

# Report To The Mississippi Legislature



## **A Review of the Mississippi Department of Transportation's Methods for Clearing Structures from the Right-of-Way**

**December 30, 1998**

The Mississippi Department of Transportation must purchase property in a proposed road area (right-of-way) and then clear it of all structures in order to construct highways. In response to complaints, PEER examined the department's process of selling and clearing structures from the right-of-way. Complainants stated that the department sometimes has not allowed citizens to bid on buying and moving structures from the right-of-way, but later has allowed demolition contractors to move the houses intact rather than destroy them. They also suspected that department personnel may have received kickbacks because contractors were allowed to remove houses intact that citizens had been told had to be destroyed.

PEER found that the department seeks to use demolition contractors to help meet construction deadlines, although existing data does not demonstrate its effectiveness in doing so. MDOT does not require that contractors bid competitively, as the law requires when certain properties are sold. Also, although PEER found no evidence suggestive of kickbacks in the cases reviewed, the lack of comprehensive, up-to-date policies and management controls for guidance of clearance agents provides ample opportunity for arbitrary decisions which could be perceived as unfair by those interested in purchasing properties on the right-of-way. In addition, the department's lack of sufficient prevention measures and oversight policies increases the potential that illegal acts could be perpetrated and go undetected.

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**A Review of the Mississippi Department of Transportation's Methods  
for Clearing Structures from the Right of Way**

**December 30, 1998**

**The PEER Committee  
Mississippi Legislature**

The Mississippi Legislature

**Joint Committee on Performance Evaluation and Expenditure Review**

PEER Committee

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MARY ANN STEVENS

**TELEPHONE:**  
(601) 359-1226

**FAX:**  
(601) 359-1420

Post Office Box 1204  
Jackson, Mississippi 39215-1204

Max K. Arinder, Ph. D.  
Executive Director

**OFFICES:**  
Professional Building  
222 North President Street  
Jackson, Mississippi 39201

December 30, 1998

Honorable Kirk Fordice, Governor  
Honorable Ronnie Musgrove, Lieutenant Governor  
Honorable Tim Ford, Speaker of the House  
Members of the Mississippi State Legislature

On December 30, 1998, the PEER Committee authorized release of the report entitled **A Review of the Mississippi Department of Transportation's Methods for Clearing Structures from the Right-of-Way.**

A handwritten signature in cursive script, reading "Ezell Lee", written over a horizontal line.

Senator Ezell Lee, Chairman

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

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# A Review of the Mississippi Department of Transportation's Methods for Clearing Structures from the Right-of-Way

December 30, 1998

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## Executive Summary

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### Overview

The Mississippi Department of Transportation must purchase property in the proposed road area (right-of-way) and then clear it of all structures in order to construct highways. Because of several complaints regarding the department's clearance methods, PEER examined the department's process of selling and clearing structures from the right-of-way, focusing on the issues raised by the complainants. Complainants stated that:

- in some instances the department has not allowed citizens to bid on buying and moving structures from the right-of-way because they were to be torn down due to time constraints, but later has allowed demolition contractors to move the houses intact rather than destroy them;
- department personnel changed proposed removal methods several times during the course of a project, reversing their previous decisions to allow citizens to buy structures; and,
- they suspected department personnel may have received kickbacks from contractors who moved structures from the right-of-way because contractors were allowed to remove houses intact that citizens had been told had to be destroyed.

In reviewing methods by which the department makes decisions to move structures, PEER determined that some decisions which may not appear to be fair to the public are driven by the department's desire to remove structures quickly from the right-of-way in order to meet construction deadlines. For instance, the department states that its use of demolition companies to remove structures for a fee is more timely than selling structures and helps to ensure that the property is cleared prior to the construction contract award date. Also, Clearance Section personnel state that removal methods are affected by numerous factors such as dates when

structures are vacated and changes in proposed construction award dates. PEER attempted to verify these assertions through an analysis of departmental data, but determined that the data was inaccurate and incomplete.

Despite the department's reasons for its choice of removal methods, its lack of comprehensive, up-to-date policies and management controls for guidance of clearance agents could result in arbitrary decisions which could be perceived as unfair by those interested in purchasing properties on the right-of-way. Also, the department's lack of sufficient oversight policies and prevention measures increases the potential for illegal acts such as kickbacks. Although a review of clearance files did not reveal situations that would suggest specific instances of kickbacks, the files do not include the type of information and proper documentation which would help lead to such conclusions or prevent improper acts.

The department has not developed policies to help agents make systematic and fair decisions and to factor costs of various removal methods into decisionmaking. For instance, the department does not have a formal policy which governs whether and under what circumstances demolition contractors or subcontractors may move structures intact and to require price competition between contractors. The department also has not developed a written policy to determine when properties should be sold and when demolition contractors may remove them. Also, some policies do not reflect current practice of the department. This has resulted in inconsistent practices in obtaining performance bonds from those who purchase structures. The official department policy also violates state law because it allows discretion to sell structures valued at more than \$500 by private sale rather than advertised sale.

### Recommendations

See pages 24 through 27 of the report for detailed recommendations.



