RIGHT OF WAY 101

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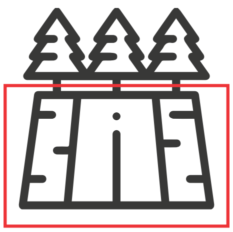
Understanding ROW and
the processes involved

Right of Way (ROW) is a set of real estate property rights granted to government agencies with eminent domain rights, enabling them to build and maintain capital projects. Before commencing any such project, it is imperative to secure either the complete parcels of land where the construction will occur or the specific portions of properties that the project will impact.

The ROW staff is responsible for gathering information and developing plans to acquire the necessary ROW, typically as part of the final design phase critical path on capital projects. This process commences after the engineering team outlines the project scope and initiates preliminary design work, including title work, surveys, and base plan creation. Once the design phase is about 60% complete, the project team can define what ROW they require. However, the actual acquisition process is held off until the environmental assessment phase is completed.

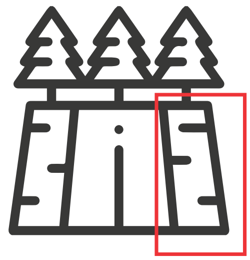
In some cases, ROW involves acquiring entire properties, compensating, and aiding in owners' relocation. At other times, the construction process needs the right to access a portion of a property, called an easement, either during construction or forever, or to purchase a part of the property, often a strip off one side of its boundaries.

Here are some types of ROW that project teams may seek



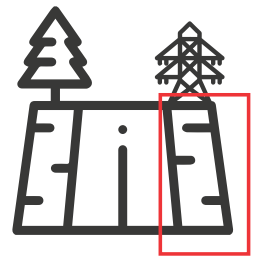
Full taking

A full taking refers to the purchase of an entire property for the purpose of building on it. A ROW team may decide to purchase a full taking if, for example, a new highway is planned to route directly through the property.



Partial taking

A partial taking refers to the purchase of a portion of the property, leaving the rest of the property as it is. The ROW team may seek to obtain ROW on a strip of yard closest to the roadway to widen the road. Occasionally, if the team only needs a portion of the property, which would render the remaining part unusable, they may need to consider buying both the required ROW area and the rest of the property from the owner.



