known or designated
- Tax map number
- R/W exhibits

⁵ Parcels with “title problems” include, without limitation, property with defective title, clouds on the title, or other issues that may render title unmarketable.

- Offer or counteroffer for the new right-of-way
- Reason for moving forward with the condemnation request

The County Director of Transportation or other appropriate County representative will recommend to SCDOT and County Council whether or not condemnation actions should be initiated on some or all of the properties identified in the Parcel List. SCDOT and County Council must approve all condemnation actions.

Upon approval from SCDOT and County Council to initiate a condemnation action, the R/W Manager will prepare an Acquisition File for each parcel to be condemned. In addition to the information contained in the Parcel List, the Acquisition File will include:

- Copy of the appraisal or cost estimate
- The title opinion
- A legal description of the property being acquired as right of way
- The plan sheets showing the property to be acquired
- The Negotiation Record (see Section 1, Subsection IV)
- Any information regarding Relocation Assistance, if applicable
- The contact information for the Engineer the R/W Manager has designated to work with the attorneys in the preparation and potential trial of the condemnation case

The R/W Manager will review the Acquisition File for verification of details regarding title, appraisal, appraisal review, negotiation, and any other pertinent correspondence. After the review, the R/W Manager will transmit the Acquisition File and other necessary paperwork to the County’s designated condemnation attorney. The R/W Manager will also provide the condemnation attorney with a complete set of R/W construction plans for each project where R/W acquisition is occurring by condemnation.

The condemnation attorney may, but is not required to, initiate additional negotiations with the Landowner to settle the matter before filing the Condemnation Notice with the appropriate Clerk of Court and initiating a condemnation action. If the condemnation attorney cannot settle with the Landowner, or unless otherwise instructed by the County Director of Transportation or other appropriate County representative, the condemnation attorney will proceed with filing Notice of Condemnation and initiating a condemnation action. Nothing in this section, limits the ability of the condemnation attorney to attempt to settle the property after commencement of the condemnation action and present proposed settlement terms to SCDOT and the County for consideration and approval.

Upon conclusion of the condemnation action, the condemnation attorney will send the recorded transfer documents conveying title of the R/W acquisition to the County to the Director of Transportation or other appropriate County representative and the R/W Manager, with copies going to the County legal office. The R/W Manager will retain such documents for transfer to SCDOT at a later date.

VII. RIGHT-OF-WAY CERTIFICATION

Before a project can be advertised for construction bids, County must provide SCDOT, and to the Federal Highway Administration (“FHWA”), if applicable, with certification that all necessary rights of way have been acquired for the project. Acquisition may be by signed easement, executed title to real estate, or by filing of notice and tender of payment with the County Clerk of Court.

Should a conditional right-of-way certificate be submitted, a clear certificate shall be issued upon completion of the acquisition and/or relocation as reflected within the conditional certificate and submitted to SCDOT, the County, and FHWA. This procedure is required for right-of-way projects