## **Clearance Policies**

1. The Department of Transportation's Clearance Section should revise its written policies to include the full scope of its operations and necessary management controls and submit these to the Transportation Commission for approval. The department should ensure that its revised policies incorporate the policy elements required by federal regulations governing property management. The revised policies should include the following:
  - a. Clearance policies should outline parameters and time frames for choosing a particular removal method for clearing the right-of-way.
  - b. Clearance policies should outline how clearance agents can conduct private sales with potential house buyers.
  - c. Clearance policies should require separation of the duties of the individuals responsible for assigning salvage values to structures from the duties of those who sell the structures.
  - d. Clearance policies should require that agents follow ethical guidelines developed by the department and require agents to sign a statement of ethics.
  - e. The department should rewrite official policies to correspond with actual right-of-way procedures, especially for performance bonds and owner buyback of property.

## **Communication of Policies to the Public**

2. The Department of Transportation should improve communications with the public or with those with whom they will be dealing in selling houses. The department should make available to the public and interested parties a guide sheet of its policies for clearing structures from the right-of-way.

## **Competitive Bidding Procedures**

3. The Legislature should amend MISS. CODE ANN. Section 65-1-123 (1) to require documen-

tation of private sales and sealed bids. Agents should document that they have contacted at least three house movers to bid on structures which are to be sold privately. For sealed bids, the Clearance Section should require that agents and witnesses present for the bid opening signify that the opening of sealed bids has taken place on a given date.

4. The Department of Transportation should consider establishing a qualified bidders' list for house movers. The department should distribute copies of and communicate its policies to the qualified house movers.
5. Clearance Section personnel should follow written policies for obtaining performance bonds from individuals who win bids to move structures from the right-of-way.
6. Departmental personnel should obtain bids from at least two demolition contractors on each separate demolition job.
7. In overall bids to demolish structures on a project, the Department of Transportation should require that demolition contractors include a bid for purchasing those structures that they move intact from the right-of-way. The department should obtain assurance that contractors have informed the department when they will move rather than destroy structures.

## **File and Data Administration**

8. Clearance Section personnel should file in a central location all information related to clearance of structures. Personnel should use a detailed checklist to ensure the presence of all items necessary to document the method of removal. Right-of-Way management should revise the project filing system to require that all clearance information be filed in one section of the folder to help ensure information is not lost.
9. The Clearance Section should revise its data system to include categories outlining the actual method by which each structure was removed from the right-of-way and the date of removal of each structure.

**For More Information or Clarification, Contact:**

PEER Committee  
P. O. Box 1204  
Jackson, MS 39215-1204  
(601) 359-1226  
<http://www.peer.state.ms.us>

Senator Ezell Lee, Chairman  
Picayune, MS (601) 798-5270

Representative Tommy Horne, Vice-Chairman  
Meridian, MS (601) 483-1806

Representative Herb Frierson, Secretary  
Poplarville, MS (601) 795-6285

# **A Review of the Mississippi Department of Transportation's Methods for Clearing Structures from the Right-of-Way**

## ***Introduction***

### **Authority**

The PEER Committee authorized a review of the Mississippi Department of Transportation's process of selling and clearing structures from the right-of-way pursuant to the authority granted by MISS. CODE ANN. § 5-3-57 et seq. (1972).

### **Scope and Purpose**

In preparing for construction of highways, the Mississippi Department of Transportation must purchase property in the proposed road area (right-of-way) and then clear it of all structures. Because of several complaints regarding the department's clearance methods, PEER examined the department's process of selling and clearing structures from the right-of-way, focusing on the issues raised by the complainants. Complainants stated that:

- in some instances the department has not allowed citizens to bid on buying and moving structures from the right-of-way because they were to be torn down due to time constraints, but later has allowed demolition contractors to move the houses intact rather than destroy them;
- department personnel changed proposed removal methods several times during the course of a project, reversing their previous decisions to allow citizens to buy structures; and,
- they suspected department personnel may have received kickbacks from contractors who moved structures from the right-of-way because contractors were allowed to remove houses intact that citizens had been told had to be destroyed.

### **Method**

In conducting this review, PEER reviewed Mississippi and federal statutes, regulations, and policies related to right-of-way and clearance issues. PEER also reviewed a sample of the Mississippi Department of Transportation's clearance project files from October 1995 to September 1998 and other departmental reports and records and interviewed personnel of the Mississippi Department of Transportation and the Federal Highway Administration.

## **Overview**

The Mississippi Department of Transportation must purchase property in the proposed road area (right-of-way) and then clear it of all structures in order to construct highways. In response to complaints received, PEER examined the department's process of selling and clearing structures from the right-of-way.

In reviewing methods by which the department makes decisions to move structures, PEER determined that some decisions which may not appear to be fair to the public are driven by the department's desire to remove structures quickly from the right-of-way in order to meet construction deadlines. For instance, the department states that its use of demolition companies to remove structures for a fee is more timely than selling structures and helps to ensure that the property is cleared prior to the construction contract award date. Also, Clearance Section personnel state that removal methods are affected by numerous factors such as dates when structures are vacated and changes in proposed construction award dates. PEER attempted to verify these assertions through an analysis of departmental data, but determined that the data was inaccurate and incomplete.

