

2017

**Dakota County Office of
Performance and Analysis**

REPORT

May 2017

**Dakota County Physical Development Division:
Real Estate Acquisition - Phase II**

Acquiring Right of Way and Eminent Domain

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Acknowledgements:

We sincerely thank and salute the spirit of cooperation shown by all staff from the Physical Development Division who participated in this project, particularly ROW staff Gary Peppard and Wendy Schmidt for this Phase II report, and Tom Donely from the County Attorney's Office.

We also appreciate time spent with us from our benchmarking partners:

Anoka County: Debra Johnson
Hennepin County: Eric Drager and his entire staff
Olmsted County: Dale Prestegard
St. Louis County: Steve Kniefel
Stearns County: Jodi Teich
Washington County: Sharon Price
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SRF Consulting: Ken Helvey and Cindy Wiste
Wilson Development Services: Dan Wilson
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EXECUTIVE SUMMARY

This report contains the second part of the Real Estate Acquisition Project for the Physical Development Division, now known as Phase II of the project.

The Phase I report details the original purpose and scope of the project, process mapping of the four distinct acquisition processes, information-gathering for IT for a new documents-tracking system, and findings related to a proposed environmental due diligence policy.

The Phase II report describes benchmarking and best practices research and recommendations focused on parcel acquisitions needed for Transportation projects, which were shown in the process mapping to be different from the other three acquisition processes.

As described toward the end of the Phase I report:

After process mapping for each of the processes was completed, it was clear that Right of Way acquisition differed from the other three acquisition types because of its use of eminent domain, the number of parcels acquired for each construction project, and the total acquisition costs generally resulted in greater financial implications for the County than the other acquisition processes.

Because of the financial costs and investment of staff resources needed to acquire parcels for Transportation, this seemed an area where Office of Performance and Analysis (OPA) staff could add value to this real estate acquisition project. After consulting with project sponsors, OPA staff designed and conducted a benchmarking research plan focused on Right of Way (R/W) acquisition and eminent domain.

OPA interviewed R/W staff from six counties, the Minnesota Department of Transportation (MnDOT), and three R/W acquisition consulting companies used by Dakota County and many other counties. We asked them to compare and contrast Dakota County's acquisition process with theirs, and discussed best practices. We analyzed R/W acquisition costs, searched for applicable research or studies about R/W acquisition, and analyzed the written communication pieces that parcel owners receive as a first contact from acquiring agencies.

With detailed acquisition cost data from MnDOT, and more limited data from Hennepin and Scott counties, we compared costs for Dakota County with peers for parcels that are settled quickly and not part of eminent domain, parcels that start but do not end in eminent domain, and those that go all the way through the eminent domain process. Our analysis shows very few Dakota County parcels go all the way through the eminent domain process compared to the benchmarking sources, but more parcels begin the eminent domain process compared to our peers or MnDOT.

We recommend:

- **changing the way relationships with parcel owners are established;**
- **providing technical assistance to the R/W staff to free necessary time for them to do so; and**
- **some strategies for reaching agreements with parcel owners earlier in the acquisition process.**

The recommendations are supported by results of the benchmarking/best practices research with peers and the literature review.

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PROJECT BACKGROUND AND PURPOSE

Project Background

This document represents the second part of the Real Estate Acquisition Project for the Physical Development Division (PDD), now known as Phase II of the project. The Phase I report details process mapping of the four distinct real estate acquisition processes used by PDD, information-gathering for IT for a new documents-tracking system, and findings related to a proposed environmental due diligence policy.

As described in the Phase I report, Office of Performance and Analysis (OPA) staff met with the project sponsor after completing the process mapping phase for the four acquisition processes. OPA found little to no opportunity existed for moving toward a more universal process for all types of real estate acquisition. However, a major difference among the four real estate acquisition processes is that the timeline for right of way acquisition for Transportation construction (and some trails/greenway) projects often requires the County to use eminent domain to acquire some of the needed parcels.

The process map for Right of Way (R/W) acquisition is reproduced (from the Phase I report) in [Appendix E](#). We did not include the original project scope here, but it is the first appendix in the Phase I report.

Transportation construction projects with a need for R/W acquisition typically follow a 3-year project plan (Year 1: design, Year 2: acquisition, Year 3: construction). Each R/W acquisition project is unique. Some, like the Cedar Avenue BRT project, involve an inflexible route (i.e. Cedar Avenue was not being moved) and require negotiating with corporate owners of many commercial parcels who have little incentive to settle quickly at the appraised value. Other projects may be an improvement, like an interchange upgrade, that is supported by the neighbors or community, so parcel owners might be more cooperative.

County R/W staff, project managers, and legal counsel carefully weigh the benefits and risks of using eminent domain¹ for parcel acquisition. Many parcel owners settle relatively quickly at, or close to, the appraised value. A small number of parcels are resolved at a cost much higher than the appraised value, and only after expending considerable staff resources in negotiations, including seeking guidance from the Board of Commissioners.

Eminent Domain is a structured process that, once the public need for a project is established in District Court, allows acquiring agencies to gain title and possession of property to construct a highway project. The primary purpose for the use of Eminent Domain is to establish a set R/W possession date that allows for construction of the project in a given season, and a time that is advantageous for County bidding and use of staff resources. Eminent Domain allows parcels to be acquired at a fair price, whether or not the parcel owner is willing to sell.

For these and other reasons, we identified the R/W process as the place where our project could add the most value, and therefore was the best candidate for further research. We conducted more in-depth research and comparison on the R/W process to determine if opportunities existed to increase efficiency, effectiveness, and to reduce County costs.

¹ Eminent Domain, also known as condemnation, is the legal process by which public agencies gain title and possession of property needed for public purposes. Under the state and federal Constitutions, no “taking” can occur without “just compensation”. A U.S. Supreme Court opinion in a 2005 case (*Kelo vs City of New London*, 545 U.S. 469, 125 S. Ct. 2655) resulted in many state legislatures (including Minnesota’s) enacting greater protection for private property owners.

In addition to the footnoted explanation on the preceding page, a more complete description of the eminent domain process can be found in the section of this report entitled [What is Eminent Domain?](#)

Project Purpose

The benchmarking phase of the project was intended to provide an opportunity to compare Dakota County's R/W practices to those used in other Minnesota counties and to practices used by the state Transportation Department (MnDOT), in order to determine if any of those organizations had success using different methods, and whether possible improvements could be integrated into our process.

Ultimately, we hoped to determine if opportunities existed to increase efficiency or effectiveness in R/W acquisition, and to reduce County costs.

Methodology – Benchmarking Research

OPA completed benchmarking of the Right of Way acquisition process by interviewing R/W staff in six peer counties, at MnDOT, and several R/W acquisition consultants used by Dakota County.

Process Questions:

- Why do R/W parcels end up in eminent domain?
- Is Dakota County's current R/W acquisition process cost-efficient?

Benchmarking Questions:

- Do other Minnesota counties follow the same R/W process? If they use a different process, can we adopt or adapt parts of their process?
- Do other counties have similar success in the percentage of R/W acquisition parcels they obtain prior to the initiation of eminent domain proceedings, and the percentage accepting the county's initial offer?
- How much above the appraised value are direct purchase settlements that occur prior to eminent domain proceedings? How much above appraised value are those that are included in the eminent domain process but are removed via direct purchases? How much above appraised value are those that are not settled until the process concludes?

Compliance Questions:

- Are we following state and federal mandates, administrative rules, and County policy in our acquisition for R/W projects?

Cost-Benefit Analysis Questions:

- In examining the County's current outcomes in R/W acquisition, is it cost-effective to continue operating at current resource levels?

OPA used these approaches to answer the project questions:

- discussed the R/W acquisition process with Dakota County staff and created a detailed process map;
- reviewed MnDOT guidelines and practices;
- reviewed statutes applicable to the R/W acquisition process;
- reviewed materials (e.g. letters, flyers) used by benchmarking partners to communicate with affected property owners; and
- reviewed relevant literature, studies and guidance related to right of way acquisition.

WHAT IS EMINENT DOMAIN?

Eminent Domain is the legal process by which public agencies gain title and possession of private property that is needed for and used for public purposes. The primary purpose for the use of Eminent Domain is to establish a set Right of Way (R/W) possession date that allows for construction of a project in a given season, and at an advantageous time for County bidding and utilization of staff resources. Eminent Domain has been in place since the United States was formed, but always with limitations.

History: The use of eminent domain, or condemnation of private property for public use, is a concept that dates from the earliest days of the democracy. The federal and state and Constitutions² require not only that a legitimate public need be shown, but also that property owners must be given “just compensation” when a public agency takes all or part of their property for a public need. Just compensation is generally based on the fair market value³ of the parcel in question at the time the public agency seeks to acquire it.

The Federal Highway Administration (FHWA) describes the process this way:

First, (public agencies) must first determine the fair market value of the property being acquired. Next, just compensation must be offered and a settlement negotiated with property owners. Finally, the agency must provide relocation assistance if the property owner is displaced. If a negotiated settlement cannot be reached, the agency may exercise the power of eminent domain to acquire the property, meaning the local government agency uses its power to acquire private property for a public purpose.⁴

The FHWA property owners’ handbook also defines the requirements for right of way acquisition for construction projects that use any federal funds, as set out in the “Uniform Act”, a reference to the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970” and subsequent amendments, or Public Law 91-646.⁵

The details of Eminent Domain

In Transportation, and some trail/greenway construction projects, Dakota County Right of Way (R/W) staff must acquire a number of parcels within several months for a single project. The property acquisition process starts before design plans are completely finished, but after the project manager is reasonably confident about which property parcels may be affected by the project. Construction does not begin until the County has legal title and possession of all the parcels needed for the entire project.

In order to stay on schedule, eminent domain is used to gain title and possession of necessary properties. Once public need for the project is established in court, eminent domain allows the County to gain legal control over the property (through title and possession) whether or not the owners are willing sellers. For some property parcels, the final settlement amount is decided after title/possession occurs, and occasionally even well after the project is completed.

² See Article 1 of the Minnesota Constitution and the Fifth Amendment of the U.S. Constitution.

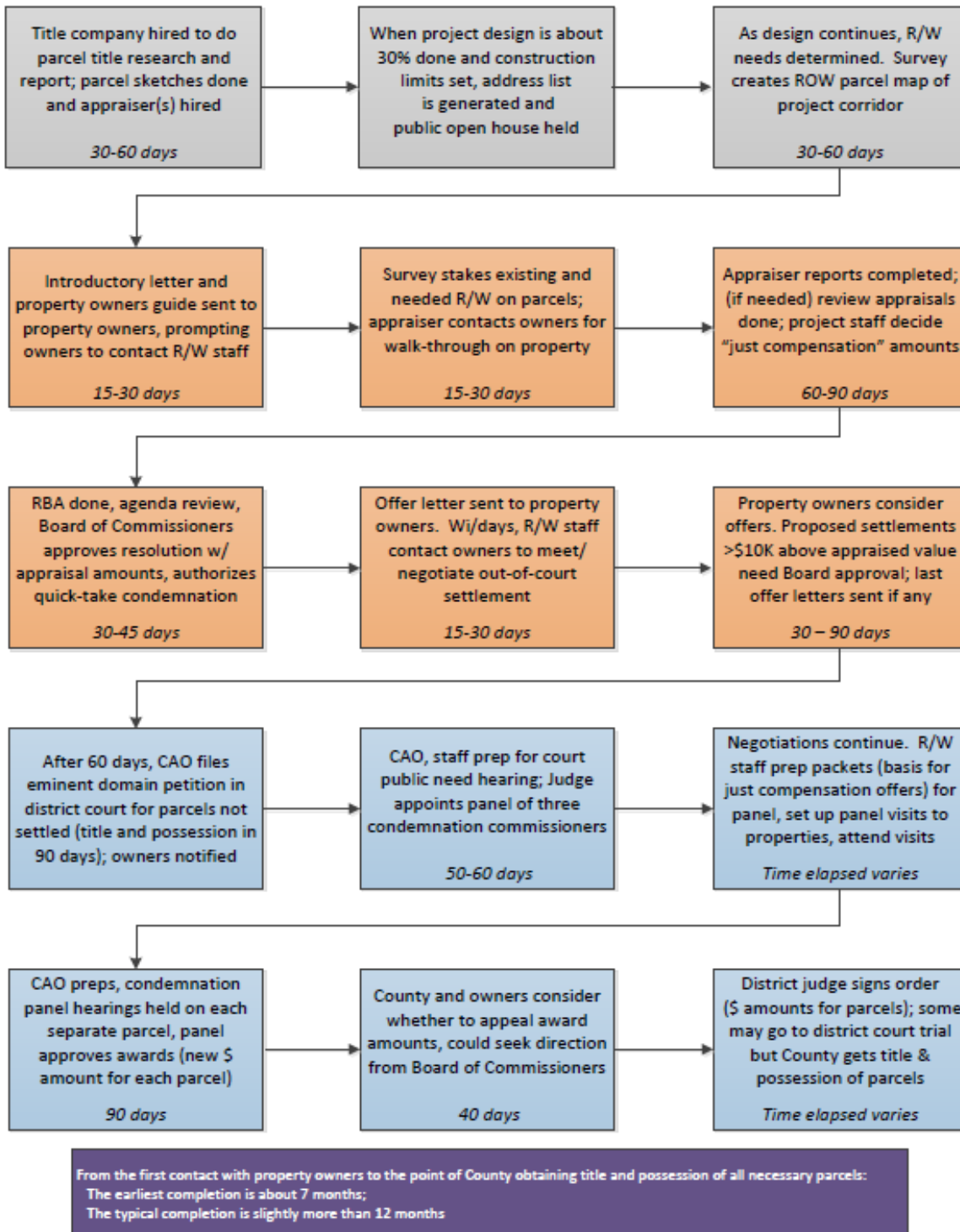
³ Fair market value is what a person who is willing, but not required, to buy the property would pay a seller, who is willing, but not required, to sell it, taking into consideration the highest and best use for the property (even if the current owner is not using it for its highest and best use).

⁴ <http://www.fhwa.dot.gov/federal-aidessentials/companionresources/06rowuniformact.pdf>

⁵ http://www.fhwa.dot.gov/real_estate/uniform_act/

This graphic shows the main steps in the R/W acquisition process. Not all steps are sequential. The grey boxes are pre-acquisition steps. The orange boxes represent acquisition tasks for R/W staff. The blue boxes describe the eminent domain process.

About 7 – 8 months (225 days) would be needed for parcel acquisition for a project if all parcels were acquired at the first offer amount from willing sellers and no parcels were acquired using eminent domain. The 12 construction projects included in the cost analysis part of this study averaged 13 months for acquisition and sometimes longer for all settlements to occur.



The R/W process map (see [Appendix E](#)), shows that for a typical project schedule in Dakota County, parcel acquisition begins after appraisers' work for each parcel in a construction project is completed and is approved by the Board of Commissioners. Early in the process, Transportation project managers and R/W staff notify property owners by letter of the pending project, and hold one or more public open house meetings to engage with property owners and answer initial questions.

Negotiations begin when parcel owners are sent a letter including a proposed purchase amount for their parcel and a brochure about property owner rights. Both include a suggestion that the owner arrange for an independent appraisal, and explain that the County will reimburse them if they choose to do so.⁶ A few days after the mailing, the R/W staff attempt to contact (usually by calling or visiting the property address) the parcel owners and discuss the offer with them.

