

Report To

The Mississippi Legislature



A Performance Audit of the Mississippi Department of Transportation's Appraisal and Acquisition of Real Property for Right-of-Way

November 30, 1994

Because the Mississippi Department of Transportation (MDOT) does not consistently adhere to nationally recognized procedures, landowner concerns about inconsistent or inequitable payments are valid and will persist unless MDOT takes corrective action. Supervisory appraisers often lack sufficient file information to determine whether field appraisers are consistent and equitable with their offers. MDOT also grants "administrative settlements" without sufficient documentation and, in some instances, without apparent justification (e.g., as a reward to the landowner for prompt acceptance of MDOT's offer). The *Citizen's Right of Way Acquisition Guide* does not fully inform property owners as to the department's appraisal and acquisition procedures.

Because MDOT and the Office of Attorney General do not monitor eminent domain cases effectively, the department entered into seven construction contracts from June 1992 to June 1993 without first obtaining immediate title and possession of all parcels involved.

The PEER Committee

PEER: The Mississippi Legislature's Oversight Agency

The Mississippi Legislature created the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER Committee) by statute in 1973. A standing joint committee, the PEER Committee is composed of five members of the House of Representatives appointed by the Speaker and five members of the Senate appointed by the Lieutenant Governor. Appointments are made for four-year terms with one Senator and one Representative appointed from each of the U. S. Congressional Districts. Committee officers are elected by the membership with officers alternating annually between the two houses. All Committee actions by statute require a majority vote of three Representatives and three Senators voting in the affirmative.

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PEER provides a variety of services to the Legislature, including program evaluations, economy and efficiency reviews, financial audits, limited scope evaluations, fiscal notes, special investigations, briefings to individual legislators, testimony, and other governmental research and assistance. The Committee identifies inefficiency or ineffectiveness or a failure to accomplish legislative objectives, and makes recommendations for redefinition, redirection, redistribution and/or restructuring of Mississippi government. As directed by and subject to the prior approval of the PEER Committee, the Committee's professional staff executes audit and evaluation projects obtaining information and developing options for consideration by the Committee. The PEER Committee releases reports to the Legislature, Governor, Lieutenant Governor, and the agency examined.

The Committee assigns top priority to written requests from individual legislators and legislative committees. The Committee also considers PEER staff proposals and written requests from state officials and others.

**A Performance Audit of the Mississippi Department of
Transportation's Appraisal and Acquisition of
Real Property for Right-of-Way**

November 30, 1994

**The PEER Committee
Mississippi Legislature**

The Mississippi Legislature

Joint Committee on Performance Evaluation and Expenditure Review

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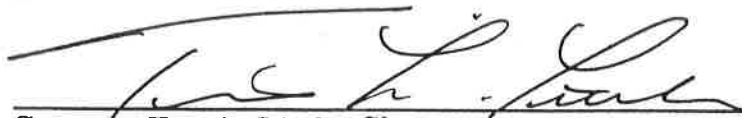
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November 30, 1994

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At its meeting of November 30, 1994, the PEER Committee authorized release of the report entitled **A Performance Audit of the Mississippi Department of Transportation's Appraisal and Acquisition of Real Property for Right-of-Way.**



Senator Travis Little, Chairman

**This report does not recommend increased
funding or additional staff.**

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A Performance Audit of the Mississippi Department of Transportation's Appraisal and Acquisition of Real Property for Right-of-Way

Executive Summary

November 30, 1994

Introduction

In response to complaints of inequitable compensation by owners of right-of-way purchased by the Department of Transportation, the PEER Committee reviewed appraisal and acquisition procedures of the Department of Transportation's Right-of-Way Division (hereafter referred to as "ROW"). The Committee conducted the review pursuant to MISS. CODE ANN. § 5-3-57 (1972).

Overview

Although MDOT's standard operating procedures for right-of-way acquisition and appraisal adhere to nationally recognized standards, ROW personnel's inconsistent compliance with these procedures and the need for further development of procedures result in the following weaknesses within the division:

- Appraisers' non-compliance with procedures for the minimum contents of appraisals prevents review appraisers from having sufficient information to verify field appraisers' determination of just compensation.
- MDOT does not consistently adhere to standard operating procedures to insure logical consistency throughout an area or project.
- MDOT's standard operating procedures do not operationally define when to grant administrative settlements (granted for monetary consideration which differs from the approved estimate of just compensation), which results in inconsistent and inequitable utilization of such settlements.

During the right-of-way appraisal and acquisition processes, MDOT should make every effort to increase public confidence and maintain the department's and its employees' credibility with

property owners. MDOT's *Citizen's Right of Way Acquisition Guide* does not fully inform property owners as to the department's appraisal and acquisition procedures.

For those right-of-way parcels which enter eminent domain proceedings, MDOT and the Attorney General's Office lack an effective monitoring system to track case status. This has resulted in MDOT's awarding of construction contracts without first obtaining immediate title and possession on all right-of-way parcels.

Background

MISS. CODE ANN. Section 65-1-47 (1972) authorizes the Transportation Commission to issue rules, orders, and regulations under which the department may improve the state highway system. To do so, the department acquires "right-of-way" from landowners, defined as the strip of land over which facilities such as highways, railroads, and power lines are built.

Appraisal Procedures

Initial Right-of-Way Appraisal

Once ROW receives project authorization from the Transportation Commission and prepares the necessary title and deed information, a ROW appraiser contacts the property owner for an appointment to inspect the property. MDOT does not normally acquire entire tracts of land; rather, it acquires parcels of tracts. For a partial acquisition, ROW appraises the entire tract to determine its fair market value before MDOT's proposed acquisition. The appraiser then determines the fair market value of the tract remaining after the acquisition of the parcel needed for right-of-way purposes. The difference between the two fair market values is what MDOT should provide as just compensation.

Review Appraisal

MDOT's Appraisal Review Section reviews appraisals for substance and form, and establishes the amounts of fair market value offers for real property. Standard operating procedures also mandate that review appraisers examine each appraisal report to insure that logical consistency in evaluation is maintained throughout an area or project.

Acquisition Procedures

Acquisition

After a review appraiser approves the appraisal, an acquisition agent contacts the property owner to make a written fair market value offer which MDOT believes to be just compensation for the property. After consideration of MDOT's offer, the owner may sign the warranty deed for the property, signifying acceptance of the offer, or the owner may present the acquisition agent with evidence of reason for a higher just compensation. MDOT and the property owner will then negotiate an agreement as to a fair market value offer.

Administrative Settlements

An administrative settlement is a negotiated agreement between MDOT and the property owner wherein MDOT agrees to increase the fair market value offer in return for the property owner signing the warranty deed. If MDOT and the property owner cannot reach agreement as to a fair market value offer through an administrative settlement, the parcel is condemned. MDOT will then initiate eminent domain proceedings against the property owner.

Eminent Domain Proceedings

Eminent domain is the power of government to take private property for public use or benefit, even against the wishes of its owner. This is also referred to as the power of condemnation. MISS. CODE ANN. Section 11-27-1 (1972) grants MDOT the right to condemn private property for public use. A special court of eminent domain convenes in the county of the parcel and a jury determines the amount of money to be paid the property owner.

Findings

Standard Operating Procedures (page 11)

MDOT's standard operating procedures for right-of-way acquisition and appraisal adhere to nationally recognized standards; however, MDOT personnel's inconsistent adherence to and the need for further development of selected procedures inhibit ROW operations.

ROW Parcel Files (page 11)

- Six percent of ROW parcel files reviewed by PEER did not comply with MDOT's standard operating procedures requiring documentation of appraisals.

PEER examined a random sample of 305 ROW files to determine compliance with MDOT's standard operating procedures for appraisals and parcel files. Ninety-four percent complied with MDOT's standard operating procedures. Appraisers did not prepare sufficient documentation to support an opinion of value in six percent of the files reviewed by PEER. Of these eighteen files:

- six files did not contain an appraisal in any form;
- four files did not contain comparable sales; and,
- eight files did not contain two or more of the required elements of an appraisal.

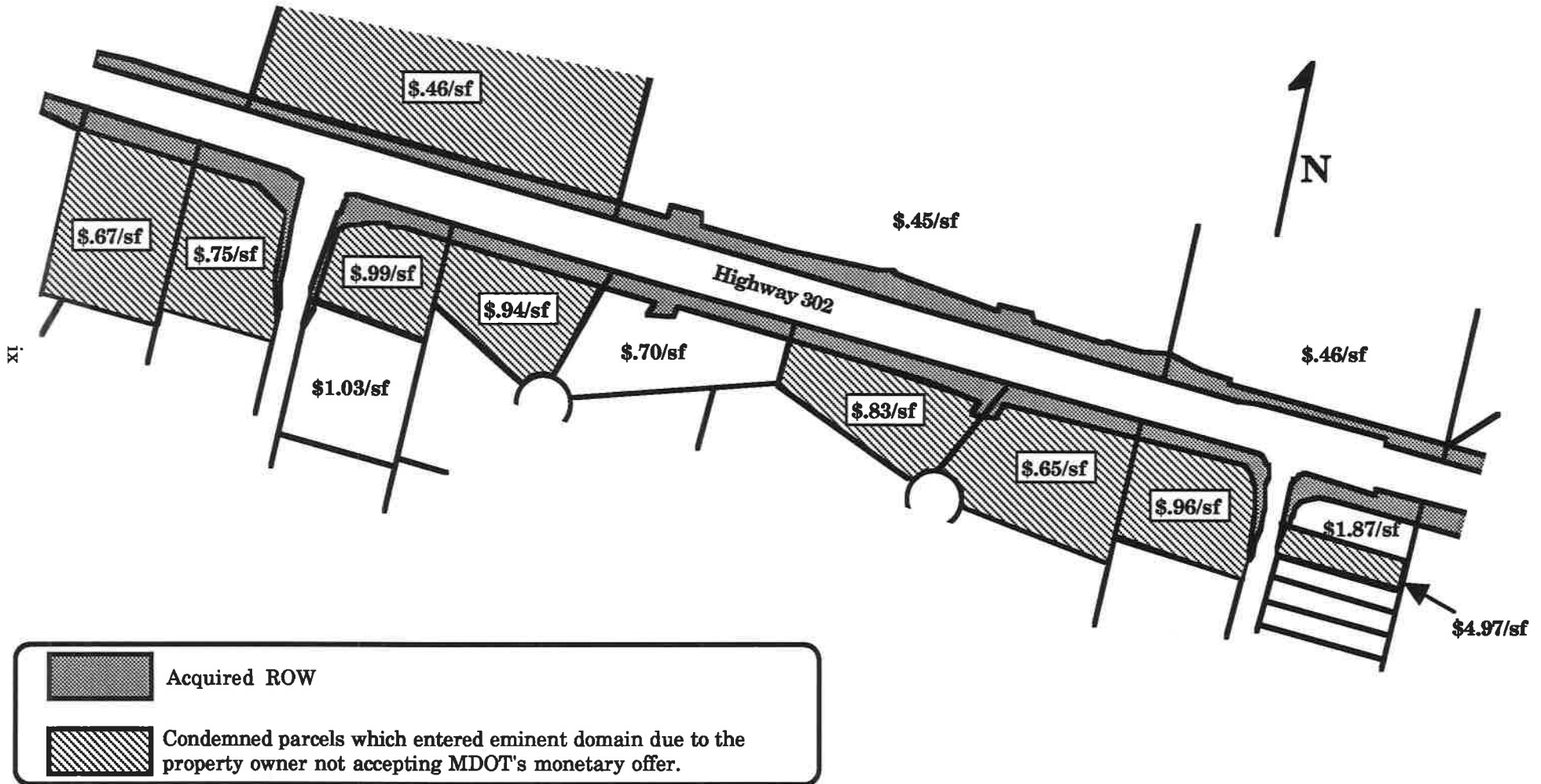
Equitable Appraisals (page 13)

- MDOT review appraisers' failure to adhere consistently to standard operating procedures does not assure equitable appraisals throughout a project or geographic area.

