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**1.0 PURPOSE:**

The purpose of this procedure is to define the process by which eminent domain shall be utilized to acquire properties on behalf of the NTTA. This process is needed when parcel settlement negotiations fail due to the owner(s) being either non-responsive or refuse to accept the NTTA’s final offer letter for sale of the property.

**2.0 RESPONSIBILITIES:**

- 2.1 NTTA Board of Directors (Board) - The Board shall be responsible for authorizing the ROW Acquisition Team specialist to proceed with condemnation. NTTA Board shall be responsible for reviewing and approving the eminent domain resolutions to proceed with parcel condemnation. Should the Board reject the resolution(s), the package is returned to the ROW Acquisition team for revision and later returned to the Board for approval.
- 2.2 ROW Acquisition Team - Shall be responsible for preparing the list of parcels considered for Eminent Domain and submission checklist for the eminent domain packages. The specialist shall also request appraisals on properties if the most recent appraisal is more than six months old and shall update title commitments if the most recent title commitment is more than 90 days old. The ROW Acquisition Team prepares and submits the eminent domain packages and checklists to legal counsel for review.
- 2.3 Legal Counsel - The legal representative shall be responsible for reviewing the list of parcels and eminent domain documents for accuracy, makes recommendations to the NTTA Board to proceed with the eminent domain process, shall file the condemnation suit, and shall ensure that all parties named in the suit receive proper notice of a condemnation hearing. After the condemnation hearing, the legal representative shall verify that no objections were filed after the prescribed waiting period. If no objections have been filed, the legal representative shall then file a check in the amount of the special commissioners’ award with the court, and acquire possession of the property.
- 2.4 Corridor Manager (CM)/Project Manager – The CM or Project Manager shall be responsible for coordinating the development of the project schedule in accordance with PC-06, Schedule Management including ROW acquisition timelines.
- 2.5 Consulting Engineer - The Consulting Engineer shall be responsible for adhering to requirements described in Section 406 of the amended and restated Trust Agreement to prepare a statement certifying that in their opinion the acquisition of such property is necessary in connection with the construction or operation of the project.

**3.0 SCOPE/APPLICABILITY:**

This procedure shall apply to all NTTA projects and corridors.

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#### 4.0 REFERENCES:

- [ROW-05](#) Relocation Services Procedure
- [PC-06](#) Schedule Management Procedure

#### 5.0 DEFINITIONS & ACRONYMS

#### 6.0 PROCEDURES:

The eminent domain process includes several activities which the ROW Acquisition Team must perform and assist the legal representative with, in order for a parcel to be correctly acquired.

- 6.1 Authorization to Proceed** – Parcels proposed for condemnation shall be prepared by the RAT and submitted to the NTTA Legal team with the completed submission checklist (ROW-04-F1) for their review. The Legal team reviews the listing of eminent domain parcels and their respective packages for accuracy and makes recommendation to the NTTA Board to proceed with the eminent domain process and file the condemnation suit. The Board shall review each parcel on the eminent domain list with input from the Legal team and RAT team and authorize the Legal team and RAT to proceed with parcel condemnation. Upon receipt of authorization to proceed with condemnation, the Corridor Manager shall work directly with the RAT to prepare the parcel condemnation schedule in accordance with PC-06, Schedule Management Procedure.
  - 6.2 Title** – Upon Board approval, the ROW Acquisition Team shall obtain updated title commitments for all parcels prior to completing and submitting an eminent domain package to the legal representative. The title commitment shall be used in preparation for filing, and shall be no older than 90 days, and shall also be brought the day after the lawsuit has been filed. The title commitment shall list ownership, liens, and any other encumbrances to the property.
  - 6.3 Appraisal** – RAT Team shall request an updated appraisal if the latest appraisal is more than 6 months old. The updated appraisal is used for preparation of the eminent domain package.
  - 6.4 Eminent Domain Package** – The eminent domain specialist shall join all parties in a condemnation action utilizing the latest title commitment and appraisal obtained. It shall be inclusive of all parties that have any interest in the property to ensure that no outstanding claims can be made after the condemnation hearing has been held. In addition, the package shall contain a completed eminent domain package submission checklist, correspondence concerning the interested parties, vested documents, current appraisal and title commitment. The complete package shall be submitted to the legal representative.
  - 6.5 Documentation** – The NTTA Legal Counsel Representative shall review the package for accuracy and then shall prepare the proper legal papers to initiate the suit. The NTTA legal representative shall file the papers in the court, shall set the hearing date, verify with the court the selection of Special Commissioners
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and shall ensure all parties named in the suit are served a Notice of Hearing, no less than 11 days prior to the hearing, not counting the day of the hearing.