Some parcel owners settle quickly and do not dispute the first offer amount, and others settle after their independent appraisal indicates the County's offer is reasonable. Some do not acknowledge the offer for a while, and a small number hire an attorney or ignore the offer letter completely. For several weeks, R/W staff continue attempting to reach unresponsive or undecided parcel owners to discuss the offer and reach a settlement.

After several weeks, R/W staff and Dakota County legal counsel meet to discuss progress of acquisitions for a project. They consider strategy for the parcels whose owners counter-offered with a purchase price of more than \$10,000 over the first offer (appraised value).⁷ County policy allows the County Manager and Transportation Director to approve what are known as administrative settlements, which are reached by the R/W staff and parcel owners for amounts up to \$10,000 over the offer. Factors to consider with counteroffers may include relevant information about the parcel that was missed by the appraiser that could change the parcel value, as well as the risk that the eminent domain process could trigger additional costs that could be avoided with a settlement.⁸

Filing the petition often motivates parcel owners to begin negotiations if none have yet occurred.

Not less than 60 days after the first offer letters are in the hands of parcel owners, the County files an eminent domain petition with the District Court. The petition includes a list of the parcels that have not yet been settled. Examples of parcel owners included in the petition are: willing sellers from whom necessary documentation (such as a release from a mortgage company or the results of a private appraisal) has not been received in time to settle the negotiation with a direct purchase; property owners (or their attorneys) who are not willing to negotiate; parcels where negotiation did not yet progress far enough for the County to acquire title and possession; or parcels in which County staff have concluded that the property owner's valuation and/or counter offer amount is excessive.

⁶ State law (MN Chapter 117) requires acquiring organizations to reimburse parcel owners up to \$1,500 if the owner chooses to arrange for a private appraisal for most residential properties, and up to \$5,000 for other types of property.

⁷ Under policy in place since 2011, the Dakota County Board of Commissioners defers approval to the County Manager and Transportation Director for settlements reached by the R/W staff and parcel owners for amounts up to \$10,000 above the first offer (appraised value). These are called "administrative settlements" and, depending on timing, either are not included in the Eminent Domain petition or are dropped from the petition after it is filed.

⁸ Since 2006, the state's eminent domain law has required acquiring organizations to pay the parcel owner's attorney fees and other litigation expenses if the condemnation panel's award, or that of a district court judge, is 40% above the last offer, for parcels valued above \$25,000. If the final award is more than 20% but less than 40% above the last offer, a district court judge MAY require the acquiring organization to pay those costs.

About a month after the petition is filed, a hearing is conducted in District Court to establish public need for the project, which must occur before the acquiring organization can gain title and possession for the remaining parcels. Minnesota law requires at least 90 days between the time parcel owners receive a notice about the public need hearing (and the County's intent to acquire the parcel) and the date when the County exercises its right to obtain title and possession of the parcels, assuming the public need is established. Generally, the County expects to have title and possession (if not an agreement on purchase price) for all parcels needed for a construction project about seven months after the first offer letters are sent out.

After the judge issues a decision about the public need for the project⁹, the next step is for the court to appoint a panel of three condemnation commissioners as neutral fact finders to determine a fair value for the remaining parcels in a project. R/W staff create informational packets for the commissioners and arrange on-site visits ("viewings") for each of the parcels in question, usually accompanied by R/W staff and parcel owners. These on-site visits occur before construction starts.

If the parcel owner is willing, R/W staff continue negotiations with parcel owners throughout this process. If a settlement still has not been reached after the condemnation panel's parcel viewings, a hearing with the condemnation panel is eventually scheduled for each parcel. Several weeks or months, and sometimes even years, can elapse from the point when the petition was filed to the condemnation commissioners' hearing on a given parcel. No condemnation commissioners' award for any parcel occurs until after the hearing. If an agreement is reached with a parcel owner after the public need hearing, and it is approved by the Board of Commissioners or is an administrative settlement, the parcel is removed from further condemnation proceedings.

Some parcel owners, particularly owners of commercial properties, wait until construction concludes to seek a condemnation commissioners hearing, because they want to include any construction damages in the evidence considered by the panel. Delays can also occur due to logistics such as R/W staff and attorney workload, availability of panel members, and the preference for commissioners to view project sites (whether before or after construction) free of snow cover.

Elements of Minnesota's Eminent Domain law

Federal law governing eminent domain is known as the "Uniform Act", a reference to the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and subsequent amendments, or Public Law 91-646.¹⁰ Minnesota's eminent domain law and practices, found in Chapter 117 of Minnesota Statutes, align generally with the federal Uniform Act.

MnDOT's Land Management Division provides a great deal of information online, including a 382-page Right of Way Manual¹¹ that describes its process for acquiring property for road construction projects. Local governments are required to follow this manual in order to be eligible to use state or federal road/bridge construction funds that flow through MnDOT.

⁹ It is very rare for a judge not to rule that there is a public need for the project. County Boards and staff carefully study, deliberate and prioritize the need for construction projects, often several years before a project starts.

¹⁰ http://www.fhwa.dot.gov/real_estate/uniform_act/

¹¹ http://www.dot.state.mn.us/row/pdfs/RWManuals/RW_Manual2015_10-27-16.pdf

In addition to the description of the eminent domain process above, other basic parts of MS Chapter 117 that guide actions of public agencies using eminent domain include:

- Before beginning the eminent domain process, acquiring agencies must first obtain at least one objective appraisal from a qualified appraiser for the property being acquired, for parcels of \$25,000 value or greater, or a minimum damages acquisition report for parcels under \$25,000. (*MS Chapter 117.036 subd 2a*)
- Agencies must notify parcel owners they have a right to conduct their own independent appraisal (*MS Chapter 117.036 subd 2a*) and must offer to reimburse a property owner up to \$1,500 for that appraisal (for single-family residential properties) and up to \$5,000 for other types of properties. (*MS Chapter 117.036 subd 2b*)
- Agencies must negotiate in good faith with parcel owners to reach a negotiated settlement for the parcel before beginning eminent domain proceedings; the specific purpose for this requirement is to avoid using eminent domain for acquisition. (*MS Chapter 117.036 subd 3*)
- An agency must notify parcel owners that it is filing an eminent domain petition in District Court to obtain their property, a public need hearing has been scheduled, and the owners have the right to challenge the public need for the taking. (*MS Chapter 117.055*)
- When the petition is filed, the agency must deposit with the Court an amount equal to the offer made by the agency for the parcel. (*MS Chapter 117.125*) Later, when the County takes possession of the property, the court can release that payment to the owner if requested, even if negotiations are still continuing.
- Both the parcel owner and the acquiring agency have 40 days to appeal (to District Court) the Condemnation Commissioners panel award for the value of the property. (*MS Chapter 117.145*)
- If a property owner is being completely displaced from his/her property, the compensation must allow the owner to buy a comparable property in the community. (*MS Chapter 117.187*) If the property is used for a business that cannot be relocated, the owner may seek compensation for “loss of a going concern” due to the taking. (*MS Chapter 117.186*)
- Federal and state law require acquiring agencies to provide relocation assistance, if the taking causes the property to no longer function as a residential property unless the property owner waives it. This goes beyond reimbursement for the loss of the property, and can include costs associated with moving, such as packing and moving company costs, for example. (*MS Chapter 117.52*)
- When a property is only partly affected by an acquisition, just compensation is determined by comparing the market value of the property before the acquisition to the market value after the acquisition (as of the taking date). The damages may include compensation for the loss of value to the remainder of the property. However, according to case law, not every damage to property is a compensable damage.
- A U.S. Supreme Court opinion in a 2005 case (*Kelo vs City of New London*, 545 U.S. 469, 125 S. Ct. 2655) found Constitutional eminent domain practices by some public agencies across the country for commercial re-development, and resulted in many state legislatures (including Minnesota’s) enacting greater protection for private property owners.

Many of the provisions discussed above were enacted in 2006. In addition, Minnesota’s eminent domain law since 2006 has required a district court judge to award an owner attorney fees and other costs of litigation if the final compensation award is 40% or more than the public agency’s last written offer. The court may award attorney fees and other costs if the final award is at least 20% more than the final written offer. In both cases, these provisions apply if the final award exceeds \$25,000. (*MS Chapter 117.031*)

RIGHT OF WAY ACQUISITION BENCHMARKING

Benchmarking: What it is and how it was used in this project

Benchmarking means contacting similar organizations to learn how they accomplish the given task, and is frequently a component of process improvement projects completed by the Office of Performance and Analysis (OPA). Having already generated a process map for the Dakota County Right of Way (R/W) acquisition process, we decided to contact several comparable peers and learn about their R/W acquisition processes.

For this project, benchmarking was intended to allow for a comparison of Dakota County's R/W practices to those used in other Minnesota counties and by the state Transportation Department (MnDOT), to determine if any possible improvements could be integrated into Dakota County's process.

Either in person or by phone, OPA interviewed staff involved in R/W acquisition for six counties: Anoka, Hennepin, Olmsted, Stearns, St. Louis, and Washington. We also spoke with staff at three consulting firms Dakota County (and other counties and cities) frequently hire to conduct R/W acquisition work, as well as staff from MnDOT working on R/W acquisition. Our benchmarking partners mentioned that their R/W acquisition processes were influenced by those of MnDOT.

Prior to these meetings, we emailed participating staff at benchmarking organizations an introduction to our project purpose, our rationale for undertaking benchmarking, the guiding questions for our conversation, and a copy of the process map we created for Dakota County's R/W process. The process map provided them a means to identify differences between their acquisition process and that of Dakota County.

We asked the benchmarking sources whether our R/W acquisition process differs from theirs in any important way. We asked them to describe how they build relationships with parcel owners, and what they consider the best way to do so. We asked them about their use of eminent domain and their acquisition costs. The list of benchmarking questions can be found in [Appendix A](#).

Benchmarking Findings

County benchmarking findings are summarized below, followed by a summary of findings from our conversations with consultants. A matrix summary of the benchmarking findings discussed below can be found in [Appendix B](#).

Benchmarking with other Counties

Communication

- The importance of having R/W staff (or a contractor) be the first point of face-to-face contact with parcel owners, prior to or at least at the same time that appraisers arrive or staking of the property occurs, was repeatedly stressed.
- Many stressed the importance of making early and frequent contact with parcel owners. Even at a point when project design is only a rough corridor/line on a map, they take the opportunity to talk one-on-one about the R/W process and to begin to build a relationship. No price discussions or negotiations occur at that point, but explanations of predictable questions from property owners can be resolved at this point.
- To a lesser extent, we heard that it's important for the same contact to serve as the "face" of the project and serve as an intermediary between the parcel owner and engineers, appraisers, those staking the property, etc.
- Some R/W staff bring design engineers with them to meetings with owners, even early in the process, and have found this helpful in addressing parcel owners' questions.

Tracking projects and data

- The vast majority of counties exclusively use Excel spreadsheets to track projects. Some use, or have used RtVision, but most find it cost prohibitive. Hennepin County is the primary exception in its ongoing use of RtVision, in part due to its size and the number of projects it undertakes.
- Most counties involved in benchmarking were unable to provide us specific data (percentages or numbers) for any given project or in any given construction season for parcels entering eminent domain proceedings or for those settling prior to a hearing by condemnation commissioners. In spite of this, their county staff were generally confident that they have a good estimate of these numbers, and that they are in line with corresponding data for Dakota County projects.¹²
- ROW staff in other counties generally agreed that the percentage of parcels entering eminent domain has increased over the years, and that acquisition costs for negotiated settlements and condemnation amounts (set by condemnation commissioners or a judge) are increasing.

Board involvement

- The counties we spoke with require far less involvement and fewer points of direct interaction with/from their Boards of Commissioners. Many expressed that an equivalent approach in their county would be detrimental to their success in settling parcels early and at or near the first written offer amount, and that scheduling Board presentations would put further pressure on an already tight acquisition timeline.
- At the outset of a project, most other county boards delegate authority to staff (department or division director) to negotiate the price of offers for parcels without going back to the Board. This differs significantly from our current \$10,000 limit on flexibility on negotiations (administrative appraisals) before seeking Board approval.
- Many counties do not go back to the board to certify appraised values.

Other

- In some counties, the R/W staff and design engineers are not in the same department or on the same work team. As a result, by the time R/W staff receive permission to move forward on a project, the timeline has become very short. In this situation, R/W staff often perceive that design takes too much time before bringing them in to the process.
- Like Dakota County, other counties often use consultants for some of their R/W acquisition and/or use other outside parties (e.g. a law firm or MnDOT) to handle relocation benefits.

Benchmarking with consultants

General

- Much of what was said by the real estate acquisition consultants used by counties and cities reinforced what we heard in our benchmarking conversations with counties.
- Dakota County does things much like the other Metro counties; there is nothing glaring that Dakota County should be doing differently.
- All counties operate under the same funding requirements and on very tight timelines.
- Consultants agreed that even though agencies generally pay more to acquire parcels using eminent domain, it is considered an essential tool that allows construction projects to start on schedule, which avoids additional expenses due to construction delays.

¹² Counties with a higher proportion of rural areas provided higher estimates of the percentage of parcels settling early on in the acquisition process and the percentage accepting the first written offer from the county.

Communication

- Consultants, like counties, emphasized that early, face-to-face contact with parcel owners is critical, and that it should occur before, or at least concurrent with, staking and appraisal.
- Building trust early and then maintaining the quality and frequency of communication with property owners is critical to both minimizing the number of parcels included in eminent domain proceedings and gaining a mutually agreeable settlement.
- After the personal relationship is established, many property owners need an opportunity to vent (“tell their story”) before being willing to negotiate.

Time constraints

- Lead time for ROW acquisition is always in short supply, across all counties. No one has excess time in this process. This is the biggest problem for all, across the board.
- Add time up front and finish design sooner, whenever possible.
- All entities (counties and cities) start eminent domain proceedings while continuing to negotiate.

Tracking of projects and data

- Consultants indicated they either do not keep, or were reluctant to share, statistics on the percentage of parcels settling before or after eminent domain proceedings are initiated.
- They use Microsoft Excel for tracking projects.
- Consultants expressed confidence that Dakota County, within a given project or a given project season, is in line with other counties in terms of the percentages of parcels entering eminent domain proceedings and the percentage of those settling prior to a hearing by condemnation commissioners.

Recommendations

Staffing: OPA recommends that current staffing for R/W be increased, given the cost effectiveness of this staffing increase. This recommendation is based on a number of factors. Our R/W staff told us the percent of Dakota County parcels entering eminent domain proceedings has been gradually increasing over the years, just as the number of acquisition parcels has increased.

The goal is to increase early personal contact between R/W acquisition representatives (staff or consultants) and parcel owners, because expert practitioners and our peers have told us this is critical to successful acquisition of parcels at or near appraised values. An increase in staffing and technical support may help reduce the percentage of parcels that are initially included in the eminent domain petition, as well as the percentage that require lengthy negotiations to reach a settlement, thus reducing the considerable time required for the eminent domain process preparation by R/W and County Attorney staff.

The Transportation Department’s senior staff tell us that the “mega projects”¹³ from recent Capital Improvement Plans (CIPs) are completed. As a result, they anticipate that while their CIP workload will grow substantially in the next 5-10 years, parcel acquisitions will be less complex than in recent years. An influx of funds from the state or federal government from infrastructure investments, or changes in taxes that generate funds for transportation projects, presumably will increase the number of construction projects.