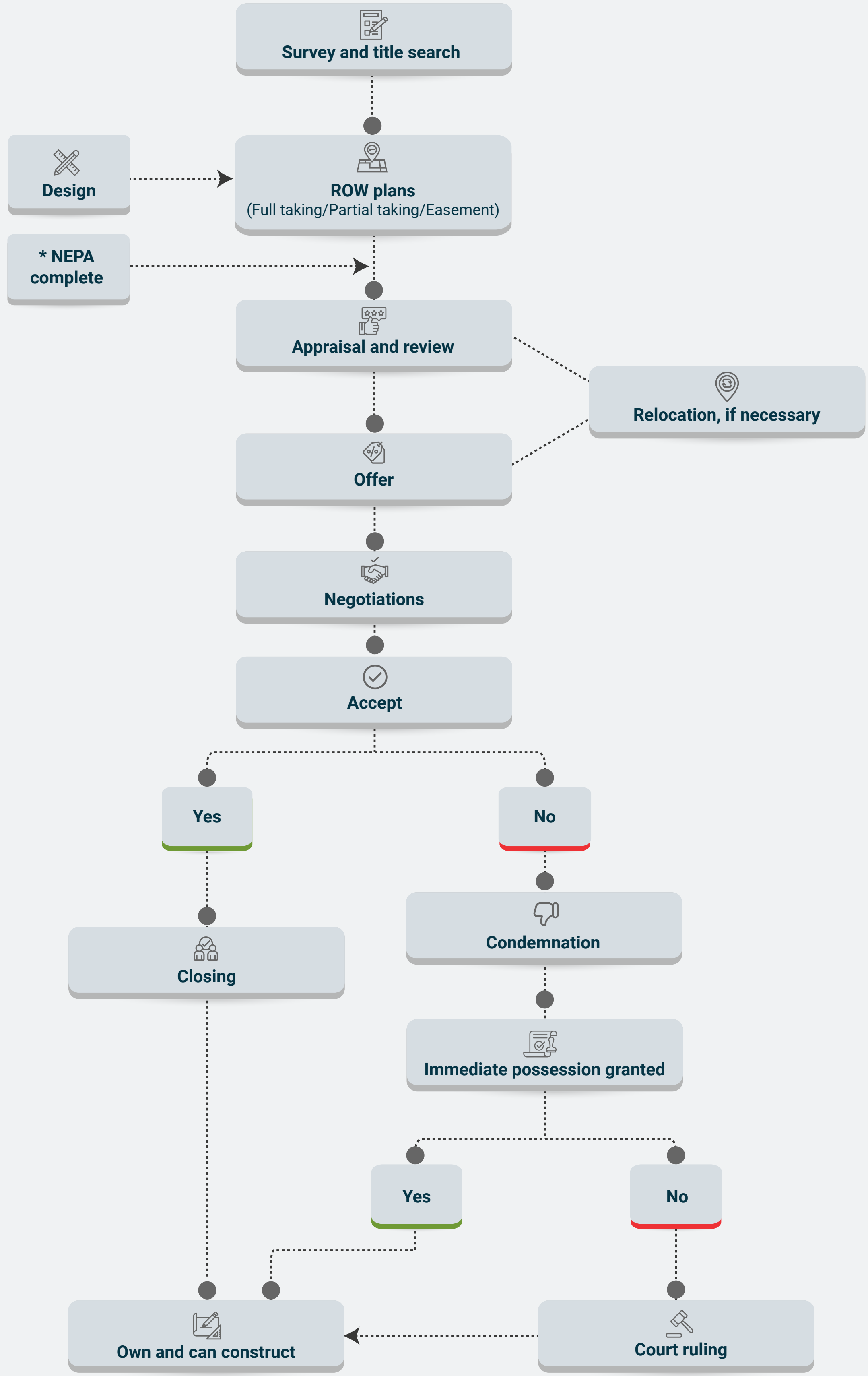
Easements

An easement describes using a portion of the property, either temporarily or permanently, for example, the underground and overhead utilities that go through properties. The owner remains, but the organization that has obtained the easement has permanent access to it and has the right to restrict the homeowner's use of that section of the property. Another example would be a municipality that obtains an easement to build a sidewalk. The property owner may retain the property, but the public has the right to walk across that portion of the property, and the title owner does not have the right to build a shed over the sidewalk.

ROW gets especially arduous when properties affected by the project are designated historic places or protected recreational properties. Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies to consider the effects of their undertakings on historic properties and provide opportunities for public comment before proceeding. Separately, Section 4(f) of the Department of Transportation Act, prohibits DOT agencies from approving projects that use land from publicly owned parks, recreation areas, wildlife and waterfowl refuges, or historic sites unless there is no feasible and prudent alternative, and all possible planning has been done to minimize harm. Environmental justice concerns can add further complexity to the ROW acquisition process.

After ROW plans have been completed, project managers and their teams should expect the acquisition process to take about twelve to eighteen months. This process cannot be rushed, as it requires negotiations and settlements for each affected property. A delay with even one property can stop the entire project until the issue is resolved. For instance, if a project needs easements on 100 properties and 99 are acquired, work cannot proceed until the last property's situation has been resolved. This guide will detail the process involved in gaining ROW for a new capital project.

A typical ROW process



Note: If a Federal project, NEPA must be completed before appraisal and negotiations.

Survey and title search

After the project team completes the preliminary design, the ROW process begins with a survey and title search. It first establishes the technical outline of the property using survey instruments to determine the legal boundaries before moving on to completing a topographic survey or an inspection of buildings or structures like driveways, fences, or decks. In some cases, ground surveying may be necessary if contamination is a concern.

A title search involves looking through Geographic Information System (GIS) databases to find information on land parcels and subdivision boundaries. It may also include a thorough examination of court and land registry records to establish legal ownership of the property and any existing ROW on it. Sometimes, a property may already have an existing ROW agreement in place, allowing a neighbor access to a portion of the property. The main aim of this search is to find the legal description of the land, its owner, and any existing titles or liens. If the survey and title search reveal any existing ROW agreements, it can complicate the process of acquiring ROW for the upcoming build by adding extra steps.

ROW plans

Once the team determines ownership and land rights, they develop a plan for obtaining the ROW. This plan includes a list and a map of current properties and their owners that may require ROW acquision. It should specify the type of ROW required, whether temporary or permanent easements or complete land acquisition. The language used in ROW plans needs to be precise, technical, and legal. The plan details the exact project dimensions and outlines how existing properties, entrances, and roadways must function throughout construction. ROW must leave enough room for adequate utilities and allow for maintenance procedures.

The ROW plan should aim to document how the proposed build will affect the property and the owner's access to it so that a discussion can begin between the ROW team and property owners, taking into account any special needs or requests they may have. Keep in mind that it's not just residences that are affected; the owner may be a business, a church or non-profit, or a government agency. Discussions will continue until the owners are finally presented with an offer. Meanwhile, the agency purchasing the ROW should estimate the costs and obtain approval from the appropriate board or council, whether federal, state, local, city, and/or county.