- 6.6 Right of Entry and Possession Agreement (ROEP)** – At any time prior to a Special Commissioners Hearing, a right of entry and possession agreement may be offered to a property owner for consideration. The legal representative is responsible for the preparation and execution of a ROEP agreement will allow for utility and/or roadway construction activities to commence within the described parcel area. The ROEP is typically used prior to holding formal condemnation proceedings, but does not waive any of the owner’s rights to just compensation.
- 6.7 Hearing Date Set-** The NTTA legal representative will work with the respective County Judge to achieve selection of the Special Commissioners for the hearing. The County Judge will then set the hearing date and NTTA legal will notify all named parties in the suit of the hearing date by sending them the “Notice of Hearing” letter.
- 6.8 Attend Hearing & Award of Special Commissioners** – The hearing is attended by Expert Witnesses, Appraisers, Design Representatives, NTTA legal and others as requested by the court. Upon completion of the condemnation hearing, the Award of Special Commissioners shall be completed and signed by the Special Commissioners. This document shall be reviewed and signed by the presiding judge and shall be filed. At this time, the NTTA legal counsel representative shall request a check in the amount set by the Special Commissioners. A Notice of Deposit shall be filed by the NTTA legal representative in order to acquire possession of property. Once the Notice of Deposit is filed, the Consulting Engineer shall prepare and submit a statement certifying that the condemned ROW purchase is necessary for construction of the project for review of conformance to Section 406 of the NTTA Trust Agreement.
- 6.9 Relocation of Residents** – Should relocation of residents be necessary to take possession of the property, continue to QMS document ROW-05 for further processing.
- 6.10 Objections** – Immediately following the close of business on the first Monday, 20 days after the award of commissioners has been filed with the Court; the legal representative shall verify that no objections have been filed. If no objections have been filed, the legal representative shall receive the warrant and prepare the Judgment in Absence of Objections. The legal representative shall then arrange for the Judge to sign the Judgment to be delivered to the title company for filing in the real property records and shall seek the issuance of the title policy. If objections are filed, the legal representative shall continue to handle the condemnation proceeding until a settlement is reached or a jury trial is held.
- 6.11 Notice of Deposit** – When the check is deposited in the court, the legal representative shall file the Notice of Deposit and notify all parties to the lawsuit that it has been filed. The legal representative obtains the parcel title policy and notifies the NTTA that they are entitled to acquire possession of the property.

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6.12 **Administrative Closeout** – Upon completion of the process, the RAT Manager shall be responsible for completing the close-out checklist form for eminent domain (ROW-04-F1) and that all parcel records are properly archived into the EPDS system.

**7.0 REGULATORY REQUIREMENTS:**

- Uniform Relocation and Real Property Acquisition Policies Act of 1970 as amended (see link to ROW-05)
- State and Local statutes as applicable.
- NTTA Amended and Restated Trust Agreement, Section 406, Payments from Construction Fund for Condemnation of Property.