¹³ “Mega projects” include Cedar BRT, the Highway 13/County Rd 5 interchange, County Road 70/I-35 Interchange, and others. These are complex projects that required acquisition of many properties (including commercial properties).

Project manager positions added in recent years mean there is still a great deal of work to be done in tight timeframes for the R/W staff, and consultants are currently being hired to help with the R/W workload. Tight timelines are an unavoidable reality in R/W acquisition, meaning there is currently not sufficient time in the process to allow for face-to-face meetings with property owners by R/W staff. Additionally, resources from the County Attorney's Office for the R/W process have not increased to keep pace with the additional project managers, the increasing percentage of parcels included in the eminent domain petition, and the number of parcels going to a condemnation commissioners' hearing.

An increase in staff resources might result in limiting additional need to assign work to consultants. There are several ways this could be accomplished. OPA believes dedicating an FTE to a new technical assistance position for property acquisitions within the division would be cost-effective. This staff member would take over essential but often tedious and time-consuming parts of the acquisition process that do not require the level of expertise of the acquisition specialists, which would free up more time for them to dedicate to relationships with property owners.¹⁴

This new position would require technical skills and would benefit from experience and interest in the field of R/W acquisition. This position would shift a number of recurring tasks that require subject matter knowledge and skills to a lower-cost staff member, who perhaps could perform similar tasks within the other acquisition processes in the Division or help support the many legal steps and documents required in the eminent domain process. This would be more cost-efficient than the current situation, in which these tasks are performed by more highly-paid Right of Way Specialists, the Lead Right of Way Specialist, or staff from the County Attorney's Office.

Change in practice: When determined appropriate by R/W staff, it is recommended that R/W specialists or project managers (or their agents) deliver the first contact (informational) letters, field information forms, and offer letters to parcel owners in person, rather than the current practice of using certified mail. Face-to-face delivery and immediate staff availability to answer questions are considered effective best practices by benchmarking partners in order to establish trusting, respectful relationships between the County and property owners that is much more difficult to accomplish through the mail. Dakota County R/W staff expressed a preference for doing so, but said it was not generally a feasible practice currently, due to staffing levels and timing constraints.

Right of way specialists have a very difficult job. They must explain to property owners that the law allows the County to take their land at a fair price, whether or not they want to sell it.

This is critical because R/W specialists have a very difficult job. They must attempt to explain to property owners why the County's public need for the property outweighs the owner's interest in keeping intact what is often his or her most (financially) valuable asset. It falls to them to explain to property owners that the law gives the County the right to take their land for a construction project, for a fair price, whether or not the property owner is willing to sell it. These are hard messages to deliver under the best of circumstances. This dynamic can easily result in a relationship based in conflict or hostility instead of a spirit of cooperation, particularly if private attorneys convince property owners to ignore the County's efforts to negotiate.

¹⁴ R/W staff describe a long list of time-consuming tasks that could be completed by someone who hasn't yet achieved the level of professional expertise achieved by the R/W specialists. They include: making check requests, entering data in project tracking spreadsheet, preparing offer letters, preparing informational letters, managing contracts/RFP's for O & E's, appraisals, review appraisals, demolition and/or structure removals, relocations, acquisition consultants, recording documents, scanning project file documents, creating labels and mailings lists, managing forms for acquisitions, deeds, easements, consents, etc.

We acknowledge that it is not realistic to hope that this new practice is a one-size-fits-all solution. The size of the project (i.e. the number of parcels to acquire) will make a difference. The parcels with corporate or out-of-state owners are obvious exceptions, as are the rare contentious parcel owners who are unwilling to negotiate with the County, or those who intentionally exploit the system to gain a bigger settlement, are not likely to change their tactics due to earlier or more frequent personal contact with our staff.¹⁵

It also seems likely that not every parcel transaction needs this more direct relationship-building (such as temporary easements, minimum damage acquisitions, narrow strips to slightly widen right of way, or other relatively inexpensive acquisitions). We suggest leaving it to the experts in the Transportation Department to determine how best to deploy greater resources to the goal of more face-to-face interactions with parcel owners.

Another change in practice that might result in more negotiated settlements, earlier in the process, is providing more time for R/W staff to have discussions with the property owners who are willing to engage with them. This is nothing new; we heard from every benchmarking source that more time for R/W is needed. We suggest reconsidering whether project timelines could be adjusted in one of two ways:

- Building more time up front in the project timeline to allow for more direct connections between staff and property owners, between the time the property owners first become aware of a project and when the first offer is made.
- Allowing 3-4 additional weeks before filing the petition that begins the eminent domain process, which usually occurs 60 days after the first or final offer letters are mailed.

Negotiating flexibility for out-of-court settlements: Dakota County is unique in setting \$10,000 above a parcel's appraised value as the ceiling for negotiations (an administrative settlement) without needing specific formal approval from the Board of Commissioners. Preparing for a closed session of the Board, as well as attending those sessions, is time-consuming for Transportation Department and County Attorney staff.

Depending on the timing of negotiations, it can be close to a month before staff are able to schedule a closed session. The process puts increased pressure on staff as well as the overall project timeline, particularly if several parcels in a single project could be settled for amounts exceeding the \$10,000 limit above the appraised value (or first offer).

The benchmarking counties and MnDOT do not have the same restriction, and expressed concerns that such a restriction would cause their acquisitions to be more challenging and more costly. As a result, it is recommended that the current limit of \$10,000 be removed, or at least increased significantly, whether in terms of a dollar value or a percentage of the appraised value for a given parcel.

An additional recommendation is to streamline staff interaction with the Board of Commissioners to make better use of their time. A change to the policy discussed above would be one major step toward accomplishing this goal. In addition, the benchmarking counties' boards of commissioners generally approve a resolution for the quick take and eminent domain petition, but are involved in the acquisition process only in unique circumstances (such as those imposing a significant cost or creating a significant liability for the County, or those with policy or political ramifications).

Consider using in-house resources: several of the benchmarking counties (and MnDOT) told us they use internal staff to complete some of the tasks necessary for acquisition instead of using outside

¹⁵ See the discussion in the following section, "[Right of Way Cost Analysis](#)", for more explanation of this point.

companies. These include title research/clearing and review appraisals. OPA recommends exploring whether this work could be done by staff elsewhere in county government for all of the PDD acquisition processes, taking into consideration the benefits of risk management and impartial reviews that the current system offers.

RIGHT OF WAY COST ANALYSIS

The purpose for considering the effect of eminent domain and acquisition cost increases is our view that avoiding eminent domain could help reduce acquisition costs.

A case can be made that the eminent domain process itself does not necessarily cause acquisition costs to increase; rather, it is the disposition of the owners, or the circumstances of the project, that increases costs. Dakota County staff and the benchmarking experts with whom we consulted agreed that some projects are controversial and owners may be less inclined to cooperate with the acquisition. In addition, routine projects generally have a few owners who are less inclined to cooperate as compared to their neighbors. The professionals all agree that acquiring total parcels, instead of a strip take along the edge of a property, for example, is usually both more expensive and more contentious.

Commercial parcels, particularly if they're owned by national corporations with many properties, are much more likely to end up in court. Declining to participate in negotiations prior to a condemnation commissioner hearing is sometimes their standard business practice nationwide.

We have noted already that our staff and benchmarking sources consider eminent domain a useful tool for scheduling purposes; it establishes a definite date for title and possession of parcels needed for work to start on the project. Our staff and benchmarking sources said that eminent domain is useful because it often serves as a reality check that causes some parcel owners to start or conclude a negotiated settlement. It was also clear from interviews with the subject matter experts that at the outset of any acquisition project, they expect a few parcels will go all the way through the eminent domain process and end up at a much higher cost than the appraised value or first offer, and that is the unavoidable nature of the business.

We asked our benchmarking sources to tell us approximately (or more precisely, if the data were available) what proportion of parcels is acquired at three points in the acquisition process:

- the percent of parcels acquired in direct purchase (before the eminent domain petition is filed);
- the percent of parcels settled after the petition was filed, but before a commissioners' condemnation hearing was held; and
- the percent of parcels settled after a condemnation commissioners' hearing award was determined, or an award (the value of the parcel plus any additional costs) was determined by district court, which hears the issue if either party appealed the condemnation commissioner panel award.

The Minnesota Department of Transportation (MnDOT) collects detailed data that is summarized annually. Hennepin and Scott counties provided less comprehensive, but still detailed, data by year or by project. The other counties do not summarize cost data annually and we did not ask them to spend the considerable time required to extract it from their files. Instead, they provided well-informed estimates. The 2016 LRRB study¹⁶ also reported detailed data.

Scott County's performance measures include a goal of acquiring 90% of its construction project parcels via negotiated settlements (outside of eminent domain). Their records show that from 2009-2013 they exceeded the goal, with a range between 91% to 96% with quickly negotiated settlements. They did not reach their goal in 2014 (86%) or 2015 (75%). In the 2011-2015 timeframe (similar to the Dakota County projects we studied) Scott County's average was 89%, very close to their goal.

¹⁶ For more information, see the Literature Review section of this report.

Scott County identifies avoiding eminent domain as an important goal, with this statement in their performance measure system:

*It is in the County’s best interest to provide enough time to work out settlements with property owners because it **leads to more satisfaction of affected property owners and typically keeps the total costs lower for project right of way acquisitions.** Project timelines and funding requirements ultimately necessitate the use of eminent domain where administrative settlements can’t be reached. (Emphasis added)*

This information was produced during the benchmarking phase of the project:

<p>Hennepin County (data from 12 “typical” projects): 60% accept first or second offer 40% parcels in eminent domain petition, and most settle before condemnation commissioner hearing (only one or two per project do not) Goal: 85% parcels direct purchase¹⁷</p>	<p>Olmsted County (estimate for last three years): 80% parcels settle for first offer or negotiated direct purchase amount (half of these are above the amount of the first offer) 20% in eminent domain petition, with half of those settling before condemnation commissioner hearing</p>
<p>St. Louis County (estimate) 75% accept first offer 20% settle with negotiated offer 5% parcels in eminent domain petition, most settle before condemnation commissioner hearing</p>	<p>Washington County (estimate) 80-85% settle with negotiated settlements (no guesses as to % at first offer) 15–20% of parcels in eminent domain petition, but no guess how many go all the way through the process to condemnation</p>
<p>Stearns County: (estimate) 90% accept first or second offer 10% in eminent domain petition The percent of parcels that settle after condemnation commissioner hearing is unknown.</p>	<p>Scott County (using actual annual tracking data for complete projects 2011-2015): 89% parcels settled before the eminent domain petition filed (no estimate as to the % at appraised value), with 11% in eminent domain. Data not reported for % of parcels not settled at time of condemnation commissioner hearing Goal: 90% parcels direct purchase</p>
<p>Anoka County: (estimate described in LRRB report) 40% direct purchase 60% in eminent domain petition 5% settle after condemnation commissioner hearing</p>	<p>Benchmarking Consultants (SRF, Henning, Wilson): none of them provided an educated guess about the % of parcels settled before or after an eminent domain petition is filed, or the % parcels that go as far as the condemnation commissioner hearing</p>

Please see the summary table on page 20 for the equivalent Dakota County data.

MnDOT Statewide R/W acquisition data for the last six years (2011-2016) show an average of just under 15% (ranging from a high of 19% to a low of 10%) of parcels acquired after either a condemnation commissioners’ hearing award or district court trial determination. Looking at each of those years individually, parcels acquired via direct purchase (prior to filing of the eminent domain petition) ranged from 67% to 88%. Parcels that were acquired after an eminent domain petition was filed, but before the condemnation commissioners’ hearing, ranged from 3% to 16% of total parcels.¹⁸

¹⁷ The goal was mentioned in the 2016 LRRB report, not during benchmarking interviews with OPA.

If we aggregate the acquisition types for the six years (2011 through 2016) for MnDOT projects, the breakdown is:

- 77.3% direct purchase (settled before an eminent domain petition is filed, not necessarily at the first offer amount)
- 8.2% dismissed – direct purchase (settled after the eminent domain process starts but before the condemnation commissioner hearing or an award is announced).
- 14.5% settled at the condemnation commissioners’ panel award amount or the amount determined following a district court trial

LRRB Study

As described more fully in the [next section of this report](#), the Minnesota Local Road Research Board and MnDOT commissioned a study of the R/W acquisition process that was completed in August 2016. The study was prompted by the fact that many urban counties and cities spend 30% of their annual transportation project budgets on R/W acquisition, which continues to be more expensive and difficult. The study identified barriers to R/W acquisition and suggested solutions.

Using statewide MnDOT data and county-level case studies, the LRRB study authors collected data showing cost of parcels at various stages of the eminent domain process. For MnDOT, data was collected from 2000–2014. This data shows a higher average of parcels acquired through eminent domain over these 15 years compared to the timeframe used in our benchmarking discussions: 20.6% on average annually from 2000-2014 compared to 14.5% during our shorter and more recent time frame (2011-2016). During the LRRB study’s 15-year timeframe, MnDOT’s rate of acquisition by eminent domain varied annually from 9.5% to 40%.¹⁹

The LRRB study also examined data from 53 parcels in 10 projects in Hennepin County from 2008 to 2014. This analysis showed types of acquisitions occurring, with eminent domain averaging 38% and negotiated settlements at about 62%, close to the ratios (see the table on the preceding page) in the data provided to us in our benchmarking meeting.

Dakota County

Dakota County, like most of the counties we spoke with during benchmarking and as discussed in the [Project Purpose section](#), currently does not have an annual data summary of project outcomes. In order to make comparisons of the data we collected in benchmarking and in the literature search with Dakota County’s results, we needed Dakota County data. The summary spreadsheets kept by our R/W staff (described in more detail below) for each individual project provided us an opportunity for analysis. Time constraints did not allow us to conduct detailed analysis of every construction project over several years. To avoid creating extra work for R/W staff, we asked them identify three or four projects a year from 2012 to 2015 that could be considered “typical” from the point of view of R/W acquisition.

Ideally, OPA wanted a sample for analysis that included at least one project managed by each of the R/W specialists, and was representative of the mix of projects that could be considered simple and

¹⁸ In 2007, MnDOT internally developed software that tracks costs and collects data and documents related to each parcel for every construction project. Staff monitor reports extracted from the Right of Way Electronic Acquisition and Land Management System (REALMS) that show the proportion of parcels acquired through negotiated settlements, the proportion that are acquired using Eminent Domain, as well as the cost departures from the appraised value for both types of acquisition. MnDOT R/W staff provided annual summary data for 2011-2016 to OPA staff on 3/9/17.

¹⁹LRRB study “Barriers to Right-of-Way Acquisition and Recommendations for Change”, August 2016, Chapter 4, page 38.

complicated, controversial and well-accepted, that included both commercial and residential parcels, and that included a trail, an interchange and a road improvement or expansion project.