PEER's review of ROW appraisals and parcel files documents the division's inconsistency in the payment of:

- compensation for land (see Exhibit A, page ix, for an example of inconsistent compensation for land purchased within a .37-mile section);
- damages for proximity of the highway; and,
- damages for landscaping and fencing.

Exhibit A
MDOT's Inconsistent Appraised Price Per Square Foot For Property,
Excluding Damages and Improvements, Within A ROW Project
1992-Present



NOTE: Price/square foot reflects that of MDOT's original appraisal and not that of any later appraisals prepared for eminent domain proceedings nor that awarded by an eminent domain jury.

SOURCE: PEER analysis of ROW plats and parcel files for ROW project 19-0021-01-018-10 in DeSoto County.

Administrative Settlements (page 18)

- *MDOT inconsistently grants administrative settlements because the department has not operationally defined when to use such settlements and does not require analytical justification for each settlement.*

MDOT negotiates an administrative settlement if the property owner does not accept the department's initial offer. MDOT's standard operating procedures do not provide criteria which must be met prior to the granting of an administrative settlement, other than the Chief of ROW's signature on the parcel invoice. Standard operating procedures authorize ROW's Chief of Acquisition to make such settlements when they are reasonable, prudent, and in the public interest.

Without standard operating procedures to govern MDOT's use of administrative settlements, MDOT cannot insure that the department will provide consistent and equitable treatment of property owners whose property is acquired for highway purposes.

Citizen's Right of Way Acquisition Guide (page 22)

MDOT's *Citizen's Right of Way Acquisition Guide* does not fully inform property owners as to the department's appraisal and acquisition procedures.

MDOT's *Citizen's Right of Way Acquisition Guide* states that MDOT prepared the booklet in order "to explain the process which your Department of Transportation will follow in acquiring your property for right of way purposes and to explain your basic rights in the process." The twelve-page *Citizen's Right of Way Acquisition Guide* defines terms utilized in acquisition procedures. However, the book does not:

- provide a flowchart of procedures;
- clarify that, should the property owner withdraw these deposited funds and the jury determine compensation at a lesser amount, the property owner must reimburse MDOT the difference with interest;
- designate a contact person nor a telephone number for property owners to contact with questions; and,

- inform property owners that MDOT will consider private appraisals obtained by the property owner.

Monitoring of Eminent Domain Cases (page 23)

Because MDOT and the Office of the Attorney General do not monitor eminent domain cases effectively, the department awarded seven construction contracts from June 1992 to June 1993 without first obtaining immediate title and possession of all parcels involved.

MISS. CODE ANN. Section 11-27-85 (1972) provides for MDOT to obtain Right of Immediate Possession and Title upon the filing of a court-ordered appraiser's report and MDOT's deposit of not less than eighty-five percent (85%) of the amount of the compensation and damages as determined by the court-ordered appraiser.

As of October 15, 1993, MDOT had 265 active eminent domain cases. From June 1992 to June 1993, MDOT let seven construction contracts which had pending eminent domain cases in which the local fee attorneys had not obtained immediate title and possession of the parcels.

This occurred because neither MDOT nor the Attorney General's Office tracks the status of eminent domain cases or fee attorneys' progress towards obtaining Immediate Title and Possession. Although the Attorney General's Office has statutory authority to appoint fee attorneys, the office lacks written procedures to govern the selection of local fee attorneys or to monitor the attorneys' progress on assigned cases.

MDOT's Eminent Domain Coordinator, the department's liaison with fee attorneys, maintains a database of all eminent domain cases. However, the database does not reflect the status of a case, but provides only a compilation of dates and information on eminent domain activities.

According to MDOT's Construction Division, from January 1, 1992, to June 30, 1993, contractors on four construction sites requested extensions or supplemental agreements for projects which were not expected to be completed on schedule due to conflicts with ROW parcels.

Recommendations (page 26)

ROW Parcel Files

1. Beginning July 1, 1995, MDOT's Executive Director should require review appraisers to complete all applicable items on a checklist of the required components of an appraisal when conducting review appraisals.
2. Beginning July 1, 1995, MDOT's Internal Audit Division should conduct an annual random sample of right-of-way parcel files to check for adherence to MDOT's standard operating procedures.

Equitable Appraisals

3. MDOT should revise its standard operating procedures to require review appraisers to maintain a log of each project which records the tract size, the amount of compensation by item, and land unit value for each parcel on that project.
4. By July 1, 1995, MDOT should develop a standard checklist of all possible compensable items and standard compensation for such items.
5. By July 1, 1995, MDOT should develop written guidelines concerning the awarding of damages for specific items and should train all appraisers in these guidelines.

Administrative Settlements

6. No later than July 1, 1995, MDOT should develop standard operating procedures specifying conditions which must be met prior to considering an administrative settlement being made, including:
 - documentation of each settlement and elimination of "fill-in-the-blank" forms;
 - creation of an Administrative Settlement Review Committee; and,
 - granting of administrative settlements only for compensable items as governed by standard operating procedures.

Citizen's Right of Way Acquisition Guide

7. By July 1, 1995, MDOT should revise its *Citizen's Right of Way Acquisition Guide* to increase its effectiveness in informing property owners of appraisal and acquisition procedures, including:
 - a flowchart of procedures;
 - clarification that MDOT is only required to deposit 85% of the court-appointed appraiser's appraised value; and,
 - an addition to the guide which states that MDOT will accept and consider a private appraisal and determination of just compensation which is obtained by the property owner for the acquisition.
8. Using existing resources, MDOT should establish a toll-free number for property owners to contact with questions concerning ROW procedures and/or their parcel.

Monitoring of Eminent Domain Cases

9. The Attorney General's Office should develop written standard operating procedures for the selection and monitoring of local fee attorneys and should require fee attorneys' submission of the following status reports:
 - Counsel Acknowledgment Report;
 - Counsel Interim Evaluation Report;
 - Counsel Evaluation Report;
 - Pre-Trial Report; and,
 - Trial Report

(See further details on pages 28 and 29 of the report.)

The Attorney General should assign one employee specialized in eminent domain law to monitor fee attorneys' work and billings.

10. MDOT should modify its eminent domain database to reflect the status of cases and to track the progress of each case based on the length of time since the last recorded action on the case.

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A Performance Audit of the Mississippi Department of Transportation's Appraisal and Acquisition of Real Property for Right-of-Way

Introduction

Authority

In response to complaints of inequitable compensation from owners of right-of-way purchased by the Department of Transportation, the PEER Committee reviewed appraisal and acquisition procedures of the Department of Transportation's Right-of-Way Division (hereafter referred to as "ROW"). The Committee conducted the review pursuant to MISS. CODE ANN. § 5-3-57 (1972).

Scope and Purpose

This performance audit:

- analyzes whether MDOT's standard operating procedures for the appraisal and acquisition of ROW properties adhere to recognized standards;
- analyzes ROW's adherence to these standard operating procedures;
- reviews weaknesses within MDOT standard operating procedures which contribute to inequitable appraisals;
- reviews the MDOT Legal Division's and Attorney General's monitoring and settling of eminent domain procedures; and,
- analyzes MDOT's means of communication with property owners.

Method

In conducting this performance audit, PEER:

- reviewed Mississippi and federal statutes and regulations governing the appraisal and acquisition of ROW parcels and eminent domain proceedings;
- interviewed ROW management and staff;

- interviewed staff of the Office of the Attorney General;
- interviewed Real Estate Appraisal Board personnel;
- selected and reviewed a random sample of 305 ROW parcel files;
- selected and reviewed a sample of parcels which entered eminent domain proceedings;
- observed eminent domain court proceedings; and,
- compared MDOT's appraisal and acquisition procedures to those of the Missouri Highway and Transportation Department, Right of Way Division.

PEER held five focus group meetings with property owners with whom MDOT had conducted appraisal and/or acquisition activities during 1992. PEER held these meetings in Booneville, Senatobia, Meridian, Goodman, and Hattiesburg. The purpose of these meetings was to receive citizens' insight into weaknesses within the ROW system and ideas for areas of improvement. PEER mailed 1,465 letters of invitation to property owners to attend these meetings. Forty-nine people attended these public meetings, and PEER received numerous written responses and telephone calls commenting on ROW practices.

Overview

Although MDOT's standard operating procedures for right-of-way acquisition and appraisal adhere to nationally recognized standards, ROW personnel's inconsistent compliance with these procedures and the need for further development of procedures result in the following weaknesses within the division:

- Appraisers' non-compliance with standard operating procedures for minimum contents of appraisals prevents review appraisers from having sufficient information to verify appraisers' determination of just compensation.
- MDOT does not consistently adhere to standard operating procedures to insure logical consistency throughout an area or project.
- MDOT's standard operating procedures do not operationally define when to grant administrative settlements (granted for monetary consideration which differs from the approved estimate of just compensation), which results in inconsistent and inequitable utilization of such settlements.

During the right-of-way appraisal and acquisition processes, MDOT should make every effort to increase public confidence and maintain the department's and its employees' credibility with property owners. At present, MDOT's *Citizen's Right of Way Acquisition Guide* does not fully inform property owners as to the department's appraisal and acquisition procedures.

For those right-of-way parcels which enter eminent domain proceedings, MDOT and the Attorney General's Office lack an effective monitoring system to track case status. This has resulted in MDOT's awarding of construction contracts without first obtaining immediate title and possession on all right-of-way parcels.

Background

MISS. CODE ANN. Section 65-1-47 (1972) authorizes the Transportation Commission to issue rules, orders, and regulations under which the Department of Transportation may locate, alter, construct, or reconstruct any and all roads of the state highway system. To do so, the department acquires "right-of-way" from landowners, defined as the strip of land over which facilities such as highways, railroads, and power lines are built. CODE Section 65-1-47 provides that MDOT acquire rights-of-way of not less than sixty feet wide except within towns and cities, in which case MDOT is authorized to obtain such width, either wider or narrower than sixty feet, as it may deem necessary.