**8.0 RELATED BOARD POLICY:**

N/A

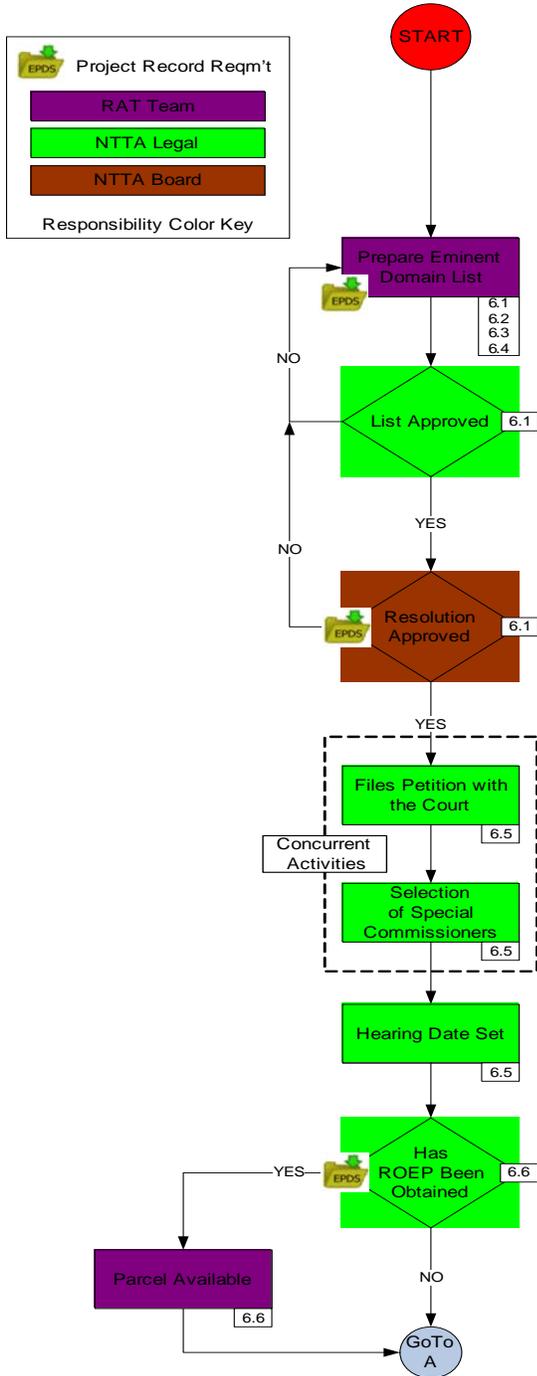
**9.0 COMPONENT DOCUMENTS:**

[ROW-04-F1 Eminent Domain Closeout Checklist](#)

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**10.0 FLOWCHART:**



- Process Inputs :**
- Negotiations fail (reference ROW -03)
  - Final offer letter not agreed to by owner
  - Non-response from owner
  - Conflict of interest circumstances
  - Owner requested

- RAT Team:**
- Prepares and submits listing of parcels to be considered for Eminent Domain
  - Orders new property titles
  - Obtains updated property appraisals and title
  - Submit eminent domain package with submission checklist (ROW-04-F1) to NTTA legal for review
  - Coordinates with CM to prepare ROW Project Schedule

- NTTA Legal:**
- Legal team reviews listing of parcels and eminent domain package for accuracy and makes recommendation to the NTTA Board to proceed with eminent domain process and file the condemnation suit
  - If rejected, send list back to RAT Team for updates/revisions
  - If approved, then list is sent to NTTA Board for approval and preparation of legal papers to initiate the suit

- NTTA Board:**
- Reviews Eminent Domain resolution to proceed with condemnation
  - If rejected, sends list back to RAT Team for updates
  - If approved, then proceed to next step