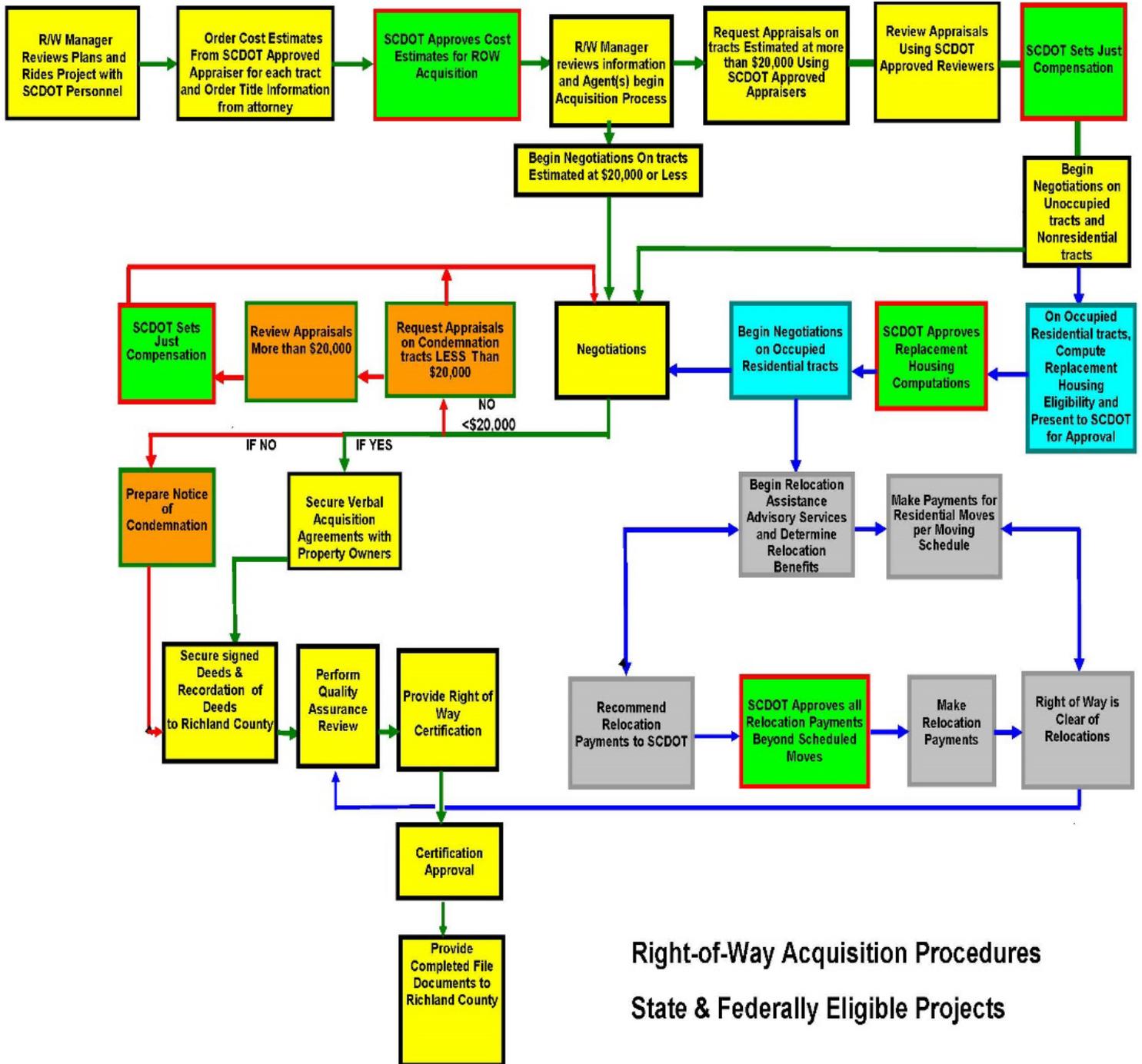
utilizing state and federal funds including projects utilizing present right-of-way, Local Public Agency (LPA) Projects, *etc.*

Prior to providing a right-of-way certification to SCDOT, the R/W Manager will perform quality control/quality assurance (QC/QA) in order to verify that all rights of way have been acquired. Following the QC/QA Process, The R/W Manager will provide SCDOT, the County and, if applicable, to FHWA, a Right-of-Way Certification for the project verifying that all necessary rights-of-way have been acquired and the project is ready for construction.

Right of Way Certification must be approved by SCDOT before a project can be advertised for construction bids.

VIII. RECORDS

During the course of the project, the R/W Manager will maintain files and a comprehensive spreadsheet listing of each parcel secured for a project. At the completion of a project, SCDOT and the County will be provided with a set of files and Final Right-of-Way plans annotated to show the date and manner of acquisition of each parcel. Once a project has been completed, and approval of final inspection by SCDOT and/or the County has been completed, the R/W Manager will prepare a title to real estate listing each parcel of land that was secured for the project originally in the County's name in order to convey the necessary right-of-way back to the SCDOT. Once appropriate signatures have been obtained, the R/W Manager will have the title to real estate and R/W exhibit recorded in the Richland County Register of Deeds office after which the title to real estate along with a set of the final project plans and comprehensive spreadsheet will be delivered to the SCDOT. County will retain records of R/W acquisitions as appropriate.