Appraisal

Before negotiating ROW with property owners, the project team conducts an inspection and assesses the Fair Market Value (FMV) of the land through an appraisal. This appraisal aims to define reasonable compensation for the requested ROW. Certified appraisers handle the ROW market valuations and consider only the property's value before any improvements, not its future worth or neighboring properties.

Assessing the FMV becomes complex when purchasing the property outright because both the fixed and personal property must be evaluated for relocation. The goal is to find owners an equivalent property for relocation, even if it means the agency pays more. Further complications arise from abandoned personal property on the land, which requires disposal and the management of the vacant building until demolition.

An independent third-party appraiser conducts an appraisal review after the initial land valuation to ensure an unbiased analysis. All work up to but excluding the appraisal may be completed before signing a National Environmental Policy Act (NEPA) document, which helps maintain the momentum of the schedule.

What is the National Environmental Policy Act (NEPA)?

Under the National Environmental Policy Act (NEPA), federal agencies must assess the environmental, social, and economic effects of their actions — including permitting decisions, land management, and construction of publicly owned facilities such as highways — before they are carried out, and must allow public input on these assessments. NEPA encompasses a broad spectrum of actions, such as

- rendering decisions on permit applications
- instituting federal land management strategies
- constructing publicly owned facilities such as highways

NEPA's framework has changed significantly. The Fiscal Responsibility Act of 2023 introduced major statutory amendments, including a two-year limit on Environmental Impact Statements, and a 2025 Executive Order removed CEQ's binding NEPA regulations effective April 11, 2025. Individual agencies are now developing their own procedures, so ROW practitioners should consult current agency-specific guidance before proceeding.

Contracting and documentation

Once the appraisal has established the value of the land, the owner must be presented with a written offer for the purchase or use of the land, as well as any special provisions that may have come up during the discussions. Owners can make counteroffers, and negotiations ensue until a settlement is reached. When all parties agree, they sign the necessary documents. This process requires time and patience. Typically, the design is almost complete at this point in a project, and the focus shifts to the ROW process, which can take about a year. If a settlement is not reached, the property may be subject to condemnation.

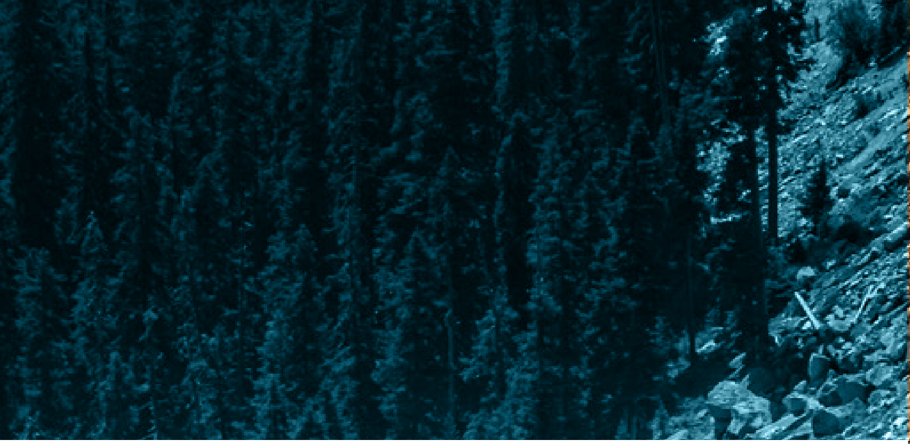
Often, these documents are printed and exchanged through registered mail, leading to extra costs and delays. A secure ROW management software solution can allow legally binding paperwork to be distributed and signed digitally, saving everybody time and the headache of printing and mailing.

Relocation

When the ROW process involves purchasing properties outright, compensation may cover moving costs and complications caused by relocating property owners to another equally suitable location. In the case of business relocation, compensation may cover signage replacement, advertising, and other expenses that may come up because of the move, including the significant cost of transporting inventory.