Despite the department's reasons for its choice of removal methods, its lack of comprehensive, up-to-date policies and management controls for guidance of clearance agents could result in arbitrary decisions which could be perceived as unfair by those interested in purchasing properties on the right-of-way. Also, the department's lack of sufficient oversight policies and prevention measures increases the potential for illegal acts such as kickbacks. Although a review of clearance files did not reveal situations that would suggest specific instances of kickbacks, the files do not include the type of information and proper documentation which would help lead to such conclusions or prevent improper acts.

The department has not developed policies to help agents make systematic and fair decisions and to factor costs of various removal methods into decisionmaking. For instance, the department does not have a formal policy which governs whether and under what circumstances demolition contractors or subcontractors may move structures intact and to require price competition between contractors. The department also has not developed a written policy to determine when properties should be sold and when demolition contractors may remove them. Also, some policies do not reflect current practice of the department. This has resulted in inconsistent practices in obtaining performance bonds from those who purchase structures. The official department policy also violates state law because it allows discretion to sell structures valued at more than \$500 by private sale rather than advertised sale.

## **Background**

The Mississippi Department of Transportation has authority to locate, alter, and construct all roads on the state highway system under the rules, regulations, and orders issued by the Transportation Commission (MISS. CODE ANN. Section 65-1-47 [1972]). Two of the department's road construction programs currently have priority: the Four-Lane Highway Program and the Gaming Roads Program. The Four-Lane Highway Program expands designated state highways from two lanes into four lanes and also constructs new connectors to major highways. This program has a legislative deadline to award all construction contracts that are part of the first three phases by June 30, 1999. The Gaming Roads Program builds roads that facilitate access to casinos along the Gulf Coast, the Mississippi River, and reservations where casinos exist. This program has its own funding bill, but no legislative deadline.

All construction projects require the acquisition and clearance of properties. Before "letting" a project (awarding a highway construction contract), the department seeks to clear right-of-way properties of all structures, debris, and contaminants. The department uses various methods to clear properties of structures. Public sales of structures is one clearance method that brings the department in contact with the general public. The department advertises sales of properties and accepts sealed bids from the public. The Transportation Commission authorizes each advertised sale and awards the sale to the highest bidder. The amount and timing of property clearance affect the awarding of construction contracts. Therefore, the Right-of-Way Division conducts public sales and the other methods for clearing properties with expediency as the main goal.

## **Right-of-Way Functions**

The Right-of-Way Division within the Department of Transportation is responsible for all activities related to obtaining land for construction of highways and roads. In order to accomplish its responsibilities, the division has four major functions:

- engineering, which includes the preparation of plats, deeds, and condemnation documents that are needed to acquire property;
- the appraisal and acquisition of properties located in the area of road construction (the right-of-way);
- relocation of persons displaced from the acquired land; and,
- the clearance of land of any structures and contaminants that are on or in the land.

The Department of Transportation employs supervised field agents to implement these four main functions for the purpose of obtaining useful land for construction of roads. Exhibit 1, page 5, shows these four main functions.

### *Right-of-Way Engineering*

Before clearing right-of-way for construction of roads, the Engineering Section reviews the extensive survey of the proposed project, then develops right-of-way plats and deeds. Plats are detailed depictions of the right-of-way from which parcel numbers are assigned. A parcel is the needed portion of land that is under one deed in the right-of-way plan. This section prepares various types of deeds for signature of the property owner. The most commonly used deeds are warranty deeds, quitclaims, and temporary and permanent easements.

### *Acquisition*

The acquisition of land begins after appraisers determine the value of land and property located in the path of proposed highway construction. Acquisition agents offer a purchase price to the property owner in the amount of the fair market value. If the owner does not agree with the fair market value and cannot agree with the department on a negotiated price, the department seeks transfer of property through an eminent domain proceeding.