MDOT needs extensive information to assure that highway projects will serve the needs of the public. The department accumulates data through studies conducted to determine which proposed route of a highway will serve the public in the best manner. MDOT solicits the opinions of local residents and federal, state, and local agents during the environmental phase of a project. MDOT also holds public hearings and meetings to offer local residents an opportunity to express opinions concerning the proposed route. After considering these opinions and the data, the Location and Design committees recommend a specific route to the Transportation Commission for approval.

The Transportation Commission instructs ROW to begin the right-of-way acquisition phase of a construction project as soon as the department has received concurrence from the Federal Highway Administration as to the location of a new project or the alteration of an existing site. During the right-of-way acquisition phase, ROW personnel develop parcel plats (maps of the area to be acquired), prepare property deeds, conduct appraisals, review appraisals, acquire parcels, relocate displaced property owners, and remove any improvements (buildings) from the right-of-way. After the right-of-way phase is completed, MDOT can solicit bids for the construction of a project.

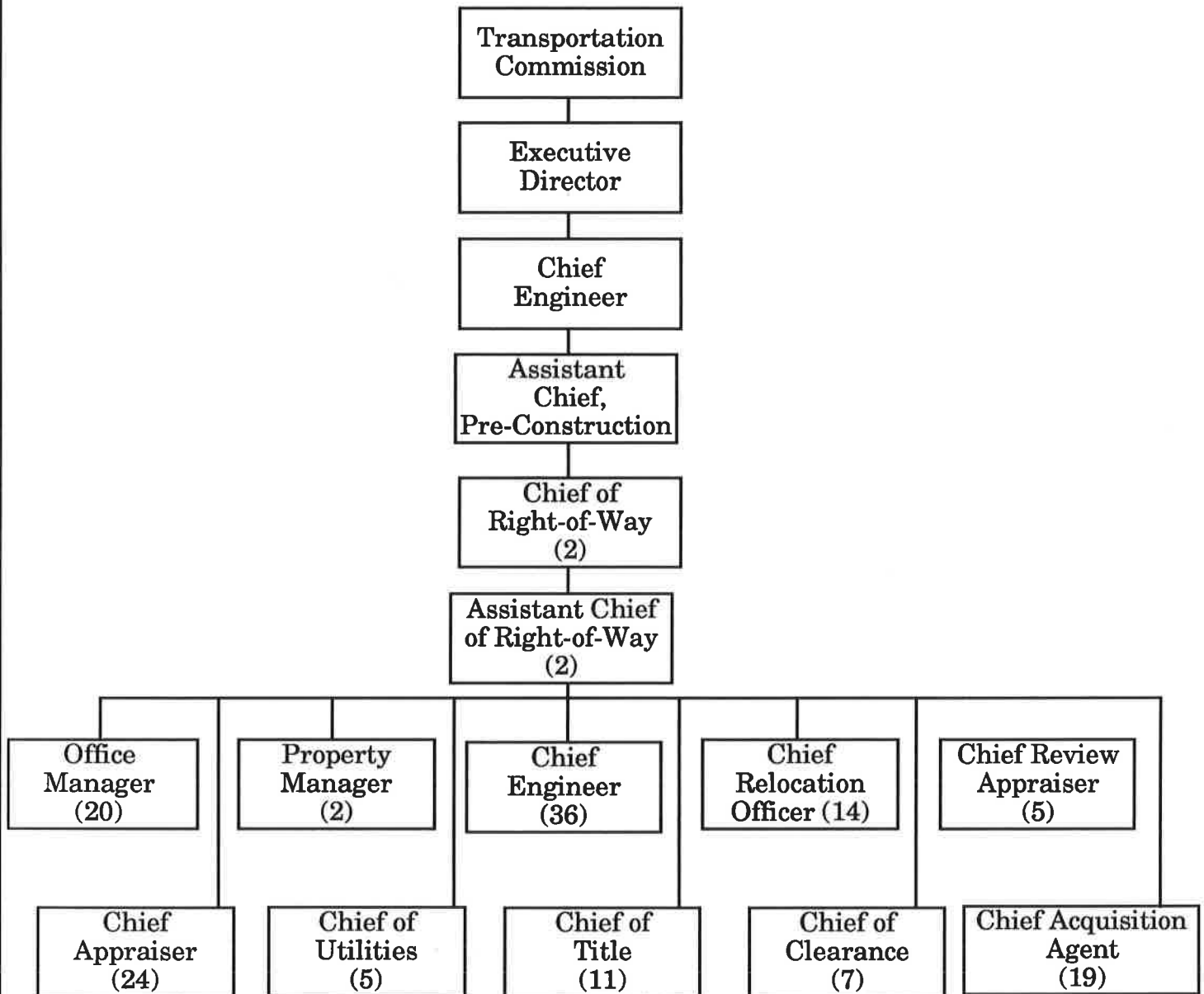
Organization Structure

The Right-of-Way Division consists of ten sections under the administration of the Chief of ROW and an Assistant Chief of ROW (see Exhibit 1, page 5). Presented below is an overview of the sections and the purpose of each:

- *Office Management:* to process all accounts payable for ROW; prepare deeds, easements, and legal documents needed to acquire right-of-way; assure all deeds are recorded with the county chancery clerk; select and maintain all furniture, equipment and supplies for ROW; maintain all records and data base; provide support services to ROW.

Exhibit 1

Mississippi Department of Transportation, Right-of-Way Division Organization Chart, As of November 1993



Total ROW staff = 147

NOTE: Numbers in parentheses denote number of staff in each section.

SOURCE: ROW Standard Operating Procedures

- *Engineering:* provide property maps to Title Section; review preliminary right-of-way plans for field inspections; coordinate right-of-way cost estimates; distribute right-of-way plans and plats; prepare and revise right-of-way plats and deeds for the acquisition and conveyance of real property; and prepare plats, legal descriptions, and other documents for eminent domain proceedings.
- *Appraisal:* conduct site inspections of property and obtain records of comparable sales of area in order to furnish appraisals as a basis for estimating the fair market value of real property.
- *Review Appraisal:* review all appraisal reports prepared by Appraisal Section for substance and form; and establish the amount of the fair market value offer for real property.
- *Acquisition:* acquire real property interests through gift, purchase, or eminent domain proceedings.
- *Title:* examine public records to prepare property titles for submittal to the Engineering Section; update titles for properties to be acquired through eminent domain proceedings; and update the title prior to recording of the executed deed.
- *Property Management:* estimate and document a salvage or retention value for improvements (buildings) located on new right-of-way; account for the purchase and disposal of all improvements purchased through the acquisition of right-of-way; conduct sales of right-of-way; maintain an inventory of excess of real property and attempt to sell these lands in a continuing program; manage Rodent Control Program; and establish and maintain field offices.
- *Relocation Assistance:* implement measures of the Uniform Relocation Act through non-monetary assistance (e.g., finding replacement housing, loan referrals) and monetary assistance; and insure that all replacement dwellings are decent, safe, and sanitary.
- *Utility:* administer that phase of a highway construction project which requires the relocation and adjustments of utilities.
- *Clearance:* clear acquired right-of-way of all improvements; coordinate site testing for contamination with Department of Environmental Quality; monitor all environmental contracts entered into by ROW; insure that all site improvements are free of asbestos before they are removed.

Appraisal Procedures

Initial Right-of-Way Appraisal

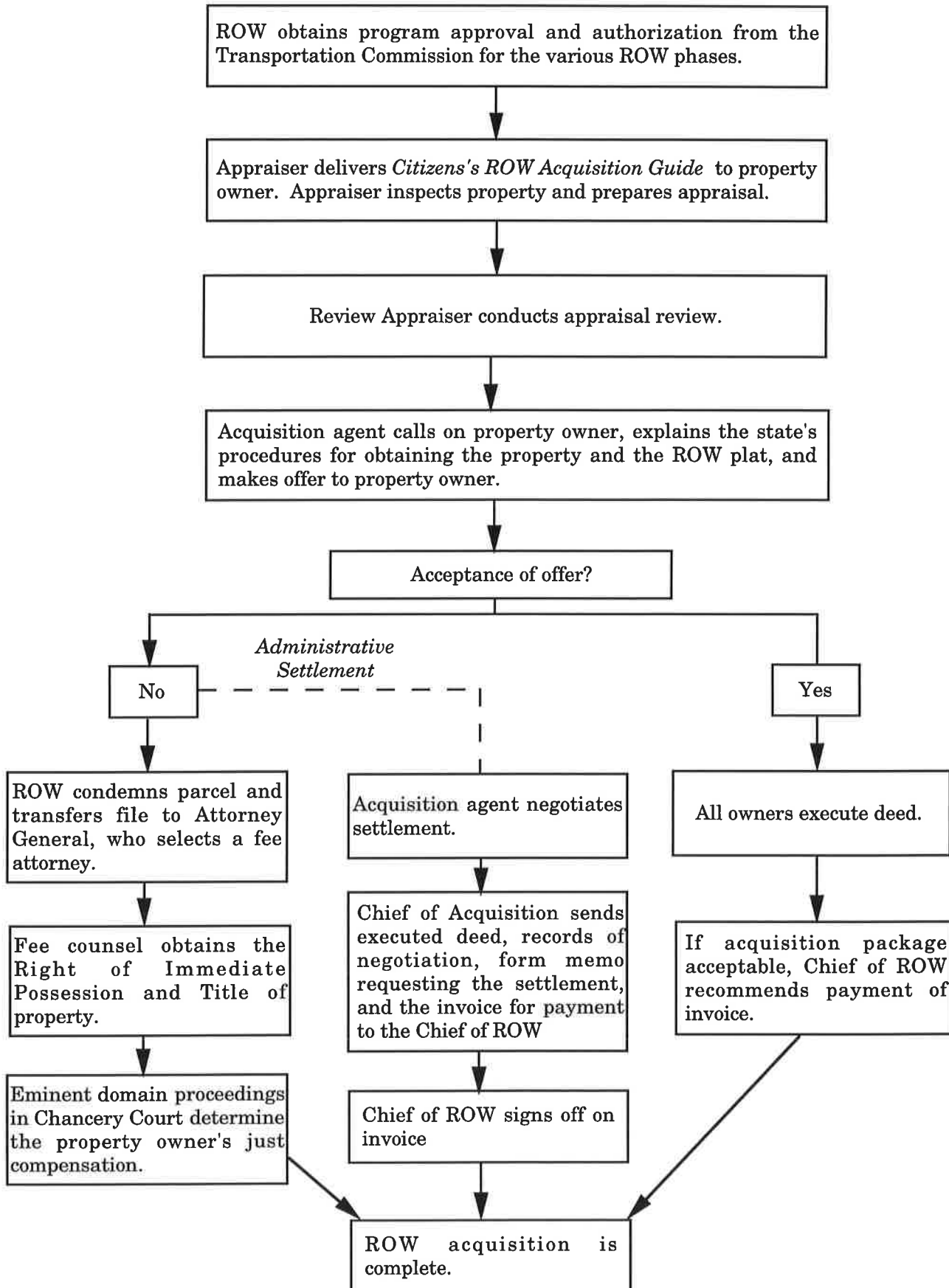
Exhibit 2, page 8, depicts ROW's procedures for obtaining needed right-of-way parcels. Once ROW receives project authorization from the Transportation Commission, ROW's Title Section prepares the necessary title and deed information. A ROW appraiser then contacts the property owner for an appointment to inspect the property. It is not necessary for the owner to be present at the inspection, but MDOT encourages property owners to be present so that they may point out features such as septic systems or property improvements. The appraiser provides the owner with a copy of the *Citizen's Right of Way Acquisition Guide*, which explains the process MDOT will follow in acquiring the property and the basic rights of the property owner.