A great deal of data is available for acquisition parcels in Dakota County's Transportation projects. Most project files feature a single tracking summary sheet that includes the parcel number, owners, appraisal value and settlement value. We added a column to the project summary spreadsheet to categorize each parcel by the type of acquisition, similar to the data collected from our benchmarking sources:

- Direct purchase (settlements reached before the eminent domain petition was filed.) Generally at either the appraised value or via an administrative settlement within \$10,000 over the appraised value, and occasionally via Board of Commissioners approval of a settlement above the administrative settlement threshold.
- Direct purchase - dismissed (settlements reached or finalized after the eminent domain petition was filed, either under the \$10,000 administrative appraisal threshold or otherwise negotiated at amounts above the appraised value).
- Parcels settled after the condemnation commissioners hearing, at the condemnation commissioners' panel award amount or an amount determined by a court after one of the parties appealed the condemnation commissioners' award.

The project list we analyzed is shown in the tables below.²⁰ The year refers to when the first Board of Commissioners resolution related to the project was approved, setting appraised values, which triggers the start of acquisition. Many, if not most, of these projects were done with other municipal and/or state partners.

Project & Year Approved	Location/Type of construction project	Number of parcels
CP 79-04 2012	Castle Rock Township Reconstruct Blaine Ave from Cty Rd 47 to Cty Rd 80	38 parcels
CP 5-41 2012	Burnsville Construct grade-separated Interchange at State Hwy 13 and CSAH 5 <ul style="list-style-type: none"> • 2 parcels remain unsettled and were not included 	50 parcels
CP 50-17 2013	Lakeville Construct a roundabout at Cty Rd 50 (Kenwood Trail) and Cty Rd 60 (185 th St), widening to a 4-lane divided highway	51 parcels
CP 9-46 2013	Lakeville/Eureka Township (with Scott Cty) reconstruct CSAH 2 and 9 (Dodd Blvd) from SC Rd 46 to Dakota Cty Rd 70, with wider shoulders and turn/bypass lanes.	69 parcels
CP 64-22 2014	Farmington Construct 3 roundabouts and widen Cty Rd 64 (195 th St) from Flagstaff Av to Diamond Path and on Cty Rd 31 (Pilot Knob Rd) from 195 th St. to 190 th St.	64 parcels
CP 70-20 2014	Lakeville Construct an 8' wide Trail along CSAH 70 from the Scott County line to Keswick Loop South	5 parcels

²⁰ We were provided with one additional project that ultimately is not shown in the table or the calculations. Project 86-29 is relatively recent, from 2016, and still had several unresolved parcels when the cost analysis was done, which we judged to be sufficiently incomplete that we removed it from our calculations. A table for that project is available in Appendix C.

Project & Year Approved	Location/Type of construction project	Number of parcels
CP 42-123 2014	Burnsville to Apple Valley Along north side of CSAH 42, construction of a 10' wide paved trail from Nicollet Blvd (BV) to Elm Drive (AV) <ul style="list-style-type: none"> 2 parcels not included, as they were initially appraised as a permanent rather than a temporary easement, meaning the initial appraisal amount was artificially inflated 	38 parcels
CP 9-36 2015	Lakeville Widen CSAH 9 (Dodd Blvd) to four-lane divided highway from 194 th St to CSAH 60 (185 th St)	36 parcels
CP 8-20 2015	West St. Paul Construct roundabout at Wentworth Av and Babcock Trail	9 parcels
CP 63-25 2015	Inver Grove Heights Realign Yankee Doodle Rd, widen Argenta Trail, and reconstruct intersection at State Hwy 55	20 parcels
CP 78-06 2016	Farmington Reconstruct CSAH 78 from 235 th St west to State Highway 3	17 parcels
CP 23-59, 23-64, 23-70	Eagan, Apple Valley, Lakeville (2011-2012 three segments) Widen Cedar Ave (Cty Rd 23) for BRT transit shoulder lanes, stations and streetscaping	142 parcels

Our intent was to look at projects for which acquisition was complete and settlements had been reached, so cost calculations could be completed with final data available for all parcels. Because one project (CP 5-41, 2012) had two remaining parcels to settle, we removed those parcels from our calculations because we do not know the final amount that will be awarded to property owners. Thus, the cost analysis shows results that are up to date as of early September 2017, but are incomplete and so are slightly lower than the final amounts will turn out to be.

The analysis from the 12 representative Dakota County projects described above shows the overall breakdown for acquisition outcomes:

- 48% Direct purchase (settlements reached before the eminent domain petition is filed; generally at either appraised value or administrative settlement of less than \$10,000 above that amount, and occasionally via Board of Commissioners approval of a settlement above the administrative settlement threshold.)
- 50% Direct purchase or dismissed (settlements negotiated at amounts above the appraised value and those not settled until after the petition was filed)
- 2% Parcels settled after the condemnation commissioners hearing, at the condemnation commissioners' panel award or an amount determined by a court after one of the parties appealed the condemnation commissioners' award.

Compared with all the benchmarking organizations, Dakota County's results show the lowest percent of parcels that were settled only after going through the entire eminent domain process. In this analysis, slightly less than 2% of Dakota County's parcels went to that point, compared to 14.5% for MnDOT and ranging between "a handful" and 10% for our benchmarking counties, where an estimate was provided. Note that if we include the two Dakota County parcels that remain unsettled in these calculations, our 2.1% of parcels in this category is still lower than any of the others.

However, Dakota County settles fewer parcels with direct purchases before the eminent domain petition is filed than MnDOT and all of the benchmarking organizations, other than Anoka County (40%). MnDOT acquires more than 75% of its parcels via direct purchase outside of eminent domain. The benchmarking counties ranged from 60% to 95% of settlements outside of eminent domain.

Eminent domain and acquisition costs

A lack of acquisition cost data from most of our benchmarking sources meant that we could do cost comparisons with only Scott County and MnDOT, with some added perspective from the LRRB report.

MnDOT R/W statewide acquisition data for the last six years (2011-2016), as noted above, show an average of just under 15% (ranging from a high of 19% to a low of 10%) of properties acquired using eminent domain, with 85% acquired through negotiated settlements out of court. However, the parcels acquired through eminent domain comprised a disproportionate amount of total acquisition costs for those six years. The 15% of parcels acquired using eminent domain equaled 58% of the total spent on acquisition, while the 85% of parcels that were settled out of court were 42% of the total cost.²¹

In the **LRRB study**, which used a longer 15-year time frame, the difference in the ratios of MnDOT's direct purchase parcels (above the appraised value/first offer) averaged about 16%. Parcels acquired through eminent domain, though, show much larger differences between final purchase amounts and the appraised value. On average for the 15 years, the difference is an added 97% above the appraised value.²² This is partly because legislative changes in 2006 required acquiring agencies to pay for not only the property, but also for some attorney fees, appraisal fees, and other costs if the difference between the appraised value and the settlement value is 40% or more.

The LRRB study reported these findings from extended interviews of county R/W staff across the state of Minnesota:

Several problems make ROW acquisition more difficult. In many cases, property owners are not cooperative with the county appraisers in estimating the property value and developing the initial offer. Sometimes property owners do not even allow the appraisers to enter their property, which makes the appraisal inaccurate or unreasonable . . . this is one of the major causes of the increase in the final award amounts compared to initial offers.²³

The LRRB study (page 44) also notes some uncooperative parcel owners go so far as to seek appraisals with highly inflated values, apparently to drive up the negotiated settlement value for their parcels, and circumventing the constitutional principal of just compensation. The LRRB study cites that "The case study of Hennepin County indicates that it is necessary to develop a guideline or a regulation that can prevent property owners from producing excessive and unjustifiable appraisal values."

Dakota County R/W staff, legal counsel, and all of our benchmarking sources (including the consultants), made similar comments.²⁴

²¹ Data provided to OPA staff by MnDOT R/W staff on 3/9/17. The data was extracted from REALMS, MnDOT's electronic real estate acquisition tracking system.

²² In this calculation, 100% above appraised value is the same as doubling the appraised value of a parcel.

²³ See page 40 in the previously referenced LRRB report.

Scott County's 2009-2015 cost data show parcels settled via negotiated settlements averaged about 8% above the first offer amount. Parcels acquired through eminent domain were approaching double the first offer amount (an 81% increase) averaged over the seven years of data.

Dakota County costs:

The 12 Dakota County projects in the cost analysis included a total of 474 parcels, with a total appraised value of just under \$19 million. Those parcels ended up settling for a total cost of \$26.8 million, or a total difference of 42% above the appraised value.

As shown in the summary table below, the data can be further broken down:

- The 8 parcels (2%) that were condemnation (eminent domain) awards represented 7% of the total cost, but were 281% above their appraised value.
- The 228 parcels (48%) that were direct purchases (settled and not included in the eminent domain petition) represented 33% of the cost and were 23% above their appraised value.
- The 238 parcels (50%) that were negotiated purchases (settled after the eminent domain petition was filed but before a condemnation commissioner hearing/award) represented 60% of the cost and were 43% above their appraised value.

In the calculations shown in the table below, the percent above appraised value means 100% is equal to doubling the appraised value. 200% is three times the appraised value.

Cumulative (for 12 projects listed on pages 17-18).	Number of R/W Acquisitions	Percent of R/W Acquisitions	Settlement Changes (vs. Certified Appraisal Amount)	Appraised Amount	Settlement Amount	Difference
Condemnation awards	8	2%	281%	\$488,850	\$1,864,057	\$1,375,207
Dismissed – Direct Purchases	238	50%	43%	\$11,274,035	\$16,125,864	\$4,851,829
Direct Purchases	228	48%	23%	\$7,200,580	\$8,843,696	\$1,643,116
Total parcels	474	100%	42%	\$18,963,465	\$26,833,617	\$7,870,152

Individual tables for each of the 12 projects included in OPA's analysis can be found in [Appendix C](#).

Conclusion

MnDOT statewide data and data collected for the LRRB study showed that even if acquiring agencies are not increasing the number of parcels they are acquiring annually for road construction projects, and even if the rate of the use of eminent domain does not increase for those parcels, the costs for R/W acquisition have been, and seem to continue to be, increasing. In fact, the reason the LRRB study was conducted was concern about rapidly increasing R/W acquisition costs statewide.

²⁴ In 2014/2015, the Dakota County Transportation Department implemented process improvements for the appraisal process to require the County's appraiser to meet with staff to review the project and issues the appraiser has encountered in the field in an effort to address any appraisal issues early in the process to the extent possible.

For Dakota County: While it does appear that a small percentage of parcel owners in most of the construction projects prove intractable and uncooperative, and therefore the acquisition of their parcels will be costly in both staff time and financial resources, we remain convinced that the strategy used by most of our benchmarking sources and by MnDOT will improve outcomes: that more focused personal attention to parcel owners by R/W staff or project managers early in the process, for judiciously selected parcels, will help encourage a greater share of settlements before eminent domain steps begin.

LITERATURE REVIEW: R/W ACQUISITION AND EMINENT DOMAIN

External research

Our conclusions and recommendations in this Phase II report were reached independently, as a result of our benchmarking research and conversations with Dakota County staff. However, in our external research, we came across several resources that further validate our findings and conclusions.

MnDOT

Like many government organizations, a significant and growing share of transportation project costs for the Minnesota Department of Transportation (MnDOT) are in property acquisition. MnDOT's right of way (R/W) staff have not always prioritized investing time in developing collaborative relationships with property owners. However, Legislative changes to the eminent domain law in 2006 that resulted in higher acquisition costs prompted a review of their acquisition process and made this practice a higher priority. MnDOT best practices are used as a model by many cities and counties.

As discussed earlier in this report's [benchmarking section](#), MnDOT best practices support OPA's recommendation to change Dakota County's R/W practice to emphasize personal contact between our staff and property owners, in order to promote trusting relationships by meeting early and often with property owners. MnDOT's practice is to meet personally on location with property owners, before the appraisal is done, to gather basic information about the property and to answer owners' questions. Later in the process, they also present the purchase offer in person, so they can explain the basis and rationale for the proposed purchase price.

As discussed more fully in the [section about cost comparisons](#), MnDOT R/W statewide acquisition data for the last six years (2011-2016) show an average of just under 15% (ranging from a high of 19% to a low of 10%) of properties acquired using eminent domain, with 85% acquired through negotiated settlements out of court.²⁵ However, the parcels acquired through eminent domain cost a disproportionate amount of total acquisition costs for those six years. The 15% of parcels acquired using eminent domain were 58% of the total spent on acquisition, while the 85% of parcels that were settled out of court were 42% of the total cost.²⁶

Additional resources, including the Federal Highway Administration (of the U.S. Transportation Department), and two other studies of R/W practices and barriers, conclude that costs for R/W increase, and have steadily become a larger share of construction budgets, when eminent domain is invoked. As a result, it is generally more cost-effective to settle out of court and avoid using eminent domain to the conclusion of that process – a strategy often used by Dakota County.

Minnesota Local Road Research Board (LRRB)

The Minnesota Local Road Research Board (LRRB) and MnDOT recently commissioned a study of the R/W acquisition process. The LRRB was formed in 1959 to conduct or supervise several best practices research projects annually for state, city and county transportation engineers, with administrative

²⁵ In 2007, MnDOT developed software internally that tracks costs and collects data and documents related to each parcel for every construction project, known as REALMS, or the Right of Way Electronic Acquisition and Land Management System. Staff monitor reports extracted from REALMS that show the proportion of parcels acquired through negotiated administrative settlements and the proportion that are acquired using Eminent Domain, as well as the cost departures from the appraised value for both types of acquisition.

²⁶ Data provided to OPA staff by MnDOT R/W staff on 3/9/17. The data was extracted from REALMS. A more complete discussion is in the cost analysis section in this report.

support and technical assistance from MnDOT and other agencies (such as the Center for Transportation Studies at the University of Minnesota), and consultants.

LRRB hired Iowa State University for this R/W study project in 2015. The report, *“Barriers to Right of Way Acquisition and Recommendations for Change”* was completed in August 2016 and can be found online at MnDOT’s website.²⁷

The report describes the purpose of the research: Many urban counties and cities in Minnesota spend more than 30% of their transportation project budgets on R/W acquisition and it continues to become more expensive, difficult, time-consuming, and a barrier for project implementation. The project identified barriers and obstacles that occur during R/W that cause cost increases and delays, and then suggested solutions.

The methodology in the LRRB study included literature review, questionnaire survey and follow-up interviews, case studies, and a one-day workshop of metro-area R/W practitioners. It should be noted that some of the common issues that appeared in the studies, as well in feedback from our benchmarking interviews, are not so prominent in Dakota County because staff work hard to resolve them.

An example is that the design engineers and the R/W staff often work in separate departments, and consistent design delays create time crunches for R/W because one department hands off the project to another in sequence, instead of collaborating from the start. In Dakota County, that problem is mostly resolved by putting those design engineers and R/W staff not only in the same department, but also under the same supervisor.

The report’s summary of major findings from the survey and interviews included: “The relationship and level of trust between public agencies and property owners is the most important factor in ROW acquisition.”²⁸ (*emphasis added*) A lack of R/W staff was also identified as an important barrier.

Federal Highway Administration (FHWA)

The Federal Highway Administration (FHWA) revised its *Right of Way Project Development Guide* in 2014.