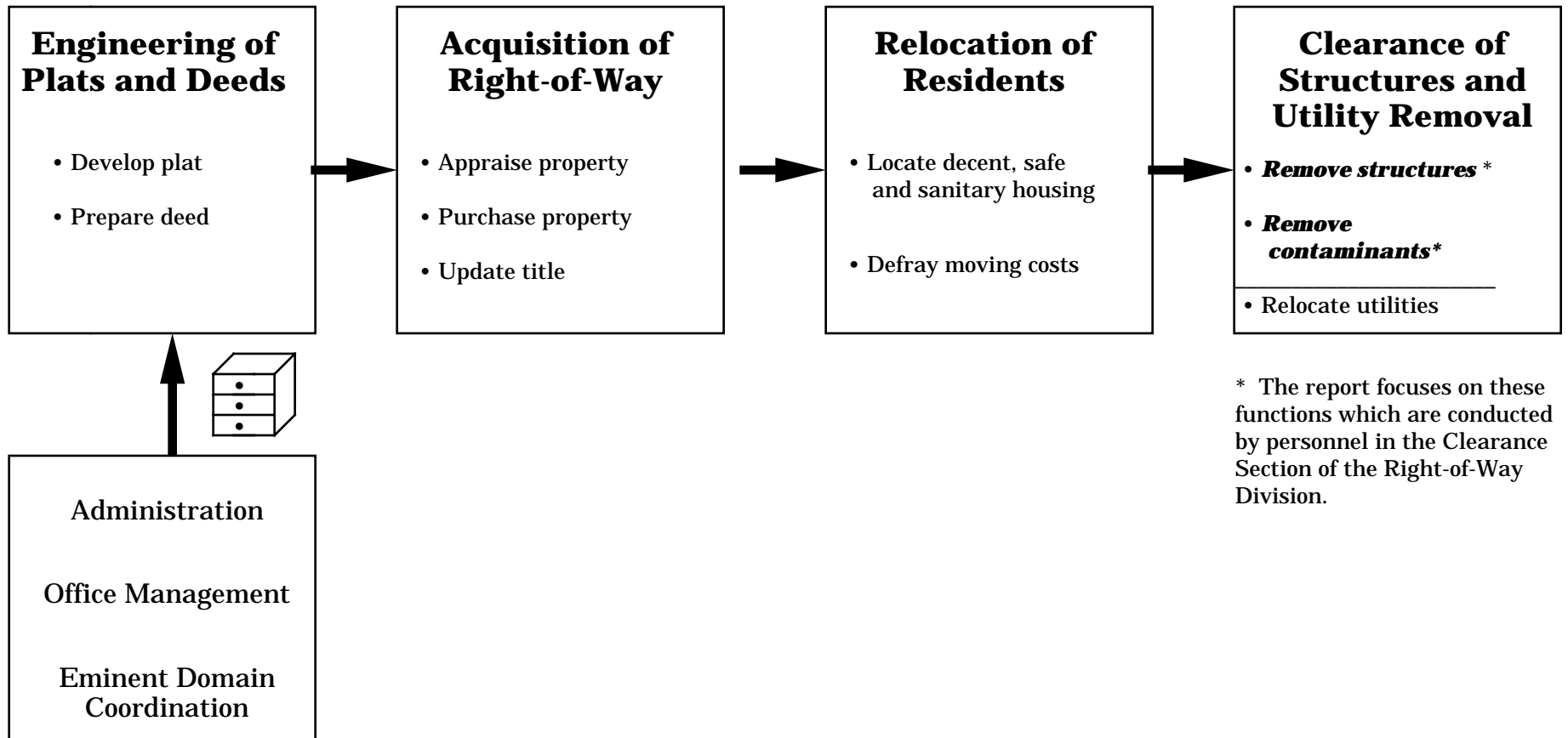
### *Relocation*

The Relocation Assistance Section provides relocation funds and other assistance to displaced persons, businesses, or farms. In order to help ensure fairness in relocation of displacees, the Relocation Section must follow the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. This act requires that the department locate decent, safe, and sanitary replacement facilities.

The department sends a written notice to displacees stating the time frame within which residents must relocate. The notice states that displacees will not be required to move from their dwelling before ninety days from the beginning of negotiations. The notice also informs displacees

## Exhibit 1

### Right-of-Way Division: Functional Areas



SOURCE: Right-of-Way Standard Operating Procedures (June 1991)

that they will be given at least thirty days of notification specifying the date by which their property must be vacated.

Relocation agents also offer supplemental funds to the displacee to expedite relocation. In a few instances, displacees purchase their homes back from the department. The displacees use the purchase price received from the department to set up the house as a replacement dwelling.

### *Clearance*

When all properties have been acquired and residents have been relocated, the Clearance Section is responsible for removing all structures, debris, and contaminants from the right-of-way so that it can be prepared for road construction. Exhibit 2, below, shows the five methods for clearing structures which are outlined in the official operating procedures.

<p style="text-align: center;"><b>Exhibit 2</b></p> <p style="text-align: center;"><b>Standard Operating Procedures for Disposing of Improvements</b></p> <p>To dispose of structures from the right-of-way, agents may:</p> <ol style="list-style-type: none"><li>(1) Advertise and receive bids.</li><li>(2) Conduct a private sale. (This method is generally used when the market value is estimated to be less than \$500, but when in the best interest of the department the \$500 limit may be exceeded).</li><li>(3) Donate an improvement as consideration for demolishing and removing it.</li><li>(4) Contract to pay for the removal of an improvement.</li><li>(5) Sell or transfer ownership of an improvement to any party who qualifies as a displaced person. The displacee may be required to pay the salvage or retention value upon receipt of the improvement. This means of disposal of improvements should be utilized only in the absence of sufficient available comparable housing and at a time in the overall right-of-way acquisition process when it will not jeopardize awarding of the highway construction contract.</li></ol> <p>SOURCE: Mississippi Department of Transportation Right-of-Way Division's Standard Operating Procedures (issued June 1, 1991), Policy Number 09-01-00-000</p>
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The Clearance Section usually disposes of structures by sale or demolition. Clearance Section personnel are also responsible for setting up asbestos inspections and abatement with contractors, as well as the removal of environmental hazards that are in the soil or underground storage tanks. Personnel in the Utility Section of the Right-of-Way Division



coordinate the disconnection and relocation of utilities, the final procedures involved in preparing right-of-way properties for highway construction.