MDOT does not normally acquire entire tracts of land; rather, it acquires parcels of tracts. For a partial acquisition, ROW appraises the entire tract to determine its fair market value before MDOT's proposed acquisition. ROW then determines the fair market value of the tract remaining after the acquisition of the parcel needed for right-of-way purposes. The difference between the two fair market values is what MDOT should provide as "just compensation"--payment for the fair market value of the property acquired plus damages to the remaining property.

Review Appraisal

MDOT's Appraisal Review Section, under the supervision of the Chief Review Appraiser, consists of four review appraisers who work on a statewide basis. MDOT's standard operating procedures delegate to this section the responsibility and authority to review appraisals for substance and form and to establish the amounts of fair market value offers for real property. Review appraisers review each appraisal for compliance with MDOT's standard operating procedures and to insure that the appraiser's reasoning is clear and documentation is correct. Standard operating procedures also mandate that review appraisers examine each appraisal report to insure that logical consistency in evaluation is maintained throughout an area or project. An ROW acquisition agent may not make a fair market value offer to a property owner until the offer is approved by a review appraiser.

Exhibit 2
ROW Appraisal and Acquisition Procedures



SOURCE: PEER analysis of MDOT's standard operating procedures.

Acquisition Procedures

Acquisition

After a review appraiser approves the appraisal, an acquisition agent contacts the property owner to make a written fair market value offer which MDOT believes to be just compensation for the property. The acquisition agent has construction plans and right-of-way maps to show the owner how much of the property is needed. The acquisition agent may not offer the property owner any more than the amount of the written offer.

After consideration of MDOT's offer, the owner may sign the warranty deed for the property, signifying acceptance of the offer, or the owner may present the acquisition agent with evidence of reason for a higher just compensation. MDOT and the property owner will then negotiate an agreement as to a fair market value offer. One negotiation tool utilized by MDOT is administrative settlements.

Administrative Settlements

MDOT utilizes administrative settlements to avoid condemning a right-of-way parcel and incurring expensive court costs. An administrative settlement is a negotiated agreement between MDOT and the property owner wherein MDOT agrees to increase the fair market value offer in return for the property owner signing the warranty deed. Standard operating procedures allow the Chief of Acquisition to authorize an administrative settlement when such settlement is reasonable, prudent, and in the public interest.

MDOT grants administrative settlements for damages such as loss of trees, proximity of the highway to the property owner's residence, and destruction of landscaping features. In most situations, the property owner believes that MDOT has not provided adequate compensation for these items. Standard operating procedures provide that after the negotiation of an administrative settlement, the Chief of Acquisition sends the executed deed, records of negotiations, his reasons for approving the settlement, and the invoice to the Chief of Right-of-Way. The Chief of Right-of-Way's signature on the invoice constitutes approval of the settlement. PEER found weaknesses in MDOT's granting of administrative settlements (see related finding on page 18).

If MDOT and the property owner cannot reach agreement as to a fair market value offer through an administrative settlement, the parcel is condemned. MDOT will then initiate eminent domain proceedings against the property owner.

Eminent Domain Proceedings

Eminent domain is the power of government to take private property for public use or benefit, even against the wishes of its owner. This is also referred to as the power of condemnation. MISS. CODE ANN. Section 11-27-1 (1972) grants MDOT the right to condemn private property for public use. A special court of eminent domain convenes in the county of the parcel. The property owner and MDOT present arguments to justify their opinion as to the value of the property. A jury then determines the amount of money to be paid the property owner.

It is sometimes necessary for MDOT to gain right of immediate entry and title to the property in order to award construction contracts on the highway segment prior to the jury's decision. CODE Section 11-27-85 provides for MDOT to obtain Right of Immediate Title and Possession in order to continue work on the highway project upon the department's deposit of 85% of a court-appointed appraiser's determination of just compensation or the department's appraised value, whichever is greater. These funds are available to the property owner once they are deposited with the court. MDOT makes supplemental payment to the property owner if the jury renders a decision of just compensation greater than that deposited with the court, while the property owner reimburses MDOT the difference between the jury award and MDOT funds deposited with the court.

Findings

Standard Operating Procedures

MDOT's standard operating procedures for right-of-way acquisition and appraisal adhere to nationally recognized standards; however, MDOT personnel's inconsistent adherence to and the need for further development of selected procedures inhibit ROW operations.

In response to complaints of inconsistent practices in the appraisal and acquisition of property, PEER analyzed MDOT's standard operating procedures to determine whether weaknesses within the procedures contributed to inconsistencies. MDOT's standard operating procedures provide minimum standards for appraisals consistent with the *Uniform Standards of Appraisal Practice* as promulgated by the Appraisal Standards Board of the Appraisal Foundation. Personnel of Mississippi's Real Estate Appraisal Board and Missouri's Highway and Transportation Department reviewed both the standard operating procedures and the appraisal formats utilized by MDOT and concurred that MDOT's procedures comply with accepted uniform standards.

The weaknesses discussed in this review are results of ROW personnel's failure to comply consistently with these procedures and the need for further development of some procedures. Appraisers' non-compliance with standard operating procedures for the minimum contents of appraisals prevents review appraisers from having sufficient information to verify appraisers' determination of just compensation. Review appraisers do not consistently adhere to standard operating procedures to insure logical consistency throughout an area or project. MDOT's standard operating procedures do not operationally define when to use administrative settlements, which results in inconsistent and inequitable utilization of such settlements. Inconsistent application of procedures threatens ROW's credibility with property owners and the public.

ROW Parcel Files

- *Six percent of ROW parcel files reviewed by PEER did not comply with MDOT's standard operating procedures requiring documentation of appraisals.*

Although PEER found a low percentage of appraisals not in compliance with standard operating procedures, MDOT should assure that its appraisals are complete in order for property owners to be compensated an amount equal to the acquisition's fair market value. Complete appraisals ensure procedural uniformity and accuracy and serve as a legal defense should compensation for a parcel be challenged in court.

Appraisals which provide sufficient documentation for review appraisers to determine just compensation also reduce the opportunity for inequity in compensation to property owners throughout a project or geographic area.

MDOT has minimum standards for appraisals consistent with commonly accepted appraisal practices. An appraisal is an independent determination of value which reflects nationally recognized appraisal standards. Each appraisal must contain sufficient documentation, including valuation data and the appraiser's analysis of that data, to support the appraiser's opinion of value. MDOT's standard operating procedures require that the appraisal, as a minimum, contain the items specified in the sidebar (at right).

MDOT's standard operating procedures require review appraisers (MDOT employees who check the quality of appraisals) to examine "all appraisals to assure that they meet applicable appraisal requirements and, prior to acceptance, obtain necessary corrections or revisions." The review appraiser's certification of the approved value of the property is set forth in a signed statement which signifies that the review appraiser has reviewed the appraisal and explains the basis for approval of the approved value.

Minimum Requirements of an MDOT Appraisal

- statement of the purpose and/or function of the appraisal, a definition of the estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal;
- adequate description of the physical characteristics of the property being appraised and, in the case of a partial acquisition, an adequate description of the remaining property;
- statement of known and observed encumbrances, title information, location, zoning, present use, analysis of highest and best use, and at least a five-year sales history of the property;
- photographs of the property and improvements;
- all relevant approaches to value;
- description of comparable sales;
- statement of value of the real property to be acquired and for partial acquisition of a statement of the value of the damages, if any;
- effective date of the valuation, date of appraisal, signature, and certification of the appraiser; and,
- project and parcel numbers.

SOURCE: MDOT's standard operating procedures.

PEER examined a random sample of 305 ROW files to determine compliance with MDOT's standard operating procedures for appraisals and parcel files. Ninety-four percent complied with MDOT's standard operating procedures by containing the required documentation, while six percent of the files did not comply due to their containing incomplete appraisals or no appraisal at all. Appraisers did not prepare sufficient documentation to support an opinion of value in six percent of the files reviewed by PEER. Of these eighteen files:

- six files did not contain an appraisal in any form;
- four files did not contain comparable sales; and,
- eight files did not contain two or more of the required elements of an appraisal, including site sketches, zoning information, site description, photos, and/or five-year sales history.

There are two reasons for incomplete appraisals: appraisers not completing or including proper documentation; and, review appraisers not checking the appraisal forms for completeness. Review appraisers failed to require the appraisers to provide the needed documentation in the six percent of files PEER found to be in noncompliance with standard operating procedures. In each case, the review appraiser should have returned the insufficient appraisal to the appraiser and required the appraiser to submit a corrected appraisal with sufficient documentation to support the opinion of value. By failing to do this, the review appraiser simply approved the appraiser's opinion of value and approved the parcel for acquisition.

Incomplete appraisals do not provide review appraisers with information necessary to verify appraisers' determination of just compensation. Without sufficient data and analysis, review appraisers cannot insure that MDOT is paying property owners proper compensation. For example, MDOT did not compensate property owners for the loss of a fence because the appraiser did not include a site sketch of the property, which should have depicted this fence, in his appraisal. The review appraiser approved the appraiser's determination of just compensation because the appraisal, as submitted, did not encompass fencing. When the property owners pointed out that they were not being compensated for the fencing, MDOT made an administrative settlement for the cost of the fence.

Equitable Appraisals

- *MDOT review appraisers' failure to adhere consistently to standard operating procedures does not assure equitable appraisals throughout a project or geographic area.*

After the appraiser inspects the property to be acquired and prepares an appraisal, a review appraiser reviews this appraisal (step 3 on the

flowchart of ROW appraisal and acquisition procedures found on page 8). MDOT's *Citizen's Right of Way Acquisition Guide* states that "the appraisal is reviewed by another experienced appraiser to assure that no factors affecting value have been overlooked."

MDOT's Chief Review Appraiser cited maintaining consistency among appraisals as the greatest obstacle faced by the Review Appraisal Division. ROW's Chief of Acquisition expressed concern over the appearance of inequity due to inconsistencies within the appraisal system for payment of items such as landscaping. ROW personnel attribute inconsistencies to the difficulty of thoroughly reviewing the work of four or five separate appraisers, while insuring that the division purchases parcels in a timely manner which does not inhibit the letting of construction contracts.

MDOT standard operating procedures state that review appraisers review all appraisal reports to insure that "logical consistency in evaluation is maintained throughout the area or project;" however, MDOT has no means or standard operating procedures that would detail how review appraisers should assure and/or document this "logical consistency." Uniform policies and procedures are intended to assure uniform acquisition practices which will provide consistent and equitable treatment of all owners of real property acquired for highway purposes.