The Guide encourages agencies to plan public meetings to introduce the project. At both Dakota County and MnDOT, this is a common practice. “The most difficult part of any project is the acquisition of property and/or displacement of people and businesses that results because of the project,” the Guide advises. “Difficult, because it is the phase when the acquiring agency has to deal with the people who are most affected by the project. Most often, the property owners who live directly on or adjacent to the project, do not see its importance when balanced against their own desires and needs . . . as a result, the property owners from whom the ROW must be purchased are often hostile and unwilling to consider reaching a friendly agreement. Public hearings can be the first informational contact with project authorities and become a forum for getting and giving information.”²⁹

²⁷ In spring 2017, the LRRB report was accessed on the MnDOT website at this link:

<http://www.dot.state.mn.us/research/TS/2016/201628.pdf>

²⁸ Ibid, page 34, Chapter 3

²⁹ In spring 2017, the Guide was found on the FHWA website at this link: https://www.fhwa.dot.gov/real_estate/right-of-way/corridor_management/pdg/pdq00.cfm. See section 5.1.2

The Guide advises that no conversation about compensation between R/W staff and property owners should occur before an appraisal is complete, but that doesn't mean informational meetings can't occur before this point.³⁰

The Guide points out that the Uniform Act, which applies to all agencies at all levels of government, requires agency representatives to "make every reasonable effort to expeditiously acquire real property by negotiation". The Guide continues, "Negotiation implies an honest effort by the acquiring agency to resolve differences with property owners, and not reflect a 'take it or leave it' position. Further, the law requires that agencies attempt to expedite the acquisition of real property by agreements with owners and to avoid litigation and relieve congestion in the courts." The Guide suggests that negotiators should begin by attempting to persuade owners to settle at the just compensation amount.³¹

Finally, the Guide advises, the choice of using administrative (negotiated settlements) versus legal settlements (i.e. a court action such as Eminent Domain) is a judgement matter that should be carefully weighed by the agency. "There should be no reluctance by agencies to consummate a settlement in appropriate situations. The federal government (FHWA) endorses administrative settlements . . . that are considered to be reasonable, prudent, and in the public interest, and negotiators should be given the latitude to achieve them."³²

National Cooperative Highway Research Program (NCHRP)

Lastly, the National Cooperative Highway Research Program (NCHRP) is a collaboration of AASHTO (the American Association of State Highway and Transportation Officials), the Federal Highway Administration, and the Transportation Research Board of the National Research Council. In 2000, the NCHRP compiled a "synthesis" report called *Innovative Practices to Reduce Delivery Time for Right of Way in Project Development*. Its purpose was to identify consistently successful strategies used by state agencies to accelerate the process of R/W acquisition for construction projects.

In 2000, it was still an unusual (but recommended) practice for states to restructure project development to include earlier participation of R/W staff, so the usually separate professional disciplines could work together as a team. "The functions are optimally effective if they act collaboratively and in parallel, rather than independently and sequentially."³³ As already noted, not all of our benchmarking organizations use this recommended model, but Dakota County does.

The report's introduction speaks to the effect on property owners of public agencies acquiring R/W for construction projects, and the importance of establishing a collaborative (rather than confrontational) relationship with property owners.

"No possession is closer to the emotions of most citizens than land and home. Ownership and possession is entrenched in human longings, particularly in our Western culture, and is protected by the 5th and 14th Amendments to the U.S. Constitution...This exercise requires a balance between treating property owners fairly and respectfully, without using the excuse of a project schedule to not do so –

³⁰ Ibid, Chapter 9

³¹ Ibid, Chapter 11

³² Ibid, Chapter 11

³³ In spring 2017, this report was found at the National Cooperative Highway Research Program website at this link: http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_syn_292-a.pdf. See Summary, page 1.

but also the public has a right to expect that transportation projects that have been studied and approved will be completed expeditiously and at reasonable cost.”³⁴

In this study, four barriers to timely acquisition of right of way were found:

- Late design or plan revisions
- Environmental issues
- Unrealistic project schedules
- Coordination problems between divisions or within agencies

In the 17 years since this study was concluded, it seems not much has changed. All of these factors were mentioned by our benchmarking organizations; though from our conversations with our own staff, we conclude that none of these are a serious issue in Dakota County with the possible exception of the second.

Conclusion

Dakota County’s R/W practices align well with state and federal law, as expected, and follow state and federal best practices as much as possible. Constraints of time and personnel resources prevent staff from consistently following a best practice featured in both federal and state R/W guidance and manuals: to meet with property owners directly, as early as possible and often throughout the acquisition process.

³⁴ Ibid, Introduction page 3



APPENDIX A: BENCHMARKING QUESTIONS


The guiding questions for benchmarking interviews with counties, consultants, and MnDOT are below. We modified these questions slightly for our conversations with R/W consulting firms and MnDOT.



- *Is your ROW acquisition process different from Dakota County's in any major way(s)? We are especially interested in your answer to this question if you also follow the same three-year construction plan used in Dakota County. Do you have a process map, or a written description of your process?*
- *How do you go about relationship building with property owners of the parcels you need to acquire?*
 - *Do you have staff dedicated to ROW acquisition? How do they go about meeting property owners, explaining the project and building a relationship with them (if you attempt to do so)?*
 - *Do you use contractors in the process? If so, how?*
 - *How do your early communication and open house process differ from Dakota County's? Are any aspects of this process particularly effective?*
- *Looking back three or so years, what percentage of your acquisitions end up in eminent domain (condemnation) proceedings? A ballpark estimate is fine.*
 - *For those that settle prior to condemnation, what is the ratio of settlements/offers? In other words, what is the total amount of all settlements prior to condemnation/total amount of final offers on those parcels prior to condemnation?*
 - *For those that go to condemnation, what is the ratio of condemnation amount/offers? In other words, what is the total amount of all settlements that go to condemnation/total amount of final offers on those parcels prior to condemnation?*
 - *Is it possible you provided these numbers to the recent Local Road Research Board (LRRB) for their recent study?*
- *What software do you use to track ROW acquisitions?*
- *Do you have any questions for us?*

Following the benchmarking interviews, we summarized the findings in a matrix format, shown in Appendix B.

APPENDIX B: BENCHMARKING RESULTS SUMMARY MATRIX

Benchmark Agency	% of parcels going to eminent domain proceedings	Differences from Dakota County	What works	Challenges cited
<p>Anoka County</p> 	<p>No current method for tracking this and did not provide an estimate.</p>	<p>Title work (expect fee title) done in house.</p> <p>Anoka County does easement conveyance by deed rather than easement agreement.</p> <p>Believes department head signs off on offer amount (not the Board)</p>	<p>Identify potential issues early by talking with parcel owners.</p> <p>Design considerations identified early on include removal of trees, relocation of fences, and changing business access.)</p> <p>ROW acting as an intermediary between construction supervisor and owners.</p>	<p>ROW staff can only engage parcel owners after final design gets Board Approval (open houses may occur prior).</p> <p>Staffing/retirements. Institutional knowledge disappearing; lack of documentation of process; have to start work on each parcel from scratch.</p>
<p>St. Louis County</p> 	<p>Ballpark estimate: initial offer accepted 75% of property owners “as is.” A high number provide counter offer close to initial offer. Less than 5% enter eminent domain proceedings, and most of these settle prior to a commissioners hearing.</p>	<p>Not as rigid about the three years schedule. They work closely with design engineers and acquisition is on a parallel track from an early part of the process.</p> <p>Board much less involved in day-to-day ROW process: initial Board approval to for right of way acquisition; additional resolution to approve eminent domain petition. No need to go back on negotiating higher than appraisal.</p>	<p>Starting conversations with parcel owners much earlier than at design completion.</p> <p>Face-to-face individual meetings with parcel owners likely to be affected to provide information and build relationships (not negotiate).</p>	

Benchmark Agency	% of parcels going to eminent domain proceedings	Differences from Dakota County	What works	Challenges cited
<p>Olmsted County</p> 	<p>Est. for the last 3 years: 40% of parcels direct purchase for appraised amount; another 40% reach an administrative settlement above first offer; ~20% of parcels have gone to condemnation, with about ½ of those settling prior to a condemnation commissioners’ hearing.</p>	<p>On a 12- to 18-month schedule from design to ROW acquisition.</p> <p>Board much less involved in day-to-day ROW process: no board resolution required on certified values; no need to go back to board to negotiate over \$10k over appraisal.</p> <p>County property records office does title work in-house.</p> <p>Does not have step where ROW/CAO meet to discuss initial map and ROW needs.</p>	<p>Talk parcel owners in person when only rough corridor is known (no price negotiations).</p> <p>Being the first point of contact (before appraiser and staking).</p> <p>Adopted 1-pager summarizing key appraisal points for owner.</p> <p>Deliver offer letters in person.</p> <p>To trigger eminent domain process, Olmsted works from 30 days <i>after final offer</i>, not 60 days <i>after first offer</i> like Dakota</p>	<p>12-18 month vs. 3 year timeline.</p> <p>As fewer people accept the first offer, appraisers are losing confidence in the process, and see what they provide as basically just the starting point of negotiations.</p>
<p>Stearns County</p>	<p>Estimate on avg., ~90% settle administratively; 10% go through eminent domain. No est. on those initially entering eminent domain proceedings.</p> <p>Those going to ED proceedings usually settle ~15-20% higher than appraisal.</p>	<p>Smaller ROW staff, so County Engineer highly and directly involved in ROW process.</p> <p>Less oversight/ involvement from Board: no need for Board to sign off on appraisal amounts; no need to go back to board on price negotiations (DC: board approval if more than \$10K over appraisal).</p>	<p>High turnout at open houses by having it at a nearby venue and timed for people’s commute home.</p> <p>Having ROW specialist attend open houses and speak personally with as many owners as possible. Reduced reliance on “cold calls.”</p>	<p>They wish they had the staffing to be able to own the parcels the year before a project started.</p>

Benchmark Agency	% of parcels going to eminent domain proceedings	Differences from Dakota County	What works	Challenges cited
<p>Washington County</p> 	<p>Ballpark estimate of ~15-20% of parcels</p>		<p>In place of open houses, may use “neighborhood mtgs” w/ groups of owners from smaller chunks of the project: this increases rapport and contact info gathered.</p>	<p>Internal communication of smaller projects (not large CIP projects) to ROW staff.</p> <p>Open houses not as effective as in the past; est. rapport w/ young owners a challenge.</p>
<p>Hennepin County</p> 	<p>Use of RTVision software for project tracking.</p> <p>Estimated for 12 recent “typical” projects: under 40% of parcels start eminent domain proceedings. Usually 1-2 per project remain unsettled after condemnation commissioners’ hearing.</p>	<p>Board signs off on construction project annually, in a broad manner, via approval of set of CIP projects for the year. Authority is delegated to the Public Works director to authorize property acquisitions.</p> <p>Transp/ROW staff do not go back to the Board for approval of just compensation values following appraisals</p> <p>ROW staff don’t work in the same department as, design engineers (Transportation).</p> <p>ROW does its own title work; drafts legal documents for the ED petition; and does many of their review appraisals (not on their own projects).</p>	<p>ROW staff be the first point of contact, whenever possible.</p> <p>Rewriting contact letter to be more user friendly; including a contact sheet to be filled out increased returns 60-70%.</p> <p>Letters purposely written to impart sense of urgency, with not a lot of answers to owners’ anticipated questions. They want to encourage owners to call them and get the relationship est. w/ROW staff</p> <p>Mortgages handled on case by case basis: for temporary easements, they view mortgage releases as unnecessary (and don’t get them) as there is no change to collateral.</p>	<p>ROW requires authorization from design to move forward and is therefore dependent on Transportation for their timeline.</p> <p>ROW staff not always first face to face contact (may be engineers or appraisers).</p> <p>Attorneys reviewing the 5-year CIP and sending property owners letters prior to the County’s introductory letter, sometimes even prior to the start of design plans.</p>

APPENDIX C: COST ANALYSIS TABLES FOR DAKOTA COUNTY'S PROJECTS

Project 05-41 2012	# of R/W Acquisitions	% of R/W Acquisitions	Settlement Changes (vs. Certified Appraisal Amount)	Appraised Amount	Settlement Amount	Difference
Condemnation awards	1	2%	884%	\$32,000	\$315,000	\$283,000
Dismissed - Direct Purchases	30	73%	47%	\$4,290,360	\$6,299,443	\$2,009,083
Direct Purchases	10	24%	11%	\$2,839,720	\$3,154,220	\$314,500
Total parcels	41	100%	36%	\$7,162,080	\$9,768,663	\$2,606,583

Note: two parcels in Project 05-41 2012 were not settled as of early September 2017 and were excluded from our analysis

Project 79-04 2012	# of R/W Acquisitions	% of R/W Acquisitions	Settlement Changes (vs. Certified Appraisal Amount)	Appraised Amount	Settlement Amount	Difference
Condemnation awards	0	0%	0%	\$0	\$0	\$0
Dismissed - Direct Purchases	0	0%	0%	\$0	\$0	\$0
Direct Purchases	30	100%	5%	\$54,450	\$57,100	\$2,650
Total parcels	30	100%	5%	\$54,450	\$57,100	\$2,650

Projects 23-59, 23-64, 23-70 2011-2012	# of R/W Acquisitions	% of R/W Acquisitions	Settlement Changes (vs. Certified Appraisal Amount)	Appraised Amount	Settlement Amount	Difference
Condemnation awards	6	4%	245%	\$443,000	\$1,528,837	\$955,837
Dismissed - Direct Purchases	90	65%	24%	\$3,812,200	\$4,722,065	\$30,937
Direct Purchases	42	30%	1%	\$607,200	\$612,500	\$3,850
Total parcels	138	100%	41%	\$4,862,400	\$6,863,402	\$990,624

Project 50-17 2013	# of R/W Acquisitions	% of R/W Acquisitions	Settlement Changes (vs. Certified Appraisal Amount)	Appraised Amount	Settlement Amount	Difference
Condemnation awards	0	0%	0%	\$0	\$0	\$0
Dismissed - Direct Purchases	29	71%	67%	\$805,500	\$1,343,800	\$538,300
Direct Purchases	12	29%	17%	\$244,025	\$286,415	\$42,390
Total parcels	41	100%	55%	\$1,049,525	\$1,630,215	\$580,690

Project 9-46 2013	# of R/W Acquisitions	% of R/W Acquisitions	Settlement Changes (vs. Certified Appraisal Amount)	Appraised Amount	Settlement Amount	Difference
Condemnation awards	0	0%	0%	\$0	\$0	\$0
Dismissed - Direct Purchases	43	69%	37%	\$406,600	\$556,515	\$149,915
Direct Purchases	19	31%	10%	\$240,885	\$265,935	\$25,050
Total parcels	62	100%	27%	\$647,485	\$822,450	\$174,965

Project 70-20 2014	# of R/W Acquisitions	% of R/W Acquisitions	Settlement Changes (vs. Certified Appraisal Amount)	Appraised Amount	Settlement Amount	Difference
Condemnation awards	0	0%	0%	\$0	\$0	\$0
Dismissed - Direct Purchases	1	20%	63%	\$4,300	\$7,000	\$2,700
Direct Purchases	4	80%	0%	\$36,500	\$36,500	\$0
Total parcels	5	100%	7%	\$40,800	\$43,500	\$2,700

Project 64-22 2014	# of R/W Acquisitions	% of R/W Acquisitions	Settlement Changes (vs. Certified Appraisal Amount)	Appraised Amount	Settlement Amount	Difference
Condemnation awards	1	2%	46%	\$13,850	\$20,220	\$6,370
Dismissed - Direct Purchases	25	48%	12%	\$554,000	\$623,151	\$69,151
Direct Purchases	27	52%	3%	\$358,850	\$371,340	\$12,490
Total parcels	53	100%	9%	\$926,700	\$1,014,711	\$88,011