Although clearance agents must follow extensive regulations and receive training for the removal of contaminants, removal of structures from the right-of-way is much less regulated. The only state law that governs structural clearance sets a \$500 cutoff for private versus public sales (see MISS. CODE ANN. Section 65-1-123 [1972]).

From October 1995 to September 1998, the Clearance Section removed structures from more than 500 parcels. A parcel usually has more than one improvement, the largest of which are structures such as houses or buildings. The Clearance Section also clears structures such as sheds, barns, fences, carports, wells, and decks from parcels on the right-of-way.

### **Organization of the Clearance Section**

Exhibit 3, page 8, outlines the management structure of the clearance function. As noted in the exhibit, the Chief of the Clearance Section reports to the Chief of Right-of-Way. The department employs three in-house clearance agents who are responsible for clearing structures and contaminants in three separate regions of the state. The department also contracts with private firms who clear properties (as well as handle other Right-of-Way functions such as acquisition and appraisal). The Right-of-Way Division's Consultant Coordinator, who is not a part of the Clearance Section, is responsible for contracting with the consultants. However, the Assistant Chief of Clearance also oversees their work. Consulting firms cleared structures from approximately 90 of the more than 500 parcels cleared during the three-year period ended September 1998. All of the sixteen consultant groups were employed in counties south of Interstate 20. The Chief of Right-of-Way stated that the department has hired consultants in order to meet the statutory deadline to complete letting of the third phase of the 1987 Four-Lane Highway Program by June 1999.

### **Property Management Duties of Clearance Personnel**

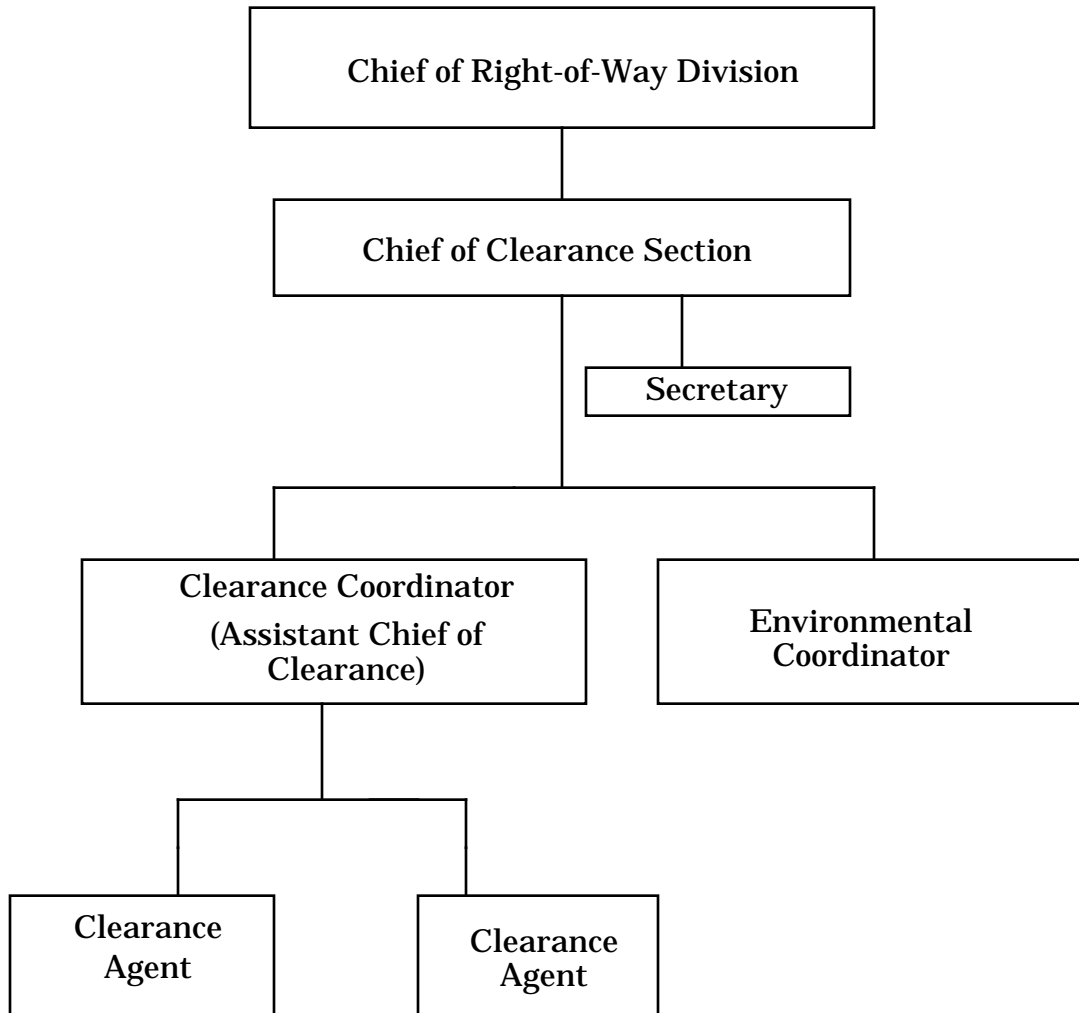
To ensure that structures are removed from right-of-way properties so that roads can be built, the Clearance Section performs three main functions which are outlined below.