Condemnation

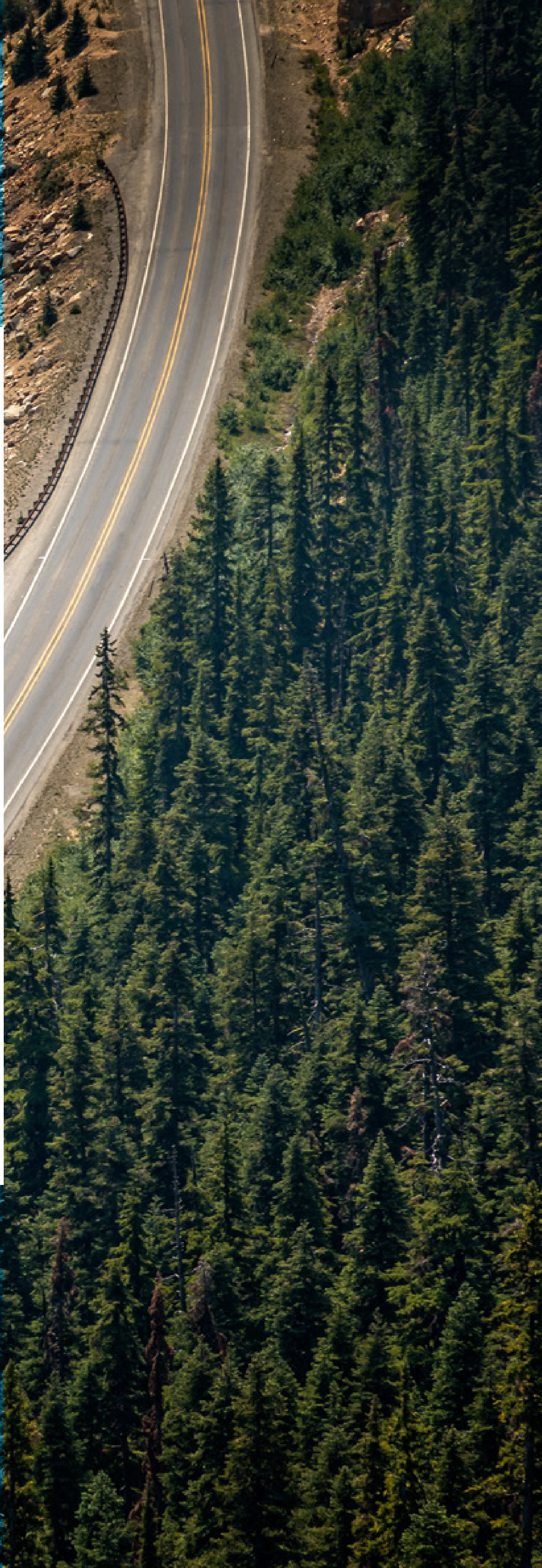
If negotiations with property owners cannot come to a successful conclusion, the next step in securing ROW is called condemnation. Condemnation is when the acquiring agency and property owner cannot reach an agreement. In such cases, the agency may acquire the property through the power of eminent domain. Eminent domain is the power granted to state and local governments to purchase private property for public projects, like buildings, transmission lines, highways, and gas lines. To use eminent domain, the agency must prove the project's necessity to the public and that the project's plans have been created to reflect the most public good with the least public harm. Since this process may take some time, the agency can request Immediate Possession (IP), which allows the project to proceed even while the process settles the compensation.



Effective ROW management

Tips to navigate the ROW process smoothly

Whenever a local public agency wants to get land for a federally funded project, they must go through a series of steps known as the ROW process. This involves conducting a survey and title search to identify land ownership and any existing agreements, determining how much land is required and where. Additionally, the value of the properties that will be affected need to be appraised, contracts to acquire the land should be created, and plans for the relocation of homes or businesses on the land must be addressed. Adhering to these ROW procedures is crucial to safeguard federal funding. Here are some steps the ROW team can take to streamline this process.



Good communication

Property owners must fully understand the impact of the ROW or relocation for their property, the project timeline and scope, the compensation package they're being offered, and all the steps involved in securing ROW. Equally, internal communication within the project team is critical, as the project manager updates progress and schedules with consultation from key team members. This helps to keep everyone up to date on the project's progress and the next steps, for example, when the proper NEPA clearance has been obtained, which ensures that the project design and ROW plans are in sync. Good communication is achieved by sharing information; the more details, the better. ROW management software makes tracking, storing, viewing, and sharing documents easy, allowing the ROW teams to foster collaboration, ensure accuracy, and achieve time savings throughout the ROW process.

Transparency and good reporting, especially at the executive level

Documents, schedules, and detailed information should be available for the public agency in a ROW negotiation to access at any time without jumping down any administrative rabbit holes. The greater the understanding on both sides, the faster negotiations may go, and the more satisfied the owners, as well as the ROW team will be. Clear reporting is a critical part of transparency in the ROW process. Shared understanding allows for educated decision-making and satisfactory outcomes. Cloud-based software boosts visibility by providing workflows that make reporting a seamless part of daily activities, giving team members clear visibility into the status of the ROW process and any issues that have arisen.