Project 42-123 2014	# of R/W Acquisitions	% of R/W Acquisitions	Settlement Changes (vs. Certified Appraisal Amount)	Appraised Amount	Settlement Amount	Difference
Condemnation awards	0	0%	0%	\$0	\$0	\$0
Dismissed - Direct Purchases	7	19%	7%	\$36,475	\$38,990	\$2,515
Direct Purchases	30	81%	3%	\$73,950	\$76,300	\$2,350
Total parcels	37	100%	4%	\$110,425	\$115,290	\$4,865

Project 09-36 2015	# of R/W Acquisitions	% of R/W Acquisitions	Settlement Changes (vs. Certified Appraisal Amount)	Appraised Amount	Settlement Amount	Difference
Condemnation awards	0	0%	0%	\$0	\$0	\$0
Dismissed - Direct Purchases	8	28%	0%	\$235,900	\$235,900	\$0
Direct Purchases	21	72%	27%	\$909,950	\$1,155,300	\$245,350
Total parcels	29	100%	21%	\$1,145,850	\$1,391,200	\$245,350

Project 8-20 2015	# of R/W Acquisitions	% of R/W Acquisitions	Settlement Changes (vs. Certified Appraisal Amount)	Appraised Amount	Settlement Amount	Difference
Condemnation awards	0	0%	0%	\$0	\$0	\$0
Dismissed - Direct Purchases	0	0%	0%	\$0	\$0	\$0
Direct Purchases	9	100%	24%	\$133,700	\$165,268	\$31,568
Total parcels	9	100%	24%	\$133,700	\$165,268	\$31,568

Project 63-25 2015	# of R/W Acquisitions	% of R/W Acquisitions	Settlement Changes (vs. Certified Appraisal Amount)	Appraised Amount	Settlement Amount	Difference
Condemnation awards	0	0%	0%	\$0	\$0	\$0
Dismissed - Direct Purchases	5	42%	104%	\$1,128,700	\$2,299,000	\$1,170,300
Direct Purchases	7	58%	66%	\$1,415,750	\$2,350,200	\$934,450
Total parcels	12	100%	83%	\$2,544,450	\$4,649,200	\$2,104,750

Project 78-06 2016	# of R/W Acquisitions	% of R/W Acquisitions	Settlement Changes (vs. Certified Appraisal Amount)	Appraised Amount	Settlement Amount	Difference
Condemnation awards	0	0%	0%	\$0	\$0	\$0
Dismissed - Direct Purchases	0	0%	0%	\$0	\$0	\$0
Direct Purchases	17	100%	9%	\$285,600	\$312,618	\$0
Total parcels	17	100%	9%	\$285,600	\$312,618	\$27,018

Project 86-29 (2016) overview:

- Location: Rural townships in Dakota County;
- Project Description: Improvements (shoulders, turn and bypass lanes) on CSAH 86 (280th St. East) from CSAH 47 to Highway 52; and
- **Note: Project 86-29 was not included in the acquisition cost summary table shown on page 20, as several parcels were had not been settled as of early September 2017.**

Project 86-29 2016	# of R/W Acquisitions	% of R/W Acquisitions	Settlement Changes (vs. Certified Appraisal Amount)	Appraised Amount	Settlement Amount	Difference
Condemnation awards	0	0%	0%	0	0	0
Dismissed - Direct Purchases	19	53%	118%	405,700	885,233	479,533
Direct Purchases	17	47%	3%	273,225	282,125	8,900
Total parcels	36	100%	259%	678,925	1,167,358	488,433

APPENDIX D – SECTION I: PROPERTY OWNER RIGHT OF WAY OUTREACH MATERIALS

Many of these points have been discussed in the main body of this report, but we are reviewing them here because they underpin the importance of effective communication for the first contact with property owners about a construction project.

We have established that Dakota County and the benchmarking organizations (six counties, three Right of Way acquisition consultants, and MnDOT) share many circumstances and outcomes:

- All benchmarking organizations reported a shortage of time available compared to what they need for Right of Way (R/W) acquisition, often because delays in “upstream” tasks, such as project design, cause a time crunch for property acquisition
- As noted in the report, lacking either sufficient time for prolonged and potentially unproductive negotiations with property owners over offers for the property needed, counties and MnDOT use Eminent Domain to gain possession of property needed for a project. This provides counties a certain date for possession so the construction project stays on schedule. Transportation directors accept the use of, and consequences of, eminent domain because they consider it an inevitable course of business for road construction.
- All benchmarking organizations, and industry research, agree that a best practice is meeting in person with property owners as early and often as possible, to build trusting, collaborative relationships that promote out-of-court settlements with property owners. Construction projects routinely involve conducting public open houses, which is usually the first time property owners have the opportunity to meet R/W staff or project managers.
- In many counties, the workload and nature of the project (i.e. the need to acquire dozens of parcels in a short time period) preclude the favored practice of face-to-face meetings with property owners. This can be accomplished to some degree for the property owners who attend a public open house for the project. But many property owners, who cannot or do not attend the open house, learn of a project either by a letter sent to them by the County or when they get a call from an independent appraiser to schedule a walk-through on their property.

In the [Benchmarking section](#), we have already pointed out the serious challenge faced by R/W specialists. We noted that they must attempt to tactfully explain to property owners that the County’s public need for the property outweighs the owner’s interest in keeping intact his or her most (financially) valuable asset. It falls to them to explain to property owners that the law gives the County the right to take their land for a construction project, for a fair price, whether or not the property owner is willing to sell it. These are hard messages to deliver under the best of circumstances. This dynamic can easily result in a relationship based in conflict or hostility instead of a spirit of cooperation, particularly if private attorneys persuade property owners to ignore the County’s efforts to negotiate.

Experts in the R/W field agree this message (pending power of eminent domain proceedings) is best discussed face-to-face with the owner at his/her property. If doing so is not possible and the message is delivered in the form of a letter to the owner, it seems important to be certain the letter is very well-crafted, because it is likely to influence the tone of the conversations between the owner and the County from that point forward.

First contact letters

Except in rural areas, a large percent of homeowners have turned off their traditional landline telephones and rely on cellphones, meaning it is harder to contact them directly by telephone than it

used to be. Because a known address is associated with every parcel, letters are the most cost-efficient way to reach most property owners.

In an effort to incorporate best practices from other counties, OPA asked benchmarking organizations to provide copies of their first contact letters and their property owner's guides that are sent with the letter. Then we assessed how well the letters communicate the critical messages by considering:

- Does the letter describe the project and what it means for the property owner (i.e. "you are receiving this letter because . . .")?
- Does the letter make the case for the public need or benefit?
- Does the letter explain next steps and how the process rolls out?
- Does it emphasize compensation based on independent appraisals and a fair market value using terms that are easily understood?

In Section II of this Appendix, the opening paragraphs of template letters used by benchmarking counties are provided. In all cases, these letters were sent before the parcel owner received an invitation to a public open house, where s/he could have learned about the project. These letters are the parcel owners' first opportunity to learn about the project and how it could affect his/her property, but most are vague and some are even unhelpful.

Staff from more than one of our benchmark counties told us that their first contact letter is intentionally vague about the purpose and importance of the letter, because they want the opportunity to talk in person about what is at stake and to explain the acquisition process. The true purpose of the initial letter is mostly to prompt the reader to contact R/W staff.

Summary: OPA's finding is that while property owner outreach materials from some counties are better than others, all could be improved. It is a little surprising how similar they are, especially the lack of specific information contained in the first contact letter. Dakota County's materials are better than many, reflecting a professional tone, but the stakes for the property owner are not very clear.

As an example from Dakota County, a letter from Dakota County's project manager to a business owner near the Kenwood Trail project in Lakeville, sent as part of a recent project, opens with a thorough description of the road expansion project, states this is a joint project of the County and City, and includes the website address for more information online. The letter continues:

Construction of these improvements will require the County to purchase property, sometimes referred to as right of way, in the form of fee title and/or easements from a number of private properties located along the project. It is anticipated that your property will be impacted. An agent from the County will contact you in the future to directly discuss the project, the proposed impacts to your property, and the acquisition process in detail. This letter is just the first step in this process.

To a property owner who is unaware of the project and wonders how it will affect him/her, these letters may not provide enough information for them to clearly understand what is about to happen to his/her property. In some letters from our benchmarking counties, a later paragraph may state that the owner will be paid a fair price for the property, but none of the letters specifically tell people what is at stake for them personally, or make the case for the public need. The construction project name and location are described, but not necessarily what is being asked of the property owner, or when, or why.

Property owners' guides

Because not all information that would be helpful for a property owner to understand about right of way acquisition can be discussed in a letter, the first contact letter is sent with a "property owner's guide" that provides more complete information. These documents are used by all of our benchmarking counties and come in all shapes and sizes, but all are based on the guide produced by MnDOT.

As with the first contact letters, some property owners' guides are better than others, but all of them include technical jargon and rely heavily on legalistic language. Most of them are not written in plain, easily understandable language. None of them explicitly state that state and federal law allow governments, acting in the public interest, to take landowners' private property at a fair price, even if the owner objects.

Section III of this Appendix is a summary of the contents of the property owner guides used by the Dakota County and the benchmarking counties.

Recommendation





Given the importance of creating a good first impression in right of way acquisition, OPA recommends that staff from OPA, Transportation, and Communications collaborate to re-design and re-write the property owner outreach materials. The goal is for the materials to be easily understood, less formal, and more direct while meeting the R/W staff purpose of prompting recipients to contact R/W staff.




APPENDIX D – SECTION II: BENCHMARKING COUNTIES' FIRST CONTACT LETTERS



The sentences below are found in the opening paragraphs of template letters used by benchmarking counties. In all cases, these letters were sent before an invitation to a public open house for the project:

- (following a description of the project) “The County is leading the process to acquire a portion of your property for a proposed interchange ramp and elimination of the frontage road. I am sending a project layout map for your reference.” The letter asks the property owner to complete a form sent with the letter that seeks contact information and names of anyone else who has a financial interest in the property.
- “You may already know the County and the Cities of xx and xx have approved a project to improve County Road xx . . . (new ¶) The current design plans indicate that your property may be affected by the project . . . I would like to discuss with you any possible impacts, the acquisition process and what to expect.”
- (following a description of the project) “While we are early in the design process, we would like to offer each resident along the project the opportunity meet with us individually to discuss the project, possible impacts, and concerns that you may have.”
- “The xx County Public Works Dept is making preliminary plans to replace or rehabilitate County Bridge xx spanning the XX River in xx Township. To complete this project, the County may need to acquire an easement for additional highway right of way across your property . . . (new ¶) As the project develops further, a representative from our right of way division will be in contact with you to discuss the project, and the policies and procedures involved in right of way acquisition.”
- “As you may or may not be aware, xx County is moving forward with the final design as it relates to the reconstruction of our County State Aid Highway xx in downtown xx . . . (new ¶) Although the construction plans have not been completed yet, the construction may necessitate that the County acquire land or easements from your property for the project. If you have any questions or concerns, we would like to sit down and go over this project with you and answer any questions you may have as it pertains to your parcel.
- (following a description of the project) “Although the construction plans have not been completed or approved yet, the reconstruction will likely necessitate that the County acquire land or easements from your property for the road construction. I have enclosed a proposed alignment of the project and would like to sit down and go over this project with you and answer any questions that you may have.”

APPENDIX D – SECTION III: BENCHMARK COUNTIES' PROPERTY OWNER GUIDES COMPARISON

Benchmark Agency	Purpose explained	Persuasive tactics: public purpose/ need	What to expect: explanation of process	Property owners' rights and options	Website includes Right Of Way info?	Notes
<p>Anoka County</p> 	Includes the standard info that state/ federal laws allow the county to acquire property for road construction projects	The guide does not define public purpose or explain that's the legal basis for the acquisition.	<p>X</p> <p>States the goal is direct purchase, not going to court.</p>	X	Yes – guide is posted.	Nicely designed booklet format. Generally pithier and shorter than the longest example -- Scott County -- with fewer details in most sections.
<p>Scott County</p> 	<p>X</p> <p>Intro uses phrase "involuntary sale" to describe public need taking</p>	X	<p>X</p> <p>Thorough info about appraisal factors, direct purchase, Eminent Domain.</p>	X	Yes but very legalistic language – their guide is much better but is not online.	Generally longer but more detailed and user-friendly explanation than MnDOT's guide.
<p>Olmsted County</p> 	<p>X</p> <p>Intro uses "inform individual whose land MUST be acquired" (<i>emphasis added</i>)</p>	No – similar to Anoka County – focused on preference for direct purchase.	<p>X</p> <p>Statements are more clear than in most other guides.</p>	X	Yes – but MnDOT's guide is posted, not Olmsted County's guide, on Olmsted County website	Very little about eminent domain. Shorter than MnDOT's guide but uses some of the same language.
<p>Washington County</p> 	<p>X</p> <p>Intro says ". . . the acquisition of privately owned property may be necessary."</p>	No - brochure jumps right into direct purchase and compensation, but no connection to public need	<p>X</p> <p>Good summary of process and owners' options.</p>	X	Did not find guide posted online, but great project info posted	Owners guide is a tri-fold brochure on regular sized paper that covers basic info well using easy-to-read bullet format.

Benchmark Agency	Purpose explained	Persuasive tactics: public purpose/ need	What to expect: explanation of process	Property owners' rights and options	Website includes Right Of Way info?	Notes
St. Louis County 	X Cover includes: "the Dept is involved in the purchasing of additional land and property rights owned by individual citizens"	X Statement that MN law allows government agencies to acquire property for public purposes.	X	X	No	Guide closely follows format of MnDOT's and in several sections, provides the same text/information.
Hennepin County 	X Very first sentence: "The acquisition of privately owned property is sometimes necessary when making improvements to county roads."	No – merely "under MN law, the county may acquire property by gift, direct purchase or eminent domain proceedings."	X	X	Yes – also, we found the property owners guide on the website of a partner City's (Bloomington) road construction projects website.	Like most of the property guides, this one includes a reference to an "uneconomic remnant" without defining what it is.
Stearns County 	Opening para: "The primary responsibilities of the SC Highway Dept are the administration Improvements are designed to reduce traffic congestion and accidents. As a result, the County is involved in purchasing land and property rights owned by individual citizens."	No - purpose para states the guide is to provide information to "those individuals whose land and/or interests must be acquired of their basic legal rights, and to outline the procedures Stearns County follows."	X The Guide includes quite detailed information about direct purchase and eminent domain processes.	X The information is organized differently than in most other guides, but covers owners' rights thoroughly.	No file found online	The format for this guide is similar to Anoka County's (8½ x 11" paper folded in half the short way, to create a 16-pg booklet. However, this won't fit in a business-sized envelope.