#### *Establishing Salvage Values*

When clearance agents begin to clear a stretch of highway on a given project, one of their initial duties is to assign salvage values to structures located on parcels in the project. Agents search a database of previous house sales maintained by the Clearance Section, choose three past sales

### Exhibit 3

## Organizational Chart of the Clearance Section within the Right-of-Way Division



NOTES: The Clearance Coordinator also serves as a clearance agent.

Clearance agents manage the removal of asbestos and structures from parcels of land on the right-of-way.

The Environmental Coordinator oversees the contracts with demolition companies and oversees removal of contaminants from the right-of-way.

SOURCE: Chief of Clearance, Mississippi Department of Transportation

which they believe are comparable, and determine a salvage value that is close in amount to the three sales amounts chosen.

Sometimes agents do not choose comparables for a structure, but instead select an amount which they believe to be the cost of material and labor to remove that improvement. Agents often choose this method of salvage value determination when the structure is valued at less than \$500. Because agents may sell at private sale those properties which are valued at less than \$500, agents may influence the method of structure removal by choosing comparables which are less than \$500 or by not choosing comparables at all.

### *Choosing a Clearance Method*

As shown in Exhibit 2, page 6, Clearance Section personnel may use one of five methods to clear the right-of-way. Generally, in the initial stages of a right-of-way project, agents have discretion to choose between three of the five methods (private sales, advertised sales, or donation) for properties which have a salvage value of less than \$500. Factors affecting the five methods of removal are described below:

- *Agents may sell structures at private sale.* Although unofficial written policies require that agents attempt to obtain the highest possible price for structures, the policies give agents full discretion in determining how to do so. Agents are not required to obtain quotes from more than one house mover.
- *Agents may donate a structure to someone as consideration for demolishing and removing it.* According to the Chief of Clearance, agents generally do this when the structure has little or no assigned salvage value. The department has no written policies to guide agents in determining when structures may be donated.
- *Agents must advertise properties for sale when the salvage value is greater than \$500.* The Transportation Commission authorizes these advertised sales and makes the final determination to award the advertised sale to the highest bidder.
- *Agents may sell some structures to property owners who are being displaced during the right-of-way process,* but do so only when the relocation section of the Right-of-Way Division makes a request for specific sales.
- *The Chief of Right-of-Way may also direct agents to contract to demolish properties.* The department has no policies governing when the demolition method of removal should be used. Although agents generally refer to this method as demolition, to agents this also means that contractors may move a house intact and sell it if this meets time constraints.

Another factor that could affect methods of removal could be changes in the targeted construction contract award dates. Right-of-Way Division personnel work toward the goal of having the property ready for construction by the proposed date that the highway construction contract will be awarded (the let date). Departmental management reports showed

that during the course of a project to acquire and clear the right-of-way, the let date changes numerous times. The Chief of Right-of-Way, in consultation with other departmental personnel, recommends changes in the let date to the Chief Engineer. Changes are based on the progress of all phases of the right-of-way process (e.g., acquisition, appraisal, clearance).

According to clearance agents, a change in let date can result in Right-of-Way management's determination that the type of removal method should be changed. PEER attempted to verify these assertions through analysis of departmental data, but determined that the data was inaccurate and incomplete. Also, Right-of-Way management stated that four to five months in advance of the proposed let date for a project, they reassess the progress on a given project and at that time may change the method of clearance from selling to demolishing structures.

### *Removing Structures on a Timely Basis*

Right-of-Way and Clearance personnel state that their primary mission is to remove structures from the right-of-way in a timely manner so that the department may proceed with construction. They stated that they have been under pressure to complete portions of the 1987 Four-Lane Highway Program by the June 30, 1999, deadline cited in MISS. CODE ANN. Section 65-3-97.

Department personnel also stated that, historically, if they have not been able to sell structures from the right-of-way by the proposed award date for the contract (the let date), they postpone the let date. Traditionally, they have preferred to sell structures and generate revenue. However, they state they have increased their use of demolition contractors instead of selling structures because of the increased pressure to meet deadlines. They claim the removal of structures by demolition is faster than selling and helps to speed the process of awarding highway construction contracts. When the department claims that time constraints will not allow sale of structures to the public, citizens perceive unfair treatment when demolition contractors or subcontractors are then allowed to move the same structures intact and sell them.

## **Conclusions**

To determine causes for complaints regarding the Department of Transportation's Right-of-Way Division, PEER reviewed methods by which the department makes decisions to move structures. PEER found that the Clearance Section has few written policies. The official policies that exist are outdated because in some areas they do not reflect current practices. Clearance Section personnel have much discretion in their dealings with the public because of the lack of policies. Some decisions which may not appear to be fair to the public are driven by the department's desire to remove structures quickly from the right-of-way in order to meet construction deadlines.

**Because the Department of Transportation's Right-of-Way Division has not established comprehensive, up-to-date written policies and procedures and management controls for clearance activities, the potential exists for arbitrary decisions which could be perceived as unfair by those interested in purchasing properties on the right-of-way. The potential also exists for improper benefit to departmental personnel or contractors.**

The following sections present each of the three primary types of complaints PEER received regarding right-of-way clearance activities, followed by a summary statement and discussion of weaknesses in the department's policies, procedures, and management controls which contributed to the complaints.