Right-of-Way Acquisition Procedures
State & Federally Eligible Projects

SECTION 2: RICHLAND COUNTY PROJECTS

This section covers all projects owned by Richland County (“County”) and for which funds from SCDOT or FHWA will not be utilized. This section covers activities including from receipt of the signed Final Right-of-Way Plans and Notice to Proceed for the acquisition process to securing and certifying right-of-way for County-owned and County managed projects.

During the development of a greenway⁶ project, the Engineer of Record, R/W Manager, and County Director of Transportation or other appropriate County representative will meet with the Landowner to determine the potential alignment of the greenway on their property. These discussions may be ongoing until the project is ready for construction. The right-of-way documentation for a greenway project will follow the procedures in this section.

These procedures will be used by the R/W Manager in the acquisition of rights-of-way by the County. The procedures follow the South Carolina Eminent Domain Procedures Act. The R/W Manager will use County standard forms and documents to the extent practicable.

I. PREPARATION FOR ACQUISITION PROCEDURES

A. Right-of-Way Plan Review

The Right-of-Way Manager (“R/W Manager”) and County Director of Transportation or other appropriate County representative will physically visit and analyze the project to determine the following:

- (1) Relocation of Landowners Displaced by the Project
- (2) Acquisition/Negotiation
- (3) Appraisal standard

The review and analysis will include a thorough discussion on the various aspects and implications of the selected route on Right-of-Way (“R/W”) acquisitions, including, but not limited to any damages or diminution in value to the property remainder, costs to cure damages, benefits to the property, specialty appraisal requirements (signs, fixtures, equipment, *etc.*), if applicable.

After the review has been concluded, a meeting will be held with the Engineer of Record to present any recommended changes to the plans that would aid in the R/W acquisition process, yet not significantly compromise any other aspect of the project. Upon receipt of the final right-of-way plans, the R/W Manager will provide a final review to determine permission only parcels, acquisition parcels with and without permissions, and relocation parcels (if applicable).

R/W parcels will be acquired in fee simple except where County may direct the acquisition of a R/W easement, in lieu of fee simple title, with respect to any portion of the R/W.

⁶ A “greenway” is generally a multi-use pathway for non-motorized transportation along natural and manmade linear spaces such as rail and highway rights-of-way, river corridors, waterfront spaces, parklands, or city streets.

B. Agent Assignments

The R/W Manager will assign parcels to Agents based on experience and parcel complexity. Agents will familiarize themselves with the plans and will draft preliminary Landowner contact letters. The Agent will not deliver the contact letter or otherwise communicate with the Landowner until receipt of the title opinion.

C. Request Title Opinions

Final R/W plans will be sent by the R/W Manager to the title attorney. The title attorney will examine title as directed by the R/W Manager. The R/W Manager’s directions will be based on parcel complexity, subject to the minimum requirements set forth in Section 2, Subsection II (Title Investigations/Opinions) of this Policy.

D. R/W Exhibit

The R/W exhibit(s) is prepared for each parcel and follows the criteria established by SCDOT in the *Instructional Guide for Rights of Way Exhibits*. The exhibit is presented on 8.5” x 14” legal size paper and contains the following, but not limited to:

- Horizontal alignment
- Property Lines
- Present R/W
- New R/W
- Area of obtain highlighted
- Parcel (Tract) No.
- New roadway design
- Existing roadway topography

The exhibit will be finalized, based on the Agent’s negotiations, and submitted to the R/W Manager and Agent for inclusion into the final R/W package.