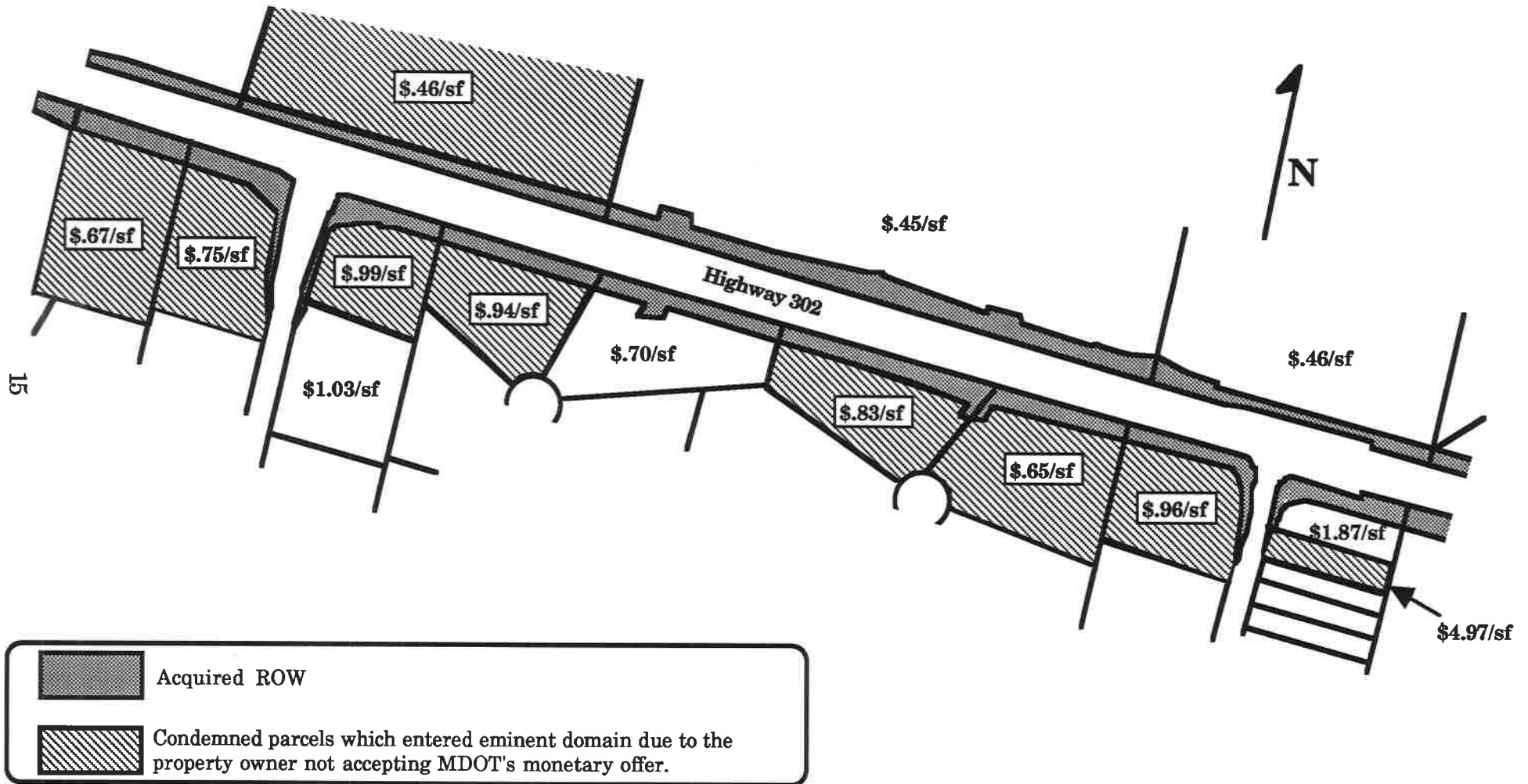
PEER's review of ROW appraisals and parcel files documented the division's inconsistency in the payment of:

- price per square foot on a project;
- damages due to proximity of the highway; and,
- damages for landscaping and fencing.

The following paragraphs give details of examples of these inconsistencies.

- *Compensation for Land*--MDOT is inconsistent in its compensation for parcels of land within the same project. In its review of files, PEER noted that MDOT had inconsistently compensated owners of separate parcels of land on Highway 302 in DeSoto County, near Memphis. PEER compared the price paid per square foot for land purchased within a .37-mile section of Highway 302 and found, as shown in Exhibit 3 on page 15, that MDOT's compensation ranged from 46 cents/square foot to \$4.97/square foot for land acquired. MDOT consistently appraised larger tracts on the north side of the highway, but offered inconsistent compensation for property located just across the highway. MDOT compensated a property owner \$1.03/square foot for .01 acre of land and offered another property owner \$4.97/square foot for the same amount of land. This compensation excluded that awarded for damages or improvements and the parcel files did not

Exhibit 3
MDOT's Inconsistent Appraised Price Per Square Foot For Property,
Excluding Damages and Improvements, Within A ROW Project
1992-Present



NOTE: Price/square foot reflects that of MDOT's original appraisal and not that of any later appraisals prepared for eminent domain proceedings nor that awarded by an eminent domain jury.

SOURCE: PEER analysis of ROW plats and parcel files for ROW project 19-0021-01-018-10 in DeSoto County.

contain any justification for the variances in the prices paid per square foot.

- *Damages for Proximity*--MDOT is inconsistent in its compensation for damages due to increased highway proximity. The Chief of ROW reported that federal regulations will not allow property owners to receive compensation for what might occur after the highway project is constructed (i.e., increased danger due to closer proximity of the highway), only what is actually present at the time of the appraisal. However, MDOT does not consistently apply this, because the department has compensated some property owners for damages due to proximity and has not compensated others.

Although the Chief of ROW reported that MDOT does not award damages for proximity, MDOT awarded property owners monetary compensation in the form of damages for the highway's increased proximity on projects located in Webster, Rankin, and Lamar counties. MDOT granted \$1,300 in the form of damages due to construction plans calling for the highway to come within forty feet of a Webster County property owner's residence. MDOT compensated a Rankin County property owner \$9,100 in damages for the ROW coming within seven feet of his residence, and granted \$3,850 for proximity damages due to the right-of-way coming within five feet of a residence in Lamar County. Although MDOT awarded damages for proximity damages in these counties, the department did not award damages for proximity to homeowners on a DeSoto County project where the right-of-way came within twenty-five feet of the residence. MDOT denied one homeowner on this same project damages for proximity due to the low value of the home.

- *Damages for Landscaping and Fencing*--MDOT is inconsistent in its compensation for damages to landscaping on parcels within the same project. An appraiser assigned to a DeSoto County project did not award damages for the loss of landscaping on one acquisition, while another appraiser on the same project awarded monetary damages for the loss of landscaping on another acquisition. MDOT made an administrative settlement of \$275 with the first landowner to compensate for the loss of the landscaping.

MDOT is also inconsistent in its compensation for damages due to the loss of fencing within the same project. One appraiser assigned to acquire ROW in Webster County did not award monetary damages for the loss of a fence, while another appraiser on the same project awarded such damages. MDOT made a \$1,088 administrative settlement to cover the cost of the fence to the first landowner.

Although PEER recognizes that each parcel of land is unique, disparities among payments, especially within the same geographic area, could be avoided if review appraisers conducted consistent, effective

reviews. Review appraisers check appraisals for technical accuracy but do not compare compensation among parcels within a project. Simply reviewing each parcel's appraisal for technical accuracy does not provide a comprehensive view of the entire project and results in inconsistencies among parcels. MDOT's standard operating procedures fail to specify how review appraisers are to insure consistency and do not provide a uniform method for review appraisers to use in tracking project costs, thereby allowing for differences due to personal judgment and inequitable appraisals.

MDOT's standard operating procedures do not control for variance in appraisals of different appraisers due to MDOT's failure to provide appraisers with uniform training on the department's appraisal policies and practices. MDOT provides training and certification opportunities for appraisers concerning the uniform standards of appraisal practice. However, MDOT does not provide the appraisers with written standards or guidelines pertinent to individual types of projects, nor does the department train the appraisers in guidelines concerning individual types of projects or other factors affecting appraisals. Without such written guidelines and training, one appraiser might offer to pay damages for landscaping and another appraiser on the same project might not offer to pay damages. A review appraiser might find both appraisals technically correct and approve the fair market values, but simply reviewing appraisals for technical accuracy does not insure the appraisals are inclusive of all characteristics of the parcels.

MDOT's review appraisers' failure to insure consistency in appraisals throughout an area or within a project heightens the opportunity for disagreement between MDOT and property owners, increases the likelihood of parcels being condemned, and endangers the credibility of MDOT's appraisals as evidence in court. As stated earlier, nine of the fourteen property owners whose parcels are depicted in Exhibit 3 on page 15 entered into eminent domain proceedings with MDOT. An eminent domain jury returned a verdict of \$31,500 just compensation due to the property owner of one parcel, which MDOT had appraised at \$12,700. As of January 1, 1994, the other eight cases were as yet undetermined or had been settled between MDOT and the property owner prior to the eminent domain jury hearing the case.

Inconsistent appraisal practices within a project endanger the credibility of appraisals in court. The Assistant Attorney General assigned to MDOT voiced his concern over inconsistencies in the awarding of damages for the loss of access in correspondence to MDOT dated January 21, 1993. MDOT did not award damages for loss of access on a tract of land on one side of an interstate highway, but had awarded such damages for a tract located directly across the highway from the first tract. Concerned over the outcome of such inconsistencies and their being admitted into court if discovered by the defendant (the property owner), the Assistant Attorney General requested that ROW review this particular appraisal to

correct the oversight. The Assistant Attorney General stated, "The credibility of the present appraisal will be questioned as it now stands. The landowners should not be allowed to capitalize on this omission and claim an unreasonable amount of damages."

Perhaps the most damaging effect of inequitable appraisals is the negative effect inconsistencies have on MDOT's credibility. MDOT should make every effort to increase public confidence in the department and its employees during the right-of-way appraisal and acquisition processes.

Administrative Settlements

- *MDOT inconsistently grants administrative settlements because the department has not operationally defined when to use such settlements and does not require analytical justification for each settlement.*

An administrative settlement is any settlement authorized for a monetary consideration which differs from the approved estimate of just compensation initially offered to a property owner. Administrative officials with the Missouri Highway and Transportation Department (MHTD), Right of Way Division, which is recognized by the American Association of State Highway and Transportation Officials (AASHTO) as being one of the most efficient ROW operations in the country, informed PEER staff that administrative settlements are a commonly accepted standard in ROW acquisition. However, MHTD officials stressed the importance of written procedures to govern the use of these settlements in order to insure uniform application. MHTD utilizes administrative settlements to make revised offers to property owners in the event of additional facts being discovered or if the appraiser did not consider items of value in the initial appraisal. MHTD's standard operating procedures contain four pages of guidelines and practices for that department's utilization of administrative settlements.

MDOT's procedures for administrative settlements differ significantly from those of MHTD. The flowchart of Mississippi's ROW appraisal and acquisition procedures on page 8 reflects that MDOT negotiates an administrative settlement if the property owner does not accept the department's initial offer, not after consideration of specific criteria. ROW staff favors administrative settlements over condemning the parcel and entering eminent domain proceedings.