Consistency in the process

ROW steps should be the same across projects to create predictability and confidence in the process. ROW teams should establish and monitor workflows to achieve consistency across stages. ROW management software can be used to set up and adjust workflows, as well as assign tasks to team members to avoid surprises. ROW is a technical, legal process often involving expensive and extensive transactions. When each part of the ROW process is clear, consistent, and accurate, it can move forward faster and prevent more issues. ROW management software helps control and share documents so that teams can achieve this high level of accuracy and consistency. When the ROW team conducts all steps with adequate organization, transparency, communication, and consistency, the process will achieve the best possible outcomes for all parties. ROW management software can help improve document management and access, organize project messages for future reference, and establish operational systems for recurring tasks, helping project teams manage ROW acquisition from start to finish.

About Aurigo Software

Aurigo builds software that helps build the world. Aurigo is an AI-native company that helps capital owners connect planning, construction, and operations in a single environment, improving decision-making and execution. Trusted by over 300 organizations across infrastructure and facilities, Aurigo manages more than $450 billion in capital programs, with over 40,000 projects throughout North America. Aurigo is a privately held U.S. corporation headquartered in Austin, Texas, with global offices in Canada, South Africa, and India.

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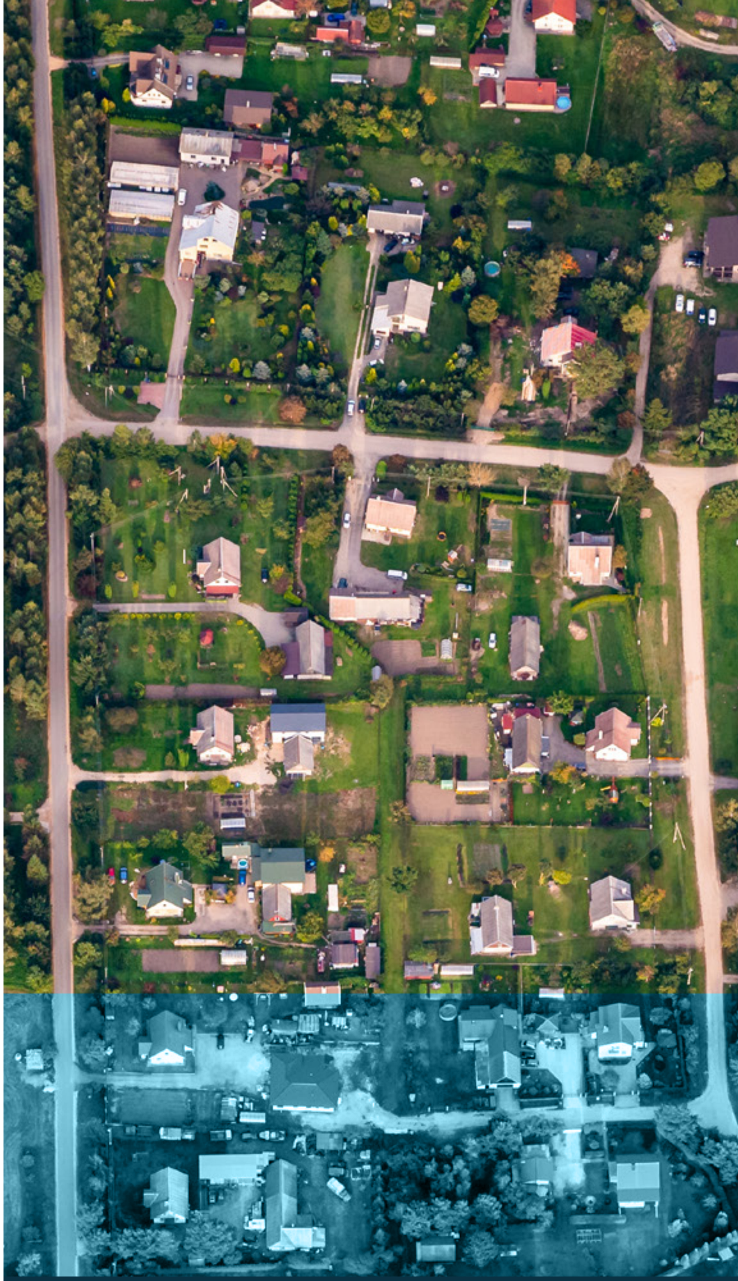
Schedule a demo

Schedule your demo today to learn how Aurigo Masterworks can help your organization streamline information, accurately track, forecast, and prioritize projects, and help you save time and money.



Aurigo Software Technologies Inc.
Austin, Texas

sales@aurigo.com | (512) 640-3377

aurigo.com