### **Complaints that the Department Does Not Allow Citizens to Bid on Some Structures**

**Complaint #1: In some instances the department has not allowed citizens to bid on buying and moving structures from the right-of-way, but later has allowed demolition contractors to move houses intact rather than destroy them.**

***The Department of Transportation uses demolition contractors to help ensure that structures are cleared from the right-of-way in time to meet the construction contract award dates. However, the department does not have a formal policy which governs whether and under what circumstances demolition contractors or subcontractors may move houses and other such structures intact. The department's lack of comprehensive policies and procedures and management controls over clearance methods may lead to inconsistent practices and citizens' perceptions of unfairness.***

*The Department Uses Demolition Contractors to Remove or Destroy Structures Occupying the Right-of-Way*

The department has contracted with four approved firms (referred to as demolition contractors) to remove structures from the right-of-way. As stated on page 10, Clearance Section personnel state that they use demolition contractors primarily when they are under time constraints to have properties moved before the highway construction award date. However, methods used by demolition contractors and their subcontractors do not necessarily result in actually destroying the structures and hauling away the debris. Contractors may remove structures intact and sell them.

*The Department Sometimes Pays Demolition Contractors to Remove Structures Which Citizens are Willing to Purchase*

The department has been criticized because it sometimes pays demolition contractors to remove structures from the right-of-way when citizens are willing to bid to purchase the structures from the department. Complainants did not understand why the contractors were later allowed to move the structures from the right-of-way intact rather than destroy them. Department personnel reportedly told citizens that due to time constraints in getting structures cleared from the right-of-way, the department must use contractors to tear down structures. When these same structures were later moved from the right-of-way rather than torn down, citizens were angry that they did not have a chance to bid on moving the structures. These citizens became distrustful of the department's personnel and procedures.

Some citizens interested in purchasing structures from the right-of-way perceive a lack of fairness and consistency in the department's decision to pay demolition companies to move and sell houses rather than take bids and sell to the public. If the department informs local citizens that structures must be torn down, yet allows demolition companies to contract with individuals to move the houses, citizens may think that the department is not acting consistently. Furthermore, if department agents inform interested parties that structures must be "demolished," but do not explain that "demolition" can include removal of the structure by a house mover, further confusion can result.

*The Department's Policies for Direction of Clearance Section Personnel are Outdated and Incomplete*

In most areas of Right-of-Way operation, the Department of Transportation has developed extensive operating policies and procedures. However, the department's policies and procedures regarding methods of clearing structures from the right-of-way are insufficient because some have not been approved by the department's administration and/or by the

Transportation Commission and because some do not reflect current practices of the department.

Clearance Section Personnel Operate Under a Mixture of “Official” and “Unofficial” Policies, Which Causes Inconsistency

Currently, the Clearance Section operates under three possible sets of policies for clearing structures from the right-of-way:

- “official” written policies approved in 1991 for the Property Management Division, which was formerly responsible for clearing the structures from the right-of-way;
- “unofficial” written policies developed in 1995-96 for the duties of the merged sections (Property Management and Environmental) but not yet approved by the Transportation Commission; and,
- actual practices and “rules of thumb” which have never been developed into formal written policies but which are generally followed by Clearance Section personnel.

Some of these policies overlap, but some conflict and cause inconsistency in the manner in which the Clearance Section operates. For example, the division’s “official” (1991) and “unofficial” (1995-96) policies differ regarding performance bonds. Generally, the division follows the 1995-96 policy, which requires that bidders for structures submit a performance bond in the amount of ten percent of their bid. The bond helps to ensure that buyers clear a structure within thirty days of the date the highest bidder is chosen. (The department is supposed to take back the structure and retain the bond as a penalty if the structure is not removed in thirty days. However, agents state they generally extend the thirty-day removal requirement due to bad weather and other circumstances.)

PEER’s file review showed that some of the division’s actual practices differ from both the official and unofficial policies. For instance, Clearance Section personnel often do not obtain bonds for those structures valued at \$500 or less, even though both official and unofficial policies require it. Also, in practice Right-of-Way personnel usually limit the amount of the performance bond to \$500 when the amount of the bid is greater than \$5,000, but do not consistently follow this practice. PEER’s file review showed that for three properties sold at a price of more than \$5,000, the department in one instance held the bond requirement to \$500 and in the other two instances required a bond greater than \$500. This inconsistent treatment of different purchasers could easily result in charges of favoritism and unfair practices.

## Clearance Policies Have Evolved During Changes in the Department in the Last Few Years

The Transportation Commission approved the Clearance Section's official operational policies on June 1, 1991. At that time the policies were written for the Property Management Division, which was responsible for clearing the structures from the right-of-way. Since that time, the Property Management Division has merged with department personnel responsible for clearing environmental hazards from the right-of-way. The merged functions became the Clearance Section of the Right-of-Way Division in 1994.