MDOT's standard operating procedures do not provide criteria which must be met prior to the granting of an administrative settlement other than the Chief of ROW's signature on the parcel invoice. The extent of MDOT's standard operating procedures governing administrative settlements is:

The Chief of Acquisition may authorize an administrative settlement when such settlement is reasonable, prudent, and in the public interest. After the negotiation of an administrative settlement, the Chief of Acquisition sends the executed deed, records of negotiations, his reasons for approving the settlement, and invoice for payment to the Chief of Right of Way. The Chief of Right of Way's signature on the invoice constitutes approval of the settlement.

Within a sample of 305 ROW parcel files reviewed by PEER, MDOT had granted eighty-three administrative settlements to property owners. These settlements represented \$108,138 (5%) of the total \$1,985,816 awarded to property owners of these eighty-three parcels. Exhibit 4, page 20, depicts the parcel file documentation for MDOT's granting of these eighty-three administrative settlements.

MDOT utilizes administrative settlements for situations other than those which are "reasonable, prudent and in the public interest" for two predominant reasons: MDOT has not developed written criteria or case studies which operationally define when an administrative settlement should be allowed, not does the department train agents in such; and, MDOT does not require sufficient analysis on an individual parcel basis to justify administrative settlements.

*Standard Operating Procedures--*MDOT has not developed written criteria or standard operating procedures to define what is "reasonable, prudent and in the public interest." When questioned as to why the division has not developed detailed standard operating procedures to govern administrative settlements and to ensure their uniform utilization, the Chief of ROW stated that the division has not considered developing more detailed standard operating procedures because the department avoided specificity in order to leave leeway for individual settlements. Without standard operating procedures and training of agents in these procedures, MDOT cannot assure that administrative settlements are granted in a uniform manner.

*Justification of Settlements--*The Chief of Acquisition's submittal of a standard inter-departmental memo to the Chief of ROW constitutes ROW's justification for each settlement (see Appendix, page 31). The memo requires only basic information (e.g., acquisition agent's name, amount of desired settlement, appraised value), but does not include details such as the point of conflict or justification for such a settlement. The memo offers little analysis of the need or credibility of a settlement for each individual parcel. The Chief of Acquisition often submits this memo to the Chief of ROW after the property owner has signed the warranty deed and the department has prepared the invoice for payment, including the administrative settlement.

Exhibit 4

Parcel File Documentation for MDOT's Granting of Eighty-three Administrative Settlements 1992

<u>Number of Settlements</u>	<u>Documentation</u>
54	To meet the owner's desired amount of compensation
12	To compensate property owners for compensable items (such as septic tanks, fencing, and shrubbery) not considered in the appraisal
7	To compensate owners for MDOT errors such as incorrect square footage calculations and miswritten deeds
3	To compensate property owners for additional acreage acquired by MDOT
1	To compensate property owners for their quick negotiating of settlement after MDOT condemned the parcel
1	To increase compensation so that it might be distributed evenly among three heirs
1	To compensate property owner for a tax lien in the amount of \$17,850 placed on the property by the Internal Revenue Service
4	<i>Parcel files did not contain any documentation to justify the settlement</i>

SOURCE: PEER analysis of MDOT parcel files.

The Chief of Acquisition stated that the parcel's contact record (the written account of the acquisition agent's contact with the property owner in negotiations) should reflect the property owner's reasoning for increased compensation. However, MDOT's limited standard operating procedures governing administrative settlements do not specify that this information should be included in the contact record. As stated above, PEER located files for four parcels for which the department had granted administrative settlements without any documentation in the file, including the contact record, detailing a reason for the settlement.

MDOT does not require any documentation or analysis other than that presented in the inter-departmental memo upon which to base its determination of whether to grant an administrative settlement. ROW's Chief of Acquisition told PEER staff that he requires acquisition agents to discuss settlements with him before offering them to property owners. In some cases, however, the acquisition agent offers a settlement to the property owner prior to discussions with the Chief of Acquisition, with the understanding that the settlement is contingent upon his approval. ROW's Chief of Acquisition stated that he would not approve any settlement that he knew the Chief of ROW would not sign or approve. He bases this decision upon personal experience rather than departmental standards.

PEER recognizes that each parcel, and any administrative settlements offered in negotiations for it, must be judged and appraised on its own merits, but a written standard should determine how these judgments and decisions are to be made. Without standard operating procedures to govern MDOT's use of administrative settlements, MDOT cannot insure that the department will provide consistent and equitable treatment of property owners whose property is acquired for highway purposes. MDOT denied a \$200 administrative settlement to a property owner on the basis that the settlement would not insure uniformity on a project, yet awarded an \$8,010 settlement in order to provide another property owner with the amount of compensation he desired without any consideration of the uniformity of the project. When questioned about the apparent inconsistency in these two cases, ROW's Chief of Acquisition stated that he denied the first settlement for the reasons stated in the files, in order to insure procedural uniformity in the project. He stated that he awarded the second administrative settlement because doing so would have proved "cheaper than going to court."

ROW personnel consistently stated that they strive for uniformity, yet their method of decisionmaking concerning administrative settlements does nothing to assure this. MDOT's inconsistency in awarding administrative settlements could cause a ROW project to cost MDOT more than planned if neighboring property owners demand more compensation through administrative settlements because of their knowledge of such settlements being offered to other owners in the area.

Citizen's Right of Way Acquisition Guide

MDOT's *Citizen's Right of Way Acquisition Guide* does not fully inform property owners of the department's appraisal and acquisition procedures.

MDOT's *Citizen's Right of Way Acquisition Guide* states that MDOT prepared the booklet in order "to explain the process which your Department of Transportation will follow in acquiring your property for right of way purposes and to explain your basic rights in the process." The booklet further states that "if all of us work together in a cooperative, friendly spirit, we can achieve our common goal," the modernization of Mississippi's highway system.

As depicted in step 2 of the flowchart on page 8, MDOT provides a property owner with a copy of the *Citizen's Right of Way Acquisition Guide* when the appraiser inspects the property to be acquired. MDOT utilizes the *Citizen's Right of Way Acquisition Guide* as its predominant means of informing property owners of ROW appraisal and acquisition procedures. ROW mails the booklet to the property owner if he or she is not a local resident.

The twelve-page *Citizen's Right of Way Acquisition Guide* defines terms utilized in acquisition procedures. However, it is not as complete or as informative as it should be in the following areas:

- The booklet provides brief overviews of appraisal and acquisition procedures, but does not provide a flowchart of the procedures in order to provide the whole picture of appraisal and acquisition procedures to property owners.
- The booklet states that "the 'right of immediate possession' law requires the Department to deposit with the court at least 100% of the amount of the approved appraisal for your withdrawal." MISS. CODE ANN. Section 11-27-85 (1972) requires MDOT to deposit only 85% of the amount of the court-appointed appraiser's appraised value with the court for withdrawal by the property owner.
- The booklet does not clarify that, should the property owner withdraw these deposited funds and the jury determine compensation at a lesser amount, the property owner must reimburse MDOT the difference with interest.
- Neither the booklet nor personnel of the ROW Division designate a contact person or a telephone number for property owners to contact with questions. The booklet

provides MDOT's mailing address and requests that the property owner direct all inquiries regarding the property to MDOT's ROW Division. Property owners complained to PEER that this has proved unsuccessful and provided copies of correspondence to MDOT for which they had not received any response.

- The booklet does not inform property owners that MDOT will accept and consider a private appraisal determination of just compensation, obtained by the property owner, for the acquisition. (MDOT's standard operating procedures do not address this option.) The responsibility of informing property owners of this option is left up to the individual right-of-way agents; therefore, all property owners may not receive the information.

ROW negotiations should be expeditious and directed to accomplish the end result that the property owner receives just compensation; that the settlement is just and fair to the public; that every courtesy, consideration, and patience is extended to the property owner; and to maintain the department's and its employees' credibility with the property owner. Utilizing the *Citizen's Right of Way Acquisition Guide* with the weaknesses discussed above does not fulfill the booklet's purpose of explaining acquisition procedures and the property owner's basic rights.

Monitoring of Eminent Domain Cases

Because MDOT and the Office of the Attorney General do not monitor eminent domain cases effectively, the department awarded seven construction contracts from June 1992 to June 1993 without first obtaining immediate title and possession of all parcels involved.

When planning to alter an existing highway or to construct a new highway, MDOT plans its projects in three phases: engineering, right-of-way and construction. All right-of-way parcels should be acquired or condemned before MDOT lets the construction contract on a project.

Prior to June 1991, MDOT selected attorneys from the locality of the eminent domain case, referred to as local fee attorneys, to represent the department in eminent domain proceedings. Since that time, the Attorney General has selected local fee attorneys in accordance with MISS. CODE ANN. Section 7-5-1 (1972), which charges the Attorney General, as chief legal officer and advisor for the state, "with managing all litigation on behalf of the state."

MDOT's *Citizen's Right of Way Acquisition Guide* states and MISS. CODE ANN. Section 11-27-85 (1972) provides that construction activities may not take place on a parcel until MDOT has received Immediate Title and

Possession to that parcel. Eminent domain proceedings begin with MDOT's attorney filing a petition for immediate title and possession in the Special Court of Eminent Domain. CODE Section 11-27-85 (1972) provides for MDOT to obtain Right of Immediate Title and Possession upon the filing of a court-ordered appraiser's report and MDOT's deposit of not less than eighty-five percent of the amount of the compensation and damages as determined by the court-ordered appraiser.

As of October 15, 1993, MDOT had 265 active eminent domain cases. From June 1992 to June 1993, MDOT let seven construction contracts which had pending eminent domain cases in which the local fee attorneys had not obtained immediate title and possession of the parcels.

Neither MDOT nor the Attorney General's Office tracks the status of eminent domain cases or fee attorneys' progress towards obtaining Immediate Title and Possession. Although the Attorney General's Office has statutory authority to appoint fee attorneys, the office lacks written procedures to govern selection of local fee attorneys or to monitor the attorneys' progress on assigned cases. The Attorney General cited trust, qualification, and location as the three factors considered in appointing local fee attorneys. Contracts entered into by the Attorney General's Office and local fee attorneys do not contain any performance measures or requirements; however, the Attorney General said that it is not likely that his office would assign additional cases to a fee attorney who performs poorly on his first case. Although fee attorneys' monthly billings are submitted to the Attorney General's Office for processing, the Attorney General's Office does not assign personnel specializing in eminent domain law to monitor and oversee fee attorneys' work or billings.

MDOT's Eminent Domain Coordinator serves as the agency's liaison with eminent domain fee attorneys. He provides fee attorneys with a checklist of procedures to follow in eminent domain cases, but has no enforcement authority over the attorneys' performance. MDOT maintains a database of all eminent domain cases. However, the database does not reflect a case's status, but provides only a compilation of dates and information on the following activities: date petition for Immediate Title and Possession filed, date court-appointed appraiser appointed, amount of court-appointed appraiser's appraisal, expected date of court's awarding of the Right to Immediate Title and Possession, date MDOT receives Immediate Title and Possession, trial date, and comments. The database does not always reflect timely information, depending on how frequently MDOT personnel update the information.