- NTTA Legal:**
- Submits Petition to the Court

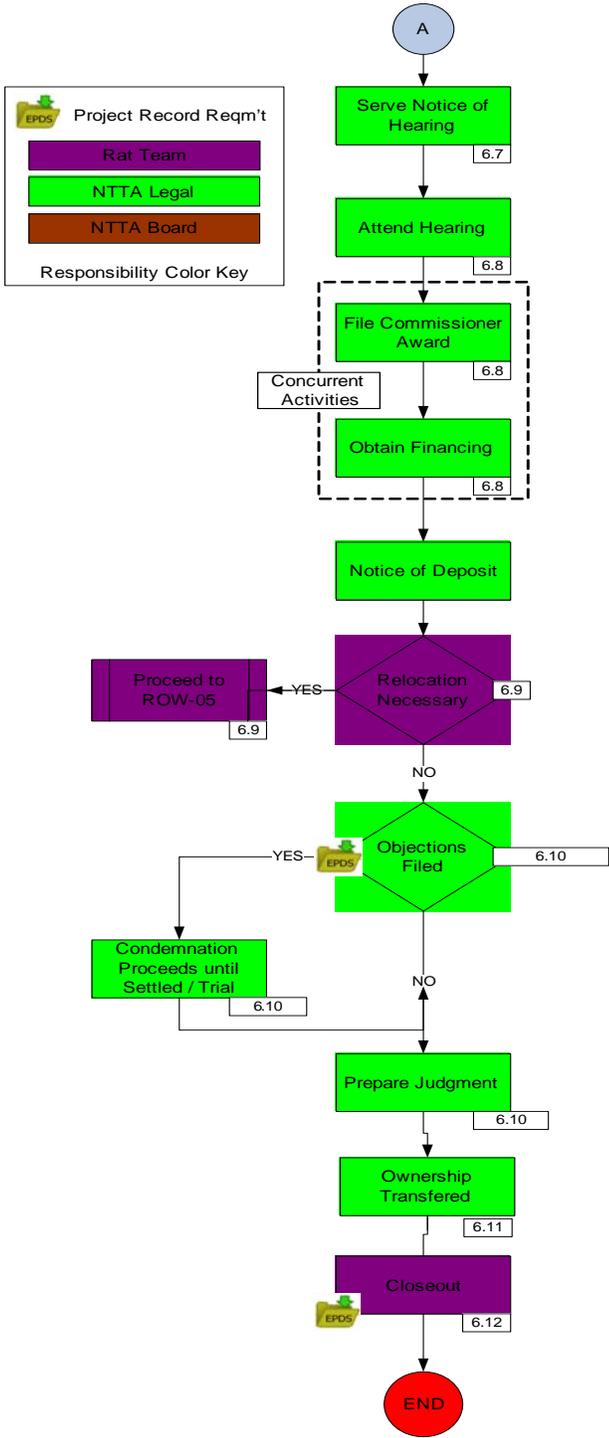
- NTTA Legal:**
- Selection of Special Commissioners by Judge

- NTTA Legal:**
- Hearing date is set, notifies all parties named in the suite of the hearing date by sending them the "Notice of Hearing" letter
  - Prepares "Right of Entry and Possession Agreement" when determined necessary to proceed with utility or roadway construction

- NTTA Legal:**
- If "Right of Entry and Possession Agreement" has been obtained, partial funds are ordered and deposited with the court
  - If no, proceed to next step

- RAT Team:**
- Parcel available for roadway and utility construction

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**NTTA Legal & NTTA:**

- Confirm receipt of "Service Notification" of hearing date to property owners and all involved in suit

**NTTA Legal & NTTA:**

- Hearing attended by Expert Witnesses , Appraisers , Design Representatives and others as requested by the court

**NTTA Legal:**

- Award of Special Commissioners is completed and signed by the Commissioners  
- Reviewed and signed by the judge

**NTTA Legal:**

- Funds requested to the NTTA in the amount set by the Special Commissioners

**NTTA Legal:**

- Funds deposited with the court
- Notice of Deposit is filed to acquire possession of property
- Notification sent to property owners
- NTTA takes possession of property upon deposit

**Consulting Engineer:**

- Prepares and submits statement in accordance with Trust Agreement Section 406

**RAT Team:**

- If relocation is necessary, proceed to Relocation Process (ROW-05)
- If no, proceed to next step

**NTTA Legal:**

- Verify that no objections have been filed
- If objections have been filed with the court by the property owners or the NTTA, proceed to Condemnation proceedings until settlement is reached or jury trial is held
- If no, proceed to next step

**NTTA Legal:**

- Legal representative continues to handle the condemnation proceedings until a settlement is reached or a jury trial is held

**NTTA Legal:**

- Receive warrant and prepare the Judgment in Absence of Objections
- Judge to sign Judgment
- Judgment delivered to title company
- Seek issuance of the title policy
- File the "Notice of Deposit" and notify all parties to the lawsuit that it has been filed

**NTTA Legal:**

- Seek issuance of the title policy
- NTTA takes ownership of property

**RAT Team:**

- Responsible for archiving all records in the EPDS system

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**11.0 REVISION HISTORY:**

Revision	Revised by:	Date Issued	DRN	Reason for Revision
0	Dave Clarke	06/05/2008		Original Issue
1	Gary Reinhardt	09/08/2008		Minor clarifications throughout document
2	Dave Clarke	03/25/2010	10099	Added flowchart, clarified procedure and added reference to checklist
3	Dave Clarke	04/30/2010	10137	Combined 2.1 and 2.4. Added Corridor Manager to 2.4. Edited 2.5