In 1995 and 1996 the Clearance Section developed updated policies for the duties of the merged sections. However, the Transportation Commission has not approved these policies. The Executive Director of the department stated that the policies had not been updated because the department was in the process of converting all standard operating procedures to electronic format and they did not want to have different electronic and paper versions that could both be considered legally binding. He stated that there was a period of time in which no changes were allowed to the standard operating procedures so as to keep the process of disseminating the policies orderly. After discussing the matter with PEER, the Executive Director stated that he would ask the Right-of-Way Chief to send a letter to him requesting tentative approval of the policies of the Clearance Section until they can be officially approved by himself and the commission.

## Clearance Policies Do Not Reflect All Current Practices and Do Not Address Some Issues, Including Contractors' Destruction vs. Removal of Structures

Clearance policies are not comprehensive because:

- As noted above, neither the official nor the unofficial written policies include all of the actual practices followed by the division. (For instance, a contract with a consultant hired to acquire and clear right-of-way for the department states that "no improvements are to be sold back to the original property owner unless they are to be used for replacement housing or business operation through relocation assistance." Department personnel stated that the agency follows this statement as its policy; however, it is not included in any written policy.)
- The department does not have a formal policy which governs whether and under what circumstances demolition contractors or subcontractors may move houses intact. Lack of a policy such as this one can lead to the types of complaints noted on page 11.



- The policies do not include specific criteria for determining which of the five listed methods of structure removal should be used (see page 9).
- The policies do not adequately address management controls over the sale of structures which should exist to provide oversight of agent activities (see pages 21 to 23 for examples of controls which should exist).

*The Department's Official Policy Allowing Some Private Sales of Structures Valued at More than \$500 Does Not Comply with State Law*

MISS. CODE ANN. Section 65-1-123 (1) outlines the methods which the Department of Transportation may use to sell properties unnecessary for public use. This section requires that property valued at over \$500 be sold only through an advertised sale with sealed bids, as noted below:

*Whenever any personal property has been acquired in any manner by the Mississippi Transportation Commission for public use and in the opinion of the commission, all or any part of the property becomes unnecessary for public use, the commission is authorized to dispose of such property for a fair and reasonable cash market price. Any such sale shall be a sale upon the receipt of sealed bids after reasonable advertisement for bids in such manner and at such time and place as the commission may deem proper and advisable, except that the commission may sell at private sale any such personal property not necessary for public purposes the cash market value of which is less than Five Hundred Dollars (\$500.00).*

However, the Department of Transportation's Standard Operating Procedure number ROW-09-01-00-000, implemented in June 1991, states that private sales are generally used to remove structures when the market value is estimated to be less than \$500, but that "when in the best interest of the Department the \$500 limit may be exceeded." The unofficial 1995-96 policy includes similar language. Although Section 65-1-123 became effective in 1993, subsequent to the department's corresponding policy, the department should have revised its policy to comply with the law. However, no written policy reflects this directive. In fact, PEER found one instance in its file review in which the Transportation Commission approved the private sale of a structure valued at \$750 on August 12, 1997.

*The Department's Lack of Comprehensive, Up-to-date Policies for Clearance Agents Could Result in Inconsistent or Arbitrary Decisions that the Public Perceives as Unfair*

Other than the inconsistent treatment in obtaining performance bonds (see page 13), PEER's review did not document specific instances of unfairness to citizens wishing to purchase structures from the right-of-way because the department does not maintain documentation of interaction between department personnel and citizens. However, the department's lack of sufficient formal written policies for dealing with the public and for choosing the best method of property removal allow opportunities for inconsistent treatment of those interested in purchasing structures. The department might be able to avoid some criticisms and negative perceptions of its methods through standardization of its overall policies and procedures and clearly communicating its demolition policies to citizens and interested persons. If the agents are aware of a clearly defined policy, they might better be able to convey it to interested citizens and consistently follow the guidelines set forth by the department.

**Complaints Regarding Changes in Clearance Methods**

**Complaint #2: Department personnel changed proposed structure removal methods several times during the course of a project, reversing previous decisions which would have allowed citizens to buy structures.**

***Clearance Section personnel state that removal methods are affected by numerous factors such as dates when structures are vacated and changes in proposed construction award dates. Changes in removal methods appear to be rooted in the desire to remove structures quickly from the right-of-way and proceed with construction, the section's primary mission. However, the department has not developed policies to help agents make systematic and fair decisions and to factor costs of various removal methods into decisionmaking.***

*Clearance Section Personnel Sometimes Change Removal Methods During the Course of a Project*

In addition to complaints that demolition companies were allowed to move structures intact that citizens could not bid on, complainants also stated that department personnel sometimes reversed their decisions about whether the structures would be sold or actually had to be demolished. Because of these changes in removal methods, complainants did not believe that department personnel were being candid about the methods which the department would use to clear the right-of-way. A complainant also

expressed concern that the department was not getting paid to move structures when it could accept bids from the public to purchase the structures.

*Clearance Personnel May Change Removal Methods for the Sake of Timeliness or Due to Changes in Let Dates*

Clearance and Right-of-Way personnel stated that they generally use a “rule of thumb” based on the construction contract award date (let date) for determining whether to sell or demolish properties. They stated that time factors drive the method of removal, that they do not consider the cost versus the benefits of using demolition contractors