The Attorney General requires fee attorneys to provide MDOT's Legal Division copies of most correspondence with his office. The fee attorney's checklist of procedures requires that the following notifications be sent to the Attorney General's Office and MDOT's Legal Division: the filing date of the Petition for Immediate Title and Possession, trial date, court-appointed appraiser's appointment, court-appointed appraisal, recording of the Order

Granting Petitioner Right of Immediate Title and Possession, result of the trial, and a certified copy of the jury's judgment.

Without immediate title and possession on all parcels within the construction site, the construction contractor is limited to a restricted area. MDOT lets construction contracts without having immediate title and possession on all right-of-way parcels in order to begin and complete the construction projects as planned and in a timely manner. According to MDOT's Construction Division, from January 1, 1992, to June 30, 1993, contractors on four construction sites requested extensions or supplemental agreements for projects which were not expected to be completed on schedule due to conflicts with ROW parcels. Three of these four contractors requested time extensions ranging from seventeen to thirty-five days, with no monetary supplements. The fourth contractor requested a nine-month extension with \$160,000 in damages. MDOT will not complete construction of these projects as planned.

Without proper oversight and systematic procedures for fee attorneys and eminent domain proceedings, MDOT cannot be assured that legal expenses are minimized and that consistent and timely defense strategies are used. Without personnel specializing in eminent domain proceedings managing and monitoring fee attorneys' actions, the Attorney General's Office may not always provide for effective and efficient representation of its client, MDOT.

Recommendations

1. Beginning July 1, 1995, MDOT's Executive Director should require review appraisers to complete all applicable items on a checklist of required appraisal components when conducting review appraisals. In accordance with standard operating procedures, review appraisers should return all incomplete appraisals to appraisers for completion. ROW should record each submittal of an incomplete appraisal by an appraiser for inclusion in the performance evaluation of that appraiser.
2. Beginning July 1, 1995, MDOT's Internal Audit Division should select an annual random sample of right-of-way parcel files to check for adherence to MDOT's standard operating procedures concerning the contents of appraisals and parcel files. MDOT should devise an improvement plan for any weaknesses cited by these internal audits.
3. MDOT should revise its standard operating procedures to require review appraisers to maintain a log of each project which records the tract size, the amount of compensation by item (land, specified damaged items, improvements), and land unit value for each parcel in that project in order to track compensation and insure logical consistency throughout projects and geographic areas.
4. By July 1, 1995, MDOT should develop a standard checklist of all possible compensable items (e.g., trees, proximity damages, landscaping, mailboxes) and standard compensation for such items within a project, to accompany appraisals. MDOT should amend its standard operating procedures to require appraisers to complete items on this checklist when conducting an appraisal. Review appraisers should not review any appraisal which is not accompanied by this completed checklist.
5. By July 1, 1995, MDOT should develop written guidelines concerning awarding of damages for specific items and should train all appraisers in these guidelines. These guidelines should provide conditions which must be met prior to the awarding of compensation for the item (e.g., ROW must approach within a specified number of feet of the dwelling).
6. No later than July 1, 1995, MDOT should develop standard operating procedures specifying conditions which must be met prior to considering an administrative settlement. Such procedures should include:
 - the preparation of documentation for each instance of a settlement and elimination of the "fill-in-the-blank" forms now utilized by the ROW Division. Documentation

should include analysis of the factors considered in arriving at the settlement figure, the amount of the owner's counteroffer, and an explanation of the factors considered to justify the settlement. When available, documentation should include the amount of a recent jury award for a similar type of property stating the appraised amount and the amount awarded by the jury. Files should document why MDOT does not grant an administrative settlement, if such is the case;

- the creation of an Administrative Settlement Review Committee to review administrative settlements greater than \$2,500. This committee should consist of the Chief of Acquisition, the Chief Review Appraiser, the Assistant Chief of Right-of-Way and the Chief of Right-of-Way and should meet twice a month to review requests. ROW's Chief of Acquisition should be authorized to approve administrative settlements for amounts up to \$2,500, with the Chief of ROW continuing to review and sign invoices, if deemed justifiable, for such settlements; and,
 - the granting of administrative settlements only for compensable items as governed by these standard operating procedures. MDOT should not grant settlements for matters such as assuring the timely signing of deeds or to settle a tax lien against a property owner, unless specified in standard operating procedures approved by the Mississippi Transportation Commission.
7. By July 1, 1995, MDOT should revise its *Citizen's Right of Way Acquisition Guide* to increase its effectiveness in informing property owners of appraisal and acquisition procedures. Such revisions should include:
- a flowchart of procedures in addition to the brief explanation of each stage of appraisal and acquisition;
 - clarification that MDOT is only required to deposit 85% of the court-appointed appraiser's appraised value of just compensation with the court for withdrawal by the property owner and that the owner must reimburse MDOT the difference with interest if the jury awards a lower amount of just compensation; and,
 - an addition to the guide which states that MDOT will accept and consider a private appraisal and

determination of just compensation which is obtained by the property owner for the acquisition.

8. Using existing resources, MDOT should establish a toll-free number for property owners to contact with questions concerning ROW procedures and/or their parcel. The Chief of ROW should designate one staff member to serve as a liaison with property owners. ROW should provide each property owner with this staff member's business card during the appraiser's site inspection of the property. If the owner does not accompany the appraiser, ROW should mail the business card to the property owner. Although this person may not have information on each parcel at the time of inquiry, he or she would serve as a responsible party for property owners to contact with their questions.
9. The Attorney General's Office should develop written standard operating procedures for the selection and monitoring of local fee attorneys. Contracts between the Attorney General's Office and local fee attorneys should require fee attorneys' submission of the following status reports, along with the completed eminent domain checklist with appropriate dates marked, to the Attorney General and to MDOT's Eminent Domain Coordinator:
 - *Counsel Acknowledgment Report*: to be submitted within ten days of assignment and to include counsel's preliminary plans for discovery, including depositions and possible expert witnesses;
 - *Counsel Interim Evaluation Report*: to be submitted 180 days after assignment. This report should give the most recent owner's demand for compensation, MDOT's most recent offer, the fee attorney's opinion as to settling the case rather than going to trial, and should provide the status of discovery on the case;
 - *Counsel Evaluation Report*: to be submitted 270 days after assignment and an updated final evaluation report on each June 15 and December 15 thereafter. This report should provide summary facts of the case, trial date, anticipated trial strategy (including witnesses' names), and potential jury verdict range;
 - *Pre-Trial Report*: to be submitted at least thirty days prior to trial. This report should describe the primary witnesses and their probable effect on the jury, any evidentiary issues which might have an impact on the verdict, steps needed to complete pre-trial work, the expected range of jury verdict, and the fee counsel's final recommendation regarding trial or settlement,

including strategies to carry out such recommendations; and,

- *Trial Report*: to be submitted within five days of the jury trial's judgment. The Attorney General requires this of fee attorneys and should not alter the contents of this report.

Using existing resources, the Attorney General should assign one employee specializing in eminent domain law to monitor fee attorneys' work and billings. Payment for services rendered should not be made unless fee attorneys meet all reporting requirements.

Upon receiving two successive reports without documentation that the attorney has aggressively worked on the case, MDOT should request that the Attorney General's Office reassign the file to another attorney.

10. MDOT should modify its eminent domain database to reflect the status of cases and to track the progress of each case based on the length of time since the last recorded action on the case. This database should provide case information measurable in time units (i.e., days) as to the maturation or age of the case. The database should be able to identify any cases in which fee attorneys did not meet the reporting requirements discussed above.

Appendix

Example of Administrative Settlement Justification Memo

DEPARTMENT OF TRANSPORTATION

Inter-Departmental Memorandum

TO: James Mathews
Acting Chief of Right of Way

DATE: 12-29-92

FROM: Glenn Beasley
Chief of Acquisition

PROJECT: 97-0014-02-044-10

File: 014-2-00-W

 INFORMATION COPY TO: FILE

COUNTY: Lamar

This is to request an administrative settlement offer in the amount of \$ 1,600.00 for the acquisition of the above parcel. Right of Way Agent Donald Davis has been unable to acquire this property at the appraised value of \$ 75,175.00. It is in the opinion of this office that a settlement offer of \$ 76,775.00 would be in the best interest of the Department. This would allow the acquisition of this parcel without the necessity of costly court proceedings.

sf

Zack Stewart
Northern District Commissioner

Wayne O. Burkes
Central District Commissioner

Ronnie Shows
Southern District Commissioner



Dr. Robert L. Robinson
Executive Director

James D. Quin
Deputy Executive Director/
Chief Engineer

Mississippi Department of Transportation / P.O. Box 1850 / Jackson, MS 39215-1850 / FAX (601) 359-2233

December 5, 1994

Mr. James A. Barber
Chief Analyst-Operations Division
PEER
P.O. Box 1204
Jackson, MS 39215-1204



Dear Mr. Barber:

The Right of Way staff has reviewed your recommendations and I would like to offer the following comments concerning these recommendations:

- Item 1. The subject of incomplete Review Appraisals has been discussed with the Chief Review Appraiser and he will follow-up to see that compliance is done by Review Appraisers. Review Appraisers will return incomplete appraisals to the appraiser for completion when necessary. The Chief Appraiser does the performance evaluation of the appraiser, and he has a list of appraisals assigned to each appraiser on each project. If there is some question or doubt in his mind during his evaluation, he will pull these appraisals and the comments made by the review appraiser for consideration.
- Item 2. MDOT's Internal Audit Division has been auditing the Right of Way Division every two years. MDOT now has a new internal auditor and this will be discussed with the auditor to determine a proper cycle to insure complete adherence to the standard operating procedure.
- Item 3. This function is reflected in the work papers of Review Appraisers at the present time. Since each property value and/or property is unique, project consistency depends upon the expertise of the Review Appraisers. Field inspection of each property and comparable sales should adequately determine proper compensation to the property owner.
- Item 4. Although your suggestion of a check list of possible compensable items might be appropriate, we feel the value of the property is determined by the market as a whole and not by individual items placed on the property.



Mr. James A. Barber
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- Item 5. It is our feeling that damages cannot be categorized to specific items that would cover all projects. Appraisers are trained in these matters. The existence of the proposed right of way line may or may not determine a loss of value. This can only be determined in the appraisal, by the appraiser with the concurrence of the review appraiser. This comes from someone with experience, but definitely with a logical thought process by the appraiser.
- Item 6a. We concur that additional documentation should be made on each file and not have a fill in the blank form, as was previously utilized.
- b. Presently the Chief of Acquisition is not limited to under \$2,500.00 administrative settlements. He has no recommendation limit to the Chief of Right of Way or the Assistant Chief of Right of Way. This is done with justification.
 - c. We do not believe that standard operating procedures could be written to cover all the possible situations where an administrative settlement is necessary. To place restrictions on administrative settlements would hinder the acquisition process.
- Item 7. At the present time, the Citizen's Right of Way Acquisition Guide is being revised, and we are considering the revision of the flow chart as recommended.
- Item 8. Due to the great number of parcels involved statewide and many problems involved, it is our opinion the best and first contact the property owner should make is with the agent in the field handling the specific project. The agents in the field have been instructed to give their business cards to the property owners. If the property owner is not satisfied with the answer given, then he should contact the Right of Way Division in Jackson to pursue the matter. As a general rule, a follow-up letter is sent by the agent to the property owner.