Benchmark Agency	Purpose explained	Persuasive tactics: public purpose/ need	What to expect: explanation of process	Property owners' rights and options	Website includes Right Of Way info?	Notes
MnDOT <i>(guide)</i> 	<p>X</p> <p>The cover page says: "the State may be required to purchase property owned by individual citizens."</p>	<p>No – only the statement that MN law allows government to acquire property for public purposes.</p>	<p>X</p>	<p>X</p>	<p>Yes – guides for R/W acquisition and relocation benefits</p>	<p>This is the basis for most, if not all, county property owner guides we looked at.</p>
Dakota County 	<p>X</p> <p>The first paragraph same as many others, then: "the acquisition of privately owned real estate is sometimes necessary."</p> <p>Also explains the purpose of brochure is to tell those whose land is needed what their rights are under the law.</p>	<p>No – only the ways in which state law allows DC to acquire property (gift, purchase, Eminent Domain). No mention or definition of public purpose except as already noted</p>	<p>X</p> <p>Explanations use less jargon and clearer messages than guides from some other counties.</p> <p>Makes clear Eminent Domain used only as last resort and to keep project on time, but provides less information than others.</p>	<p>X</p>	<p>Yes – Transp staff provide more info about ROW acquisition than any other county we benchmarked, with a splash page of its own on the external site at this link:</p> <p>https://www.co.dakota.mn.us/Transportation/HighwayPolicies/Acquisition/Pages/default.aspx</p>	<p>Owners' guide mailed to property owners twice: once as a tri-fold brochure on regular-sized paper, later in longer memo format.</p> <p>The same info is posted on the website, in a memo format.</p>

APPENDIX E: PROPERTY ACQUISITION (RIGHT OF WAY) PROCESS MAP

Legend for Real Estate Acquisition Process Mapping

Action taken by
Elected officials
or other
Authorized
Decision-maker

Action taken by
Physical
Development
Division staff

Action taken by
consultants

Action taken by
property owners

Action taken by
other Dakota
County staff or
depts

Note: on our process maps, we often show many tasks in a vertical lineup. That means those tasks are undertaken at about the same time, not consecutively. An arrow between tasks indicates they are done sequentially.

This symbol indicates a decision point

This SHAPE signifies the start of a process

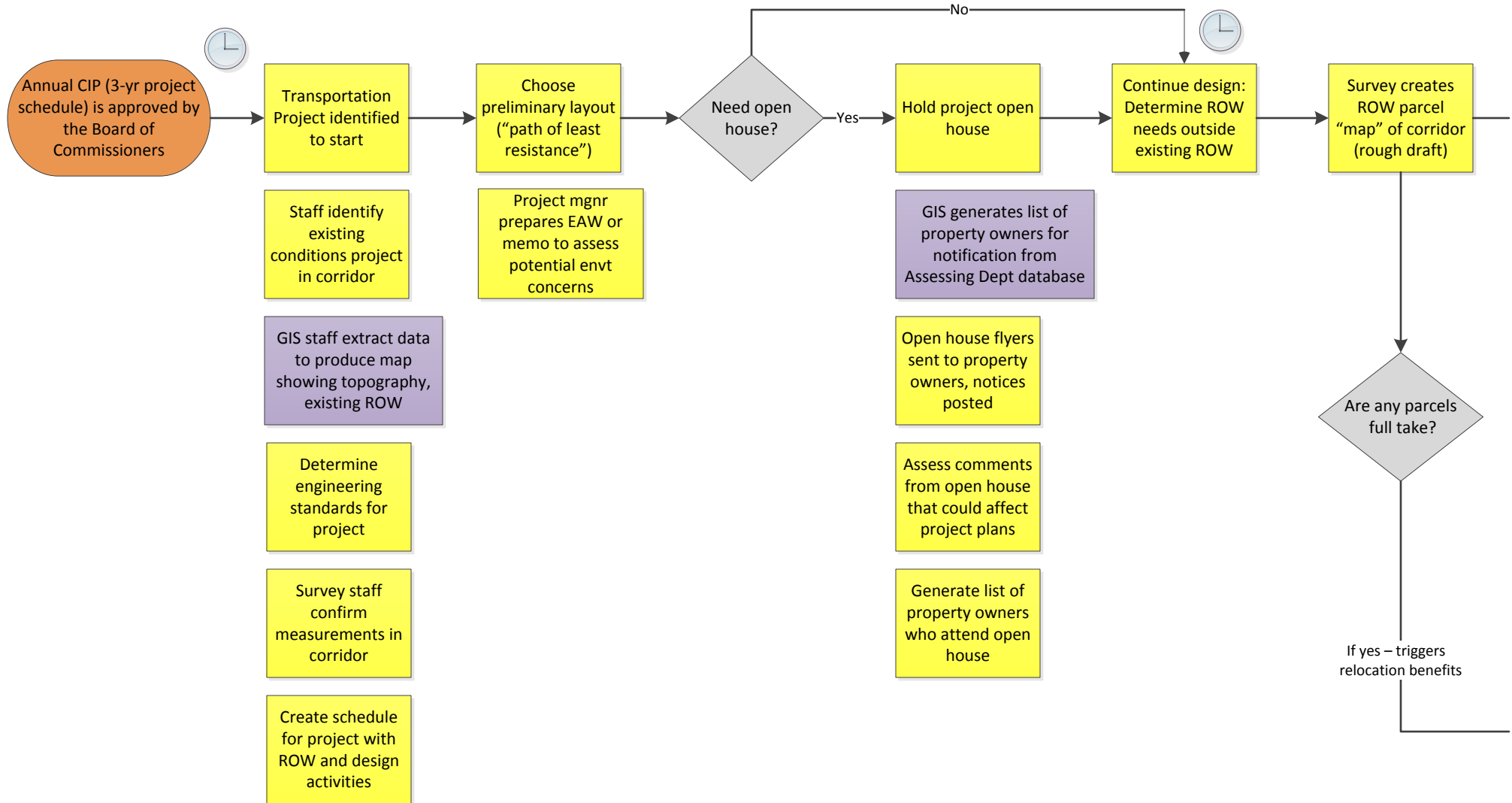


This symbol shows the passage of time – could be weeks or months.

Real Estate Acquisition Project – Process Flow Map for Right of Way (Current State)

Map Page 1

Project Planning/Design Phase

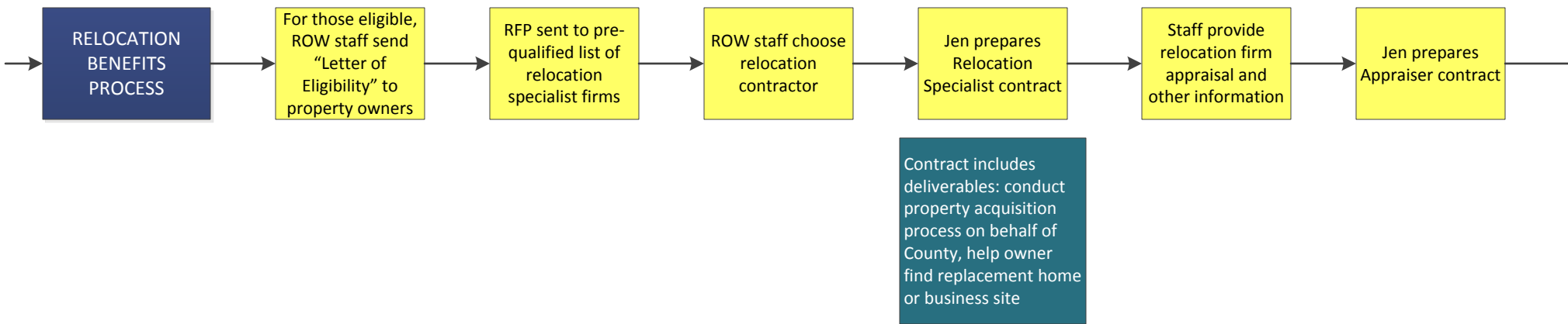
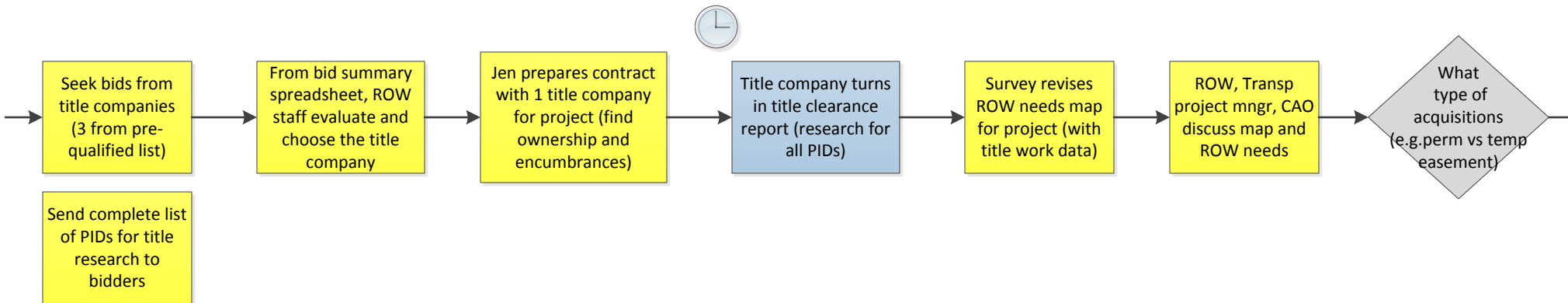


Documents List	Annual CIP	Contract for title company	RFP for review appraiser	Notice of Quick Take	Final certificate for all settlements
	ROW Map (Final)	Title company report (work product)	Contract for review appraiser	Notice of Hearing	RFP for relocation consultant
	Project Timeline	RFP for Appraisers Bids	Appraiser final report	Affidavit of Service (landowners)	Contract for relocation consultant
	Open House notification	Contract for Appraisals	RBA/Resolution (parcels cost)	Proposed Order/Memo of Law	Settlement Report (recommendations from relocation consultant)
	Contact list - open house	Individual parcel sketches	Property owner offer letter(s)	Info packets for condemnation panel	Settlement Report (recommendations from relocation consultant)
	Bid request for title company	Early notification Letter (with Field Title Investigation Form)	Eminent Domain Petition and related court documents	Condemnation panel award notices	EAW, project memo – environmental audit, or Phase I report
	Spreadsheet of bids (title co)			RBA – Board considers awards	

Real Estate Acquisition Project – Process Flow Map for Right of Way (Current State)

Map Page 2

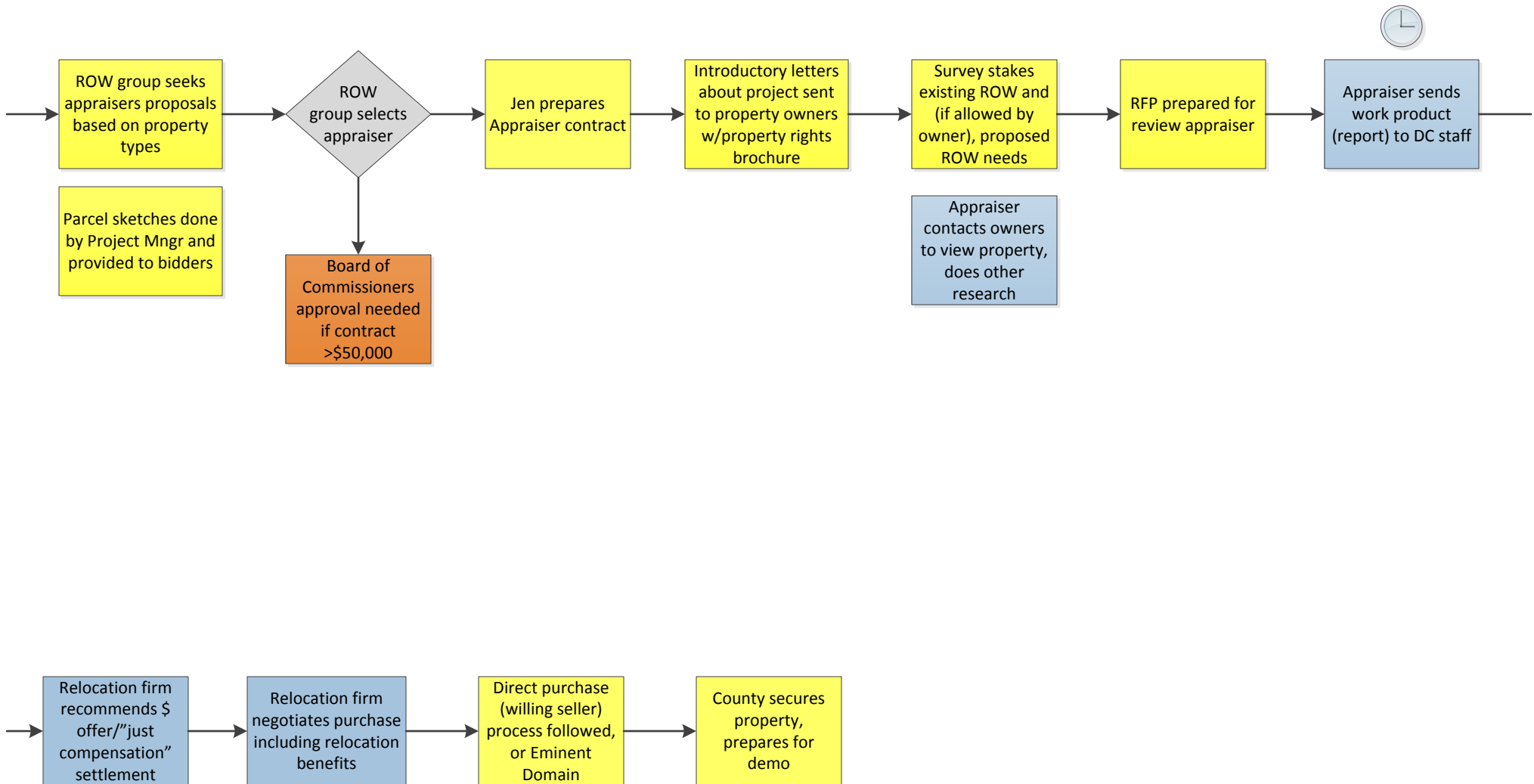
Title Research/Clearance Phase



Real Estate Acquisition Project – Process Flow Map for Right of Way (Current State)

Map Page 3

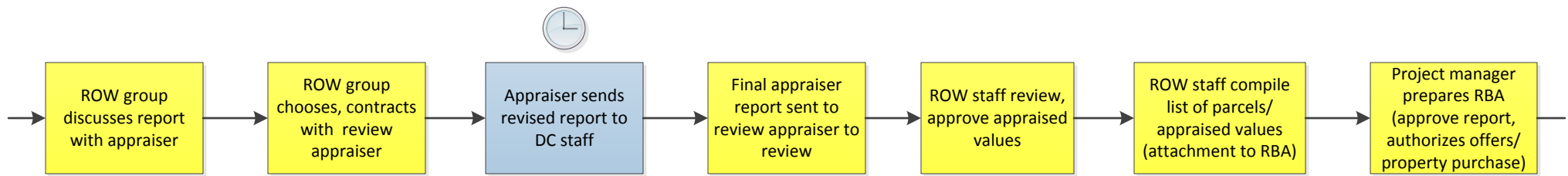
Appraisals Phase



Real Estate Acquisition Project – Process Flow Map for Right of Way (Current State)

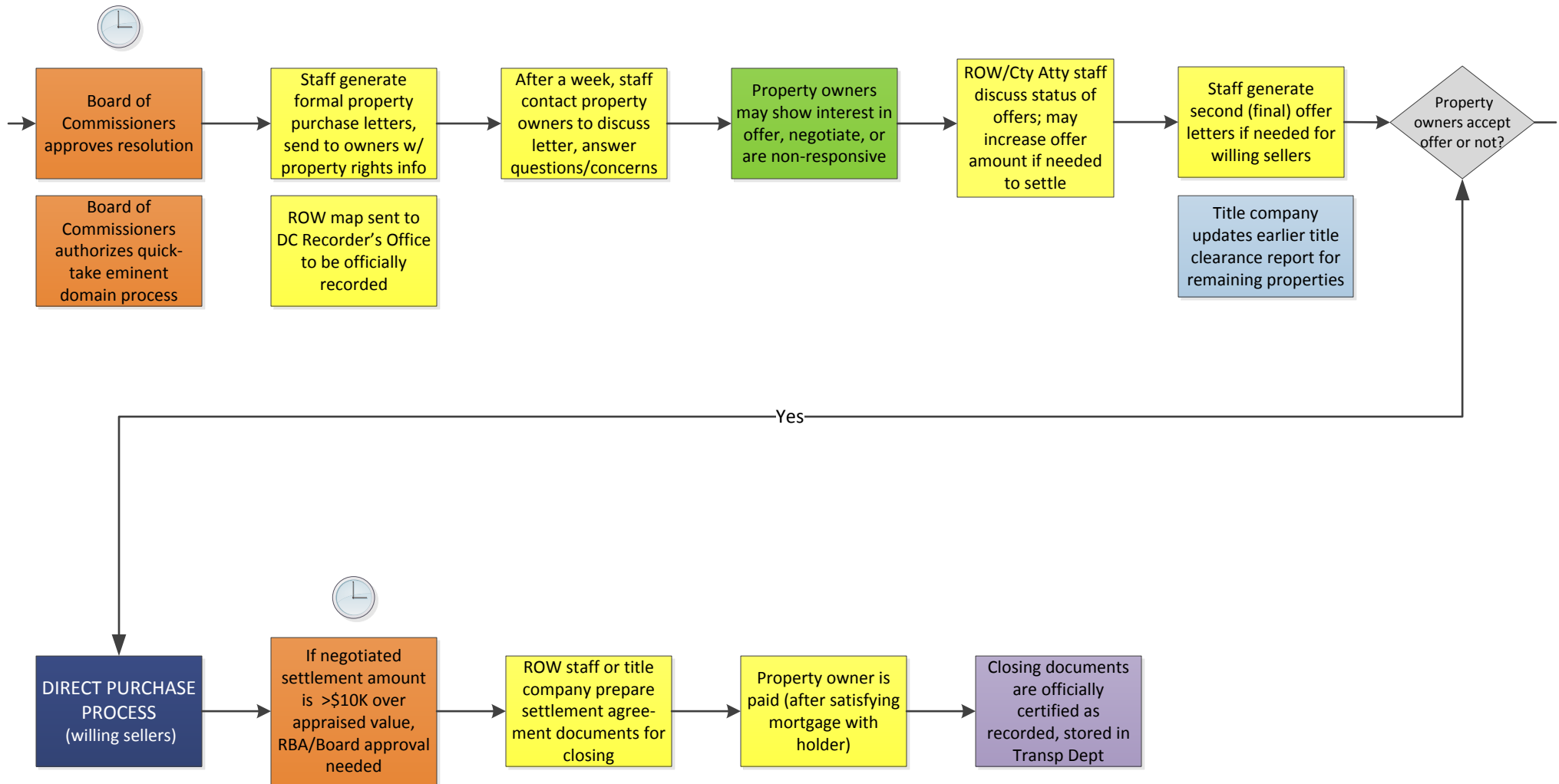
Map Page 4

Appraisals Phase



Real Estate Acquisition Project – Process Flow Map for Right of Way (Current State)

Direct Property Purchase Phase

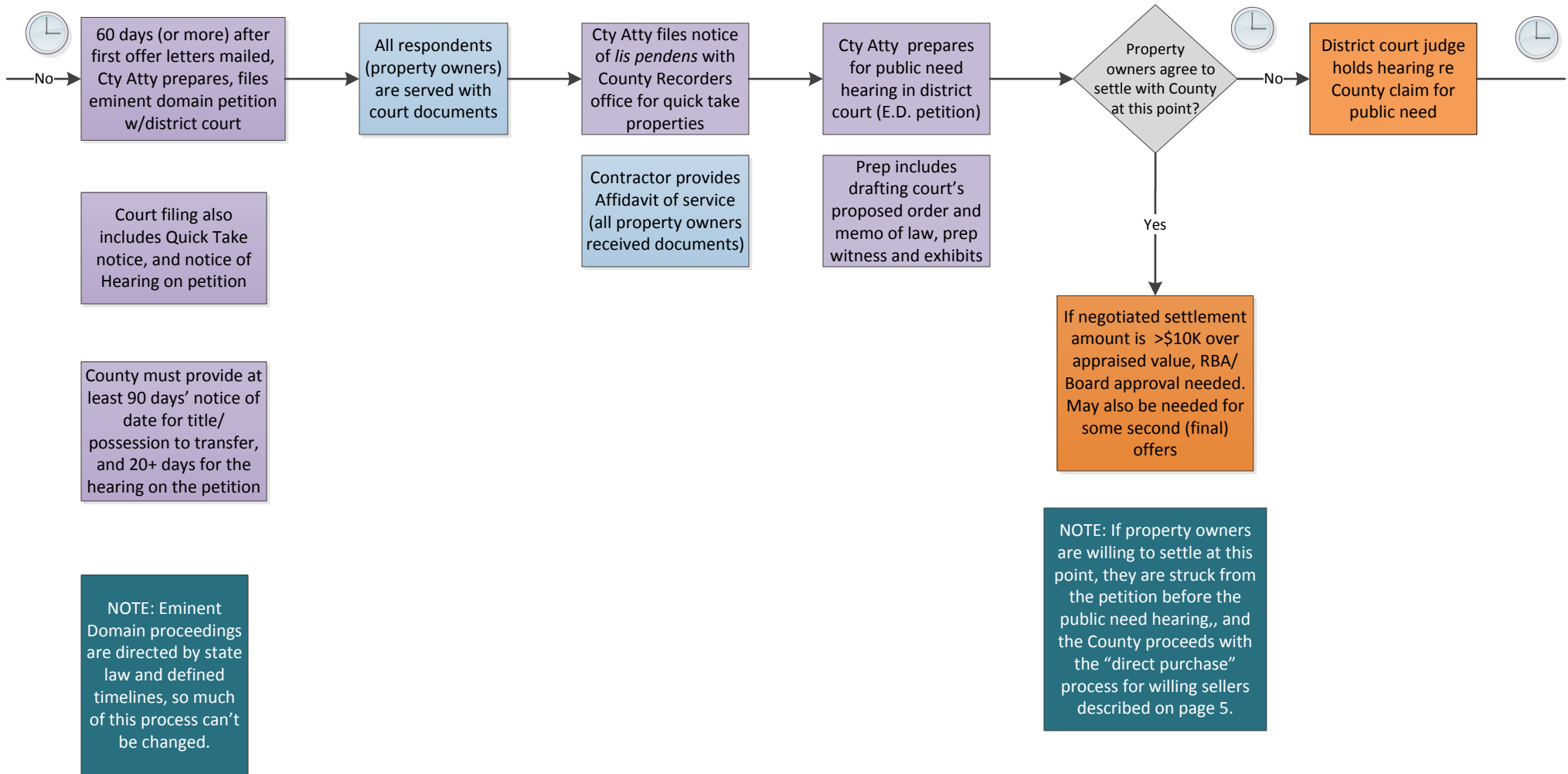


Direct Purchase Documents	Request for Mortgage Release	Recording certification
	Signed Mortgage Release (owner)	RBA/Board approval for amounts >\$10K appraised value
	Easement Document (purchase agreement)	Confidential memo for Board
	Check Request (from?)	
	Evidence of property taxes paid	

Real Estate Acquisition Project – Process Flow Map for Right of Way (Current State)

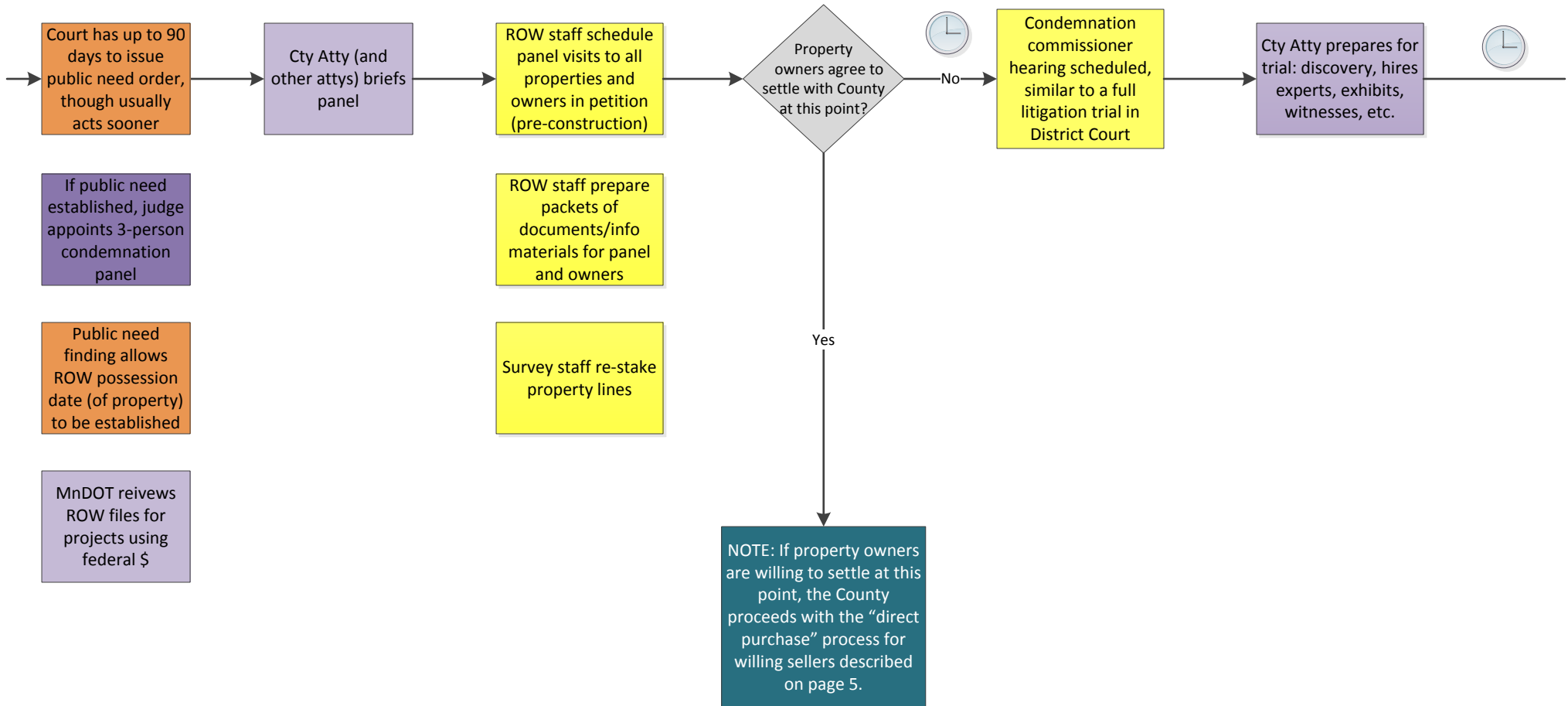
Map Page 6

Eminent Domain (Quick Take) Property Purchase Phase



Real Estate Acquisition Project – Process Flow Map for Right of Way (Current State)

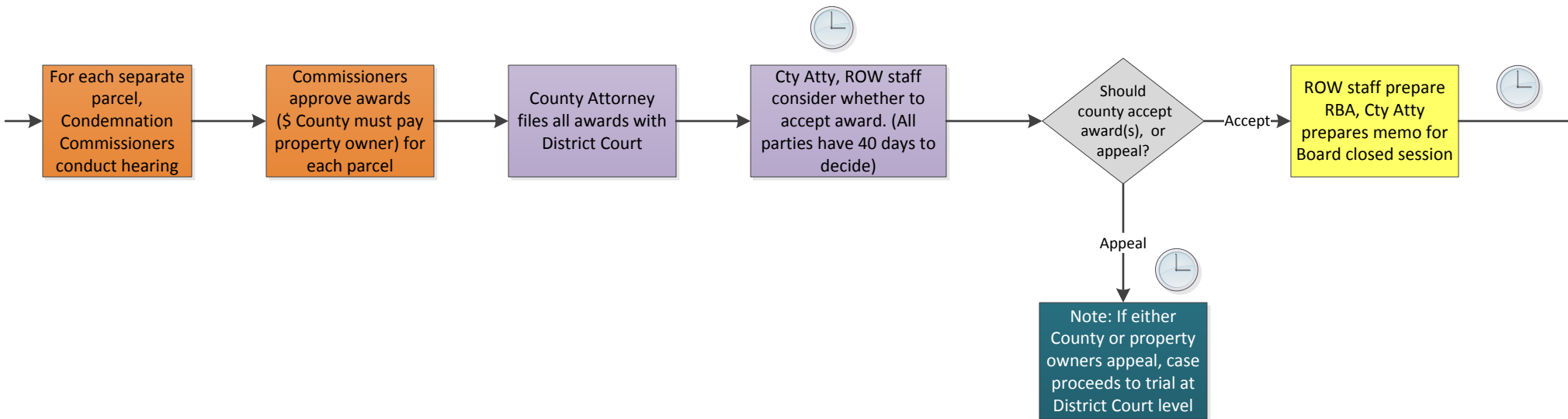
Eminent Domain (Quick Take) Property Purchase Phase



Real Estate Acquisition Project – Process Flow Map for Right of Way (Current State)

Map Page 8

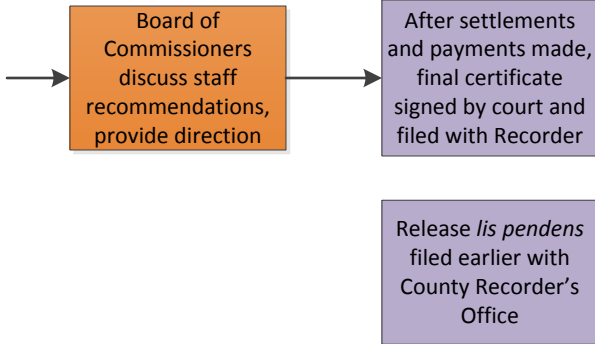
Eminent Domain (Quick Take) Property Purchase Phase



Real Estate Acquisition Project – Process Flow Map for Right of Way (Current State)

Map Page 9

Eminent Domain (Quick Take) Property Purchase Phase



Legend for Real Estate Acquisition Process Mapping

Action taken by Elected officials or other Authorized Decision-maker

Action taken by Physical Development Division staff

Action taken by consultants

Action taken by property owners

Action taken by other Dakota County staff or depts

Note: on our process maps, we often show many tasks in a vertical lineup. That means those tasks are undertaken at about the same time, not consecutively. An arrow between tasks indicates they are done sequentially.

This symbol indicates a decision point

This SHAPE signifies the start of a process

This symbol shows the passage of time – could be weeks or months.