II. TITLE INVESTIGATIONS/OPINIONS

The title attorney will provide a 40 year title investigation in order to establish property ownership prior to contacting any Landowners, as defined by the South Carolina Eminent Domain Procedure Act, S.C. Code Ann. § 28-2-30(12). The title search will conform to stated requirements and will consist of a thorough search of the tax assessor’s records, deed records, Probate records, and other pertinent sources in order to determine the current ownership of each parcel. The title opinion will include, but not be limited to:

- Current Landowner
- Property tax information
- Mortgage(s) of record
- Miscellaneous liens (state, federal, etc.)
- Landowner deed(s) and plat(s)
- Easements of record

The title opinion will list all Landowners. Title opinions are effective for a period of 90 days. Should title opinions exceed 90 days prior to the actual acquisition, conclusion or condemnation of a parcel, the title attorney, at the request of the R/W Manager, will provide an updated title opinion. The updated title opinion, also effective for a period of 90 days, will include any new information regarding mortgage(s) of record and miscellaneous liens.

Upon receipt of the title opinion, the R/W Manager will review the title opinion, and if clarification is needed on any items, the R/W Manager will discuss these items with the title attorney. The title attorney will provide a revised title opinion as needed.

Prior to filing a condemnation notice with the Court, outside counsel has the discretion to update the title opinion as needed.

III. PRELIMINARY CONTACT WITH LANDOWNER

Agents will begin contacting Landowners as soon as possible after receipt of the title opinion from the R/W Manager. Agents will initiate the negotiation process by mailing a preliminary contact letter to the Landowner. This will allow the Landowner to schedule a meeting with the Agent at the Landowner's convenience. The Agent will include the following with the letter:

- Brief R/W project description
- Copy of the R/W plan sheets, highlighting the proposed acquisition on the Landowner's property
- Agent contact information

During the preliminary contact, the Agent will meet with the Landowner onsite, when reasonably possible, to discuss:

- Title information
- Property lines
- Proposed improvements
- R/W acquisition
- R/W appraisal process, if utilized
- Relocation process and assistance, if applicable

If permissions are required for the parcel, the Agent will obtain a signed permission form during the preliminary contact. If the Landowner is not willing to grant a specific permission, it may be necessary to convert the permission(s) to R/W.

During the preliminary contact with the Landowner, if it is apparent that the Landowner does not understand how the new R/W acquisition will affect the property, it may be necessary to have the present and new R/W limits staked prior to the Agent meeting with the Landowner again. Under such circumstances, the Agent may recommend R/W staking for the specific parcel to the R/W Manager, and the R/W Manager may coordinate the R/W staking with the surveyor. If the County prefers, the present and new R/W limits for the entire project may be staked prior to the Agents making preliminary contact with Landowners. This may be necessary on controversial projects, or if during the public involvement process, multiple R/W questions are submitted.

IV. NEGOTIATIONS

In the majority of the County's acquisitions, the necessary right-of-way is obtained "gratis"; however, County, at its discretion, may utilize the appraisal process and appraisal review process, as necessary to settle with a Landowner prior to recommending condemnation.

The negotiations with the Landowner will adhere to applicable laws and regulations. As such, the R/W Manager will maintain record of negotiations on a parcel-by-parcel basis. The record will be kept in a permanent form and completed within a reasonable time after each contact with the

property owner. The record shall be signed and dated by the assigned Agent and transmitted to the R/W Manager.

The negotiation record will include:

- Correspondence between the Agent and Landowner
- Correspondence between the R/W Manager, County personnel involved in R/W acquisitions, Engineer of Record, and others
- Title Opinion
- Initial offer and counteroffer(s) (if any) based on approved
- Signed title to real estate or Letter Recommending Condemnation

When permitted by County, “negotiations by mail” may be used on specific parcels where it appears feasible to do so. A packet containing information pertinent to the particular parcel will be mailed to the Landowner by certified mail. The letter will contain the address and phone number of the Agent and will advise the owner that the Agent will answer any questions and/or set up an appointment to discuss matters at a specific time.

Providing specific information to the Landowner in advance of the meeting with the agent allows the Landowner time to review the offer and the effects of the acquisition on the property, and therefore, be better prepared to discuss the acquisition with the Agent.

Due to the complexities of the relocation assistance program, negotiations by mail will not be used for parcels on which owner-occupied structures are located. In addition, the negotiations by mail will not be used on other parcels involving complex issues as determined by the R/W Manager.

When an appraisal is requested, at Richland County’s discretion or if the County designee is recommending an appraisal prior to condemnation, Agents, following the preliminary contact with the Landowner, will:

A. Make Offer

The majority of offers will usually be made and negotiated in person between the Agent and Landowner. The following describes the process:

All offers will be made subject to the approval authority established by County Council. County Council may revise, alter, or amend this approval authority from time-to-time at its sole discretion.

The County Director of Transportation or other appropriate County representative will review proposed settlements. If necessary, due to the established approval authority, the County Director of Transportation or other appropriate County representative must seek and secure additional approval to settle the matter.

Offer Process:

1) Appraisals

In the event an appraisal is necessary, the R/W Manager will request an appraiser from the Director of Transportation or other appropriate County representative to perform a specific appraisal. The appraiser should be selected from the County’s approved list of appraisers. Each appraisal will comply with the requirements of Richland County’s policies and procedures and Uniform Standards of Professional Appraisal Practices (“USPAP”). The

County may use an outside appraiser if the appraiser is listed on the County's approved list of appraisers.

2) Review Appraisals, if utilized

If the appropriate review is performed, it will comply with the requirements of the County's policies and procedures and USPAP.

The reviewer will check each appraisal for compliance with applicable County and USPAP requirements and appropriate items of compensation and will verify the appraisal does not contain arbitrary or speculative adjustments. The accuracy of mathematics, reasoning and logic, and overall support for the value conclusion will be reviewed thoroughly. The reviewer will provide the R/W Manager and County designated personnel a Review Appraisal Report, and Appraisal Review Summary, and a recommended just compensation offer for the property to be acquired. The documents will comply with applicable regulations.

Upon acceptance of the appraisal, the appropriate County authority will set just compensation.

For purposes of quality assurance, the R/W Manager may review the appraisals, appraisal reviews, and other information provided by the appraiser and reviewer on a random basis.

B. Offer Accepted or Countered

1) Initial Offer Accepted

Once an initial offer is accepted, the Agent will prepare a negotiation package ("Negotiation Package") and submit it to the R/W Manager. The Negotiation Package will include the following:

- The form of any proposed titles to real estate, easements, releases for encumbrances, or any other interest in real estate that may be required
- Signed form verifying social security or tax identification number of Landowner(s)
- R/W exhibit(s)
- Request for payment form
- Acceptance of Offer form signed by the Landowner and any Lienholders (see Attachment 1)

The Agent may have the transfer documents, permissions, and/or releases signed by the Landowner if the property is being granted "gratis." Copies of the signed documents will be submitted to the R/W Manager. The R/W Manager will record the signed documents with the appropriate Register of Deeds, and will retain such documents for transfer to another entity, if required, at a later date. For example, greenway property may be transferred to an entity which has accepted the permanent maintenance obligation for that property.

2) Offer Countered

If the initial offer is countered by the Landowner, the Agent will listen to the Landowner's counteroffer. The counteroffer will be discussed with the R/W Manager and the County Director of Transportation or other appropriate County representative prior to the Agent making a best effort to negotiate a settlement with the Landowner. If necessary and in the best interest of the County, the Agent and the R/W Manager will discuss whether or not to increase the offer in order to reach a settlement with the Landowner. The Landowner must provide a legitimate reason and/or documentation for the increase in the offer amount.

Following settlement with the Landowner, the R/W Manager will prepare documentation for the file noting the revised offer. The documentation must be signed by the R/W Manager and County Director of Transportation or other appropriate County representative.

Once the counteroffer has been accepted with the Landowner, the Agent will submit a Negotiation Package to the R/W Manager.

V. FINALIZE NEGOTIATIONS

Generally, the County will only acquire rights-of-way “gratis” from the Landowner. However, if the County agrees to compensate the Landowner for the new R/W, then County will follow both processes listed below:

A. Payment Process, if required for requested appraised properties

The R/W Manager will forward the final Negotiation Package, as set forth in Section 2, Subsection IV.B (Offer Accepted or Countered) to the County Director of Transportation or other appropriate County representative requesting payment to the Landowner.

Upon parcel settlement approval, the R/W Manager will submit the finalized request to the County Director of Transportation or other appropriate County representative for payment. Typically several payment forms will be bundled into one request and submitted bi-monthly to the County designee for processing.

B. Transfer of Title

The Agent will obtain execution of documents conveying title to the County. The Agent will deliver to the Landowner a check in the appropriate amount as compensation for the R/W acquisition. The R/W Manager will record such documents with the appropriate Register of Deeds, and deliver executed and copies of recorded documents to the County legal office. Title will be conveyed to the County, free and clear of liens and encumbrances, except permitted encumbrances. Upon completion of construction of the R/W project by the contractor and acceptance of completion of construction by County Council, the R/W Manager will convey title of rights-of-way from the County to another entity, if required.

VI. CONDEMNATION/EMINENT DOMAIN

Condemnation actions and the exercise of the state’s eminent domain powers are governed by the Constitution of the State of South Carolina, the South Carolina Eminent Domain Procedure Act, and applicable federal laws and regulations. The South Carolina Eminent Domain Procedure Act sets forth the exclusive procedures for the exercise of eminent domain power in this State. S.C. Code Ann. §§ 28-2-20, -60, and -210. To the extent this policy conflicts with this Act, the Act controls.

All possible effort within the County’s scope of work will be made to avoid condemnation. Where possible, a minimum of two (2) personal contacts, no less than three (3) overall contacts, and additional contacts as needed will be made with the Landowner in a timely manner in an effort to negotiate the acquisition of the necessary right-of-way.

If a problem may be solved by a change in the plans, the Engineer of Record and Right-of-Way Manager will be consulted to determine if there are any engineering solutions that will resolve the

issues. Changes that do not significantly compromise any other aspect of the project may be made where possible.

Before condemnation is initiated on those parcels with title problems, the Agent will make every effort to clear title and avoid condemnation.

Mediation may be considered as an alternate solution to condemnation actions on a case-by-case basis, if time allows. The Director of Transportation or other appropriate County representative must approve the use of the mediation process. The County will be responsible for the costs associated with mediation.

In the event condemnation appears imminent, the R/W Manager will request approval to initiate a condemnation action from the County's Representative, Director of Transportation or other appropriate County representative, or Deputy Director of Transportation or other appropriate County representative, as necessary. A list will be provided for County Council's approval identifying parcels for condemnation ("Parcel List"). The following information will be provided for each parcel on the Parcel List:

- Project identification or name
- Parcel number
- Landowner's contact information, or contact information for Landowner's counsel, if known or designated
- Tax map number
- R/W exhibits
- Offer or counteroffer for the new right-of-way
- Amount of the right-of-way needed for the project
- Reason for moving forward with the condemnation request

Upon County Council's approval to initiate a condemnation action, the R/W Manager will prepare an "Acquisition File" for each parcel to be condemned. In addition to the information contained in the Parcel List, the Acquisition File will include:

- Copy of the appraisal or cost estimate
- The title opinion
- A legal description of the property being acquired as right of way
- The plan sheets showing the property to be acquired
- The Negotiation Record (see Section 2, Subsection IV)
- Any information regarding Relocation Assistance, if applicable
- The contact information for the Engineer the R/W Manager has designated to work with the attorneys in the preparation and potential trial of the condemnation case

The R/W Manager will review the Acquisition File for verification of details regarding title, appraisal, appraisal review, negotiation, and any other pertinent correspondence. After the review, the R/W Manager will transmit the Acquisition File and other necessary paperwork to the County's designated condemnation attorney. The R/W Manager will also provide the condemnation attorney with a complete set of R/W construction plans for each project where R/W acquisition is occurring by condemnation.

The condemnation attorney may, but is not required to, initiate additional negotiations with the Landowner to settle the matter before filing the Condemnation Notice with the appropriate Clerk of Court and initiating a condemnation action.

If the condemnation attorney cannot settle with the Landowner, or unless otherwise instructed by the County Director of Transportation or other appropriate County representative, the condemnation attorney will proceed with filing Notice of Condemnation and initiating a condemnation action. Nothing in this section limits the ability of the condemnation attorney to attempt to settle the property after commencement of the condemnation action and present proposed settlement terms to the County for consideration and approval.

Upon conclusion of the condemnation action, the condemnation attorney will send the recorded transfer documents conveying title of the R/W acquisition to the County to the Director of Transportation or other appropriate County representative and the R/W Manager, with copies going to the County legal office. The R/W Manager will retain such documents for transfer to another entity, if required, at later date.

VII. RIGHT-OF-WAY CERTIFICATION

Before a construction project can be advertised for construction bids, the R/W Manager must provide the County Director of Transportation or other appropriate County representative with certification that all rights-of-way have been acquired for the project. Acquisition may be by signed easement, signed permission, executed title to property, or by filing of Condemnation Notice and tender of payment with the County Clerk of Court.

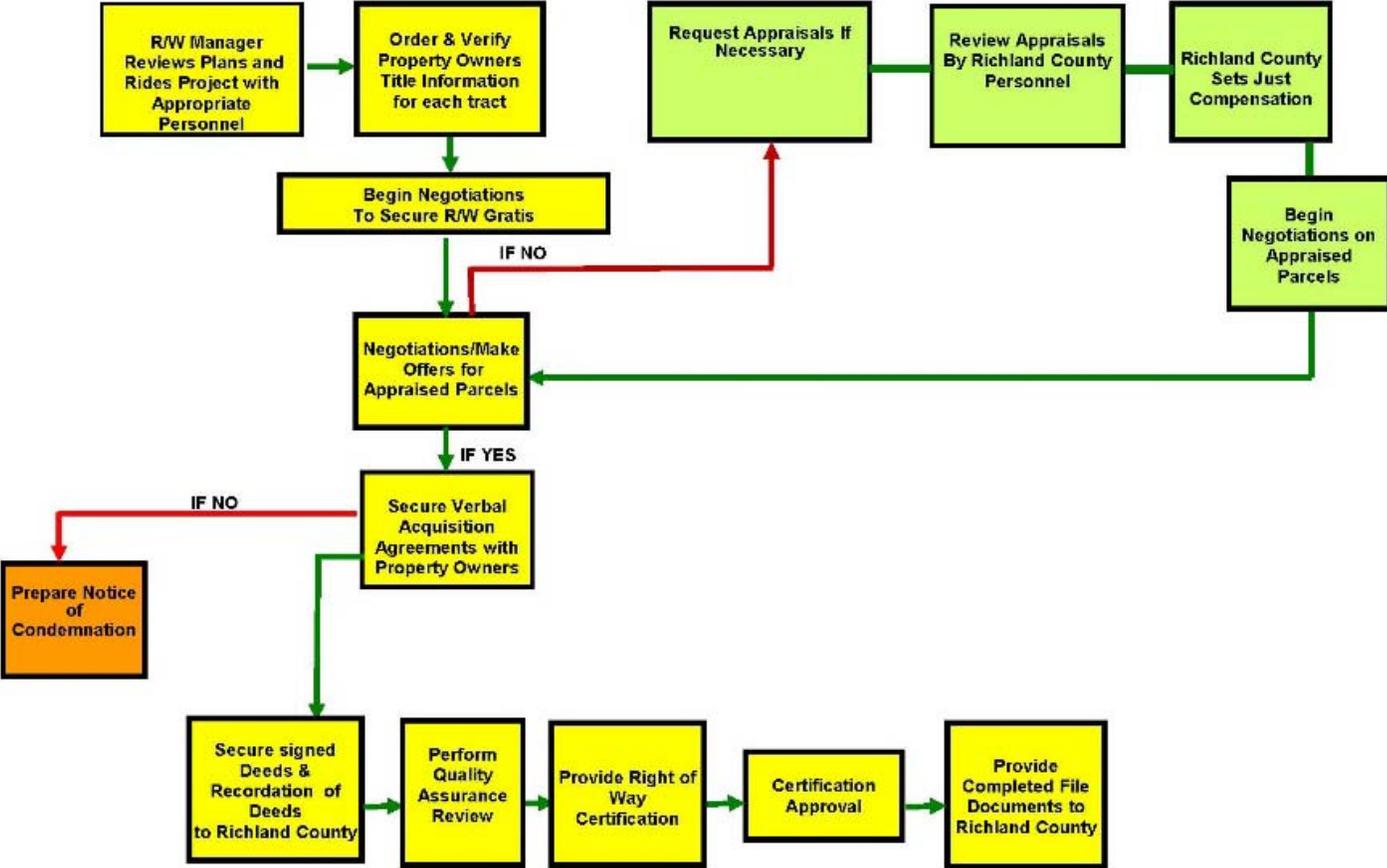
Prior to providing a R/W certification, the R/W Manager will perform quality control/quality assurance (QC/QA) in order to verify that all rights of way have been acquired.

Following the QC/QA process, the R/W Manager will provide the County a R/W Certification on the project prior to advertising the project for construction. The County must approve the certification before the project may be advertised for construction bids.

VIII. RECORDS

During the course of the project, the R/W Manager will maintain files and a comprehensive spreadsheet listing of each parcel secured for a project. At the completion of a project, the County will be provided with a set of files and Final R/W plans annotated to show the date and manner of acquisition of each parcel.

If after completion of the project the easements or titles to properties acquired for a project are to be transferred to an entity other than Richland County, the R/W Manager will prepare the necessary transfer documents and obtain the required signatures. After the appropriate signatures have been obtained, the R/W Manager will have the title to real estate and R/W exhibit recorded in the Richland County Register of Deeds office after which the title to real estate, along with a set of the project plans, will be delivered to the appropriate entity. County will retain records of R/W acquisitions as appropriate.



Right-of-Way Acquisition Procedures
Richland County Projects

**Richland County’s Offer for Right of Way Acquisition
And Acceptance by Landowner**

Parcel Number _____
Tax Map Number _____
Project Identification _____

**Name and Address of
Landowner(s)** _____

Landowner understands that Richland County wants to acquire Landowner’s interests in real estate for public use in the project identified above. The Real Estate Interest Richland County wants to acquire is _____

[description of interest: fee simple title, easement, release of encumbrance]

on _____ acres/square feet of property located at: _____

_____ *[address or other description]* as shown on attached Exhibit A.

Richland County has offered and Landowner agrees to accept \$_____ as full payment and just compensation for the transfer of Landowner’s Real Estate Interest. As part of this offer, Richland County also promises to do the following:

(Include only if offer is subject to special conditions, and if so, describe same, such as “restoration of walkway, or “construction of fence”, etc.)

If more than one person or organization owns this Real Estate Interest, Landowner agrees that payment will be divided among us as follows:

To:	_____	\$ _____
	_____	\$ _____
	_____	\$ _____
	_____	\$ _____
	TOTAL	\$ _____

RICHLAND COUNTY RIGHT-OF-WAY POLICY
Attachment 1

Landowner understands that by signing this Acceptance, Landowner is agreeing to sign any documents necessary to transfer Landowner's Real Estate Interest to Richland County. Landowner is also agreeing to provide Richland County with all Social Security or federal/state tax identification numbers of any person or entity which is to receive payment. Landowner understands that this agreement is legally binding and that if Landowner refuses to sign documents or provide information voluntarily, Landowner's agreements can be specifically enforced by a court.

If this Offer and Acceptance is signed on behalf of a Landowner which is a company or organization, the signer confirms that he/she has the power and ability to enter into this Agreement on behalf of the company or organization.

The Landowner(s) and Richland County need not all sign on the same copy of this Offer and Acceptance, but can sign identical copies, all of which shall be considered together as a single agreement as if all the signatures were on the same copy.

Offered by Richland County:

Accepted by Landowners:

Name/Title

Name/Title

Date

Date

Name/Title

Date

Name/Title

Date

If the Real Estate Interest to be acquired by Richland County is subject to any lien, Lienholder accepts the offer and payment distribution and agrees to release such lien(s) at the time of transfer of title.

Lienholder(s): _____

Date: _____