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Item 9
& 10

Since these items involve the operating procedures of the Attorney General's Office, the suggested controls should be generated by the Attorney General. We have referred these recommendations to their office for consideration and will report their response to you as soon as it is received.

Sincerely,



Robert L. Robinson
Executive Director

RLR:JHM:WGT:lf

STATE OF MISSISSIPPI



OFFICE OF THE ATTORNEY GENERAL

MIKE MOORE
ATTORNEY GENERAL

July 1, 1994

Mr. James A. Barber
PEER Committee Chief Analyst - Operations Division
222 North President Street
Jackson, Mississippi 39201

Re: Response to PEER's review of the Mississippi Department of Transportation's eminent domain and right-of-way appraisal and acquisition procedures

Dear Mr. Barber:

This letter is in response to the PEER Committee's report dated June 15, 1994, in which a review of the Mississippi Department of Transportation's appraisal and acquisition procedures was conducted. It is limited to those portions of the report which involve the Office of the Attorney General's role in eminent domain proceedings.

The Attorney General's Office does not in any way administer or handle any aspect of right-of way acquisition until such time as the case becomes litigated. Prior to litigation, all negotiations and attempts to acquire title to a particular piece of right-of-way are handled by MDOT's right-of-way officials.

The Right of Immediate Title and Possession is not a process accomplished by negotiation, but rather a legal process handled through the court system. Therefore, PEER's statement on page x of the report that " the Department awarded seven contracts from June 1992 to June 1993 without first negotiating for immediate title and possession of all parcels involved" is not accurate. No local fee attorneys or attorney's employed by the Attorney General's office participate in any negotiated settlements prior to the case entering litigation.

Further, the Attorney General's Office has no authority, control, or discretion as to when or if any construction contract is let or awarded. It is common practice for the MDOT to let contracts prior to acquisition of all the necessary right-of-way parcels.

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The Attorney General's Office is not instructed to obtain particular pieces of right-of-way in anticipation of a project letting. The Attorney General's Office is sent a right-of-way file only after all attempts at negotiating a settlement for the acquisition of the parcel by the MDOT right of way officials have failed.

Once a file is sent to the Attorney General's Office and fee counsel is appointed, the status of the case and the attorney's progress toward obtaining Immediate Title and Possession is closely monitored, contrary to the PEER's statement on page x of the report.

When a file is delivered to the fee counsel, a detailed eminent domain checklist is provided, which is reviewed extensively with the attorney by the Eminent Domain Coordinator. The checklist provides a written procedure for the attorney to follow from the initial filing of the Petition through the appeal process should it become necessary. A copy of said checklist is attached for your review.

The Office of the Attorney General does require submission of information as to the status of the eminent domain files. (See attached checklist). Also, the Eminent Domain Coordinator continues in close contact with all fee counsel regarding the status of files from their inception. The Eminent Domain Coordinator keeps the right-of-way division apprised as to the status of the files by a monthly written report which is provided prior to the meeting of the construction division in which decisions are made as to contract letting.

The Attorney General's Office has assigned one attorney to act as liaison with fee counsel on all eminent domain matters. This attorney monitors the work of the fee counsel, reviews the attorney's billings, and is in place to provide input on legal strategies as well as to provide general advice. The attorney has also been given the authority to authorize settlements with the approval of the right of way officials.

Although we have had some technical problems with our eminent domain database, it does exist and continues to be refined and improved. The report produced from this system includes the date the Petition is filed, the date the court appointed appraiser is appointed, the amount of the appraisal, the date the Right to Immediate Title and Possession is expected, the date the "Quick Take" is completed, and the trial date.

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We appreciate and thank you for your conscientious efforts and hope this clarifies our position on these issues. If we can be of further assistance, please advise.

Sincerely,

A handwritten signature in blue ink that reads "Marshall Lusk". The signature is written in a cursive style and is followed by a horizontal line.

Marshall Lusk
Assistant Attorney General

JML/cb

Attachment

July 1, 1994

Effective this date, this checklist is to be used on all Eminent Domain cases assigned to you by the Office of the Attorney General. Please copy and keep in your files for reference.

PROJECT NO.: _____

COUNTY: _____

PROPERTY OWNERS: _____

FILES (S): _____

CHECKLIST FOR FEE COUNSEL

** Please take note that all Eminent Domain correspondence should be addressed to the Office of the Attorney General-MDOT Division: Attn. Eminent Domain, and should be mailed to Post Office Box 1850, Jackson, Mississippi, 39215-1850.

- _____ 1. Mail Fee Agreement to the Office of the Attorney General-MDOT Division : Attn. Eminent Domain.
- _____ 2. Once packet is received, check title sufficiently to insure correctness and examine pleadings for the required defendants. If there are any corrections, notify the Office of the Attorney General- MDOT Division: Attn. Eminent Domain, in writing.
- _____ 3. If no corrections are necessary, file Petition in the Special Court of Eminent Domain.
- _____ 4. Notify the Office of the Attorney General-MDOT Division: Attn. Eminent Domain, of the filing date by the enclosed postcard.
- _____ 5. File Lis Pendens in the Chancery Clerk's office.
- _____ 6. Verify process on all Defendants. (Actually check it yourself.)
- _____ 7. Obtain Fiat setting trial date.

8. Notify the Office of the Attorney General- MDOT Division: Attn. Eminent Domain, of the trial date by using the enclosed postcard.
9. File Statement of Values once furnished by the Office of the Attorney General- MDOT Division: Attn. Eminent Domain.
10. Schedule a conference with the witnesses for the Petitioner.
11. Have the Judge appoint a Court Appointed Appraiser pursuant to Section 11-27-83 of the Mississippi Code. Notify the Office of the Attorney General-MDOT Division: Attn. Eminent Domain.
12. Verify filing of the Court Appointed Appraiser's appraisal and give notice as follows: (1) On behalf of Clerk, prepare a certified letter noticing each Defendant; (2) give to clerk; and (3) have clerk sign and mail to defendants. (Mississippi Code Section 11-27-85) (Make a Motion at this point for Right of Immediate Possession Order; notice counsel opposite.) Also get the Judge to sign the Order directing payment of fee to Court Appointed Appraiser. At this time secure the Appraiser's Social Security Number or Tax I.D. number and correct mailing address for the benefit of the circuit clerk.
13. After five (5) day objection period has passed, and as soon thereafter as allowed, obtain a signed Order Granting Petitioner Right of Immediate Title and Possession. (Mississippi Code Section 11-27-83 & 85)
14. Furnish the Office of the Attorney General-MDOT Division: Attn. Eminent Domain, a copy of the court appointed appraisal. (Mississippi Code 11-27-83 and 85. FAX THE ORDER GRANTING PETITIONER RIGHT OF IMMEDIATE TITLE AND POSSESSION TO 601-359-1128, ATTENTION : EMINENT DOMAIN. Also, at this time fax the Order to pay the Court Appointed Appraiser.
15. When check and receipt of funds are delivered to Fee Counsel, deposit same with the Circuit/County clerk. Return receipt to the Office of the Attorney General-MDOT Division:Attn. Eminent Domain. Also fax this to 601-359-1128.
- 15a. After funds are deposited with the Circuit/County Clerk, record the Order Granting Petitioner Right of Immediate Title and Possession with Exhibit "A" attached thereto with both the Circuit/County Clerk and the Chancery Clerk. After recording, mail original to the office of the Attorney General- MDOT Division: Attn. Eminent Domain.

16. Well in advance of the trial, arrange a pre-trial conference with all witnesses. Special Counsel should request that project engineer stake acquisition area and notify Counsel so that he may inspect it at least two weeks before the trial.
17. If an aerial photograph or any other documents are needed for trial, request from John Smith at 359-1473, as early as possible, but no later than two weeks prior to need.
18. Prepare for trial. Project Engineer, Appraiser, and other witnesses should all meet one time as a group, then other times individually as needed.
19. Coordinate with the Office of the Attorney General-MDOT Division: Attn. Eminent Domain, if an MDOT representative will be needed on trial date. Use Project Engineer when possible.
20. Update title from filing date to trial date.
21. Trial.
22. Report result of trial as required in F.H.P.M. 7-2-4(pkg. inst.) to the Office of the Attorney General-MDOT Division: Attn. Eminent Domain, along with your recommendation for acceptance of judgement or for and appeal.
23. All Appeals must be approved by the office of the Attorney General.
24. Have Judgement prepared using Exhibit "A" (the description).
25. If there is no appeal, file judgement with the Circuit and Chancery Clerk, and send a certified copy of the Judgement to the Office of the Attorney General- MDOT Division: Attn. Eminent Domain.
26. In the event of an appeal by either the Petitioner or the Defendant, a certified copy of the Judgement must be forwarded to the Office of the Attorney General - MDOT Division: Attention Eminent Domain immediately after the Judgement is rendered.

SETTLEMENT PROCEDURE AND/OR PROCEDURE FOLLOWING JUDGEMENT:

_____ 1. After receiving firm settlement offer from counsel opposite, prepare a written recommendation for settlement in compliance with the outline in F.H.P.M. 7-2-4 (in the packet). Mail a copy to the Office of the Attorney General-MDOT Division: Attn. Eminent Domain. A representative of the Office of the Attorney General will contact you regarding said offer after conferring with the Right-of-Way Division.

_____ 2. After the offer is accepted, have the deed signed and notarized, [DO NOT MAKE ANY CHANGES TO THE DEED WITHOUT PRIOR AUTHORIZATION.] Send a copy to the Office of the Attorney General: MDOT Division, along with request for payment (which will be available in 4 to 6 weeks). Retain the original in your files or have counsel opposite do so, if he wishes. Payment will be sent to the property owner only, with notice to you to have the deed filed after another update of the title. Mail the recorded deed to the Office of the Attorney General-MDOT Division. Also, send your letter closing the case to the Office of the Attorney General- MDOT Division:Attn.Eminent Domain.

_____ 3. After the Judgement is signed, have it filed in the Circuit Clerk's office, and the Chancery Clerk's office. Send a certified copy to the Office of the Attorney General-MDOT Division:Attn. Eminent Domain, requesting payment processing as per the terms of the Judgement.Be sure to include the payee's Social Security Number at this time. Fax a copy to 601-359-1128.

_____ 4. We further request that all judgement payments be monitored. If you have not received notice that the Judgement has been paid within 50 days after its entry, please notify this office.

_____ 5. Please include the date the Judgement was paid in your trial report. The trial report should then be sent to this office along with your final bill.

PEER Staff

Director

John W. Turcotte

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Counsel and Controller

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Deborah McMinn
Mary McNeill

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Linda Triplett
Larry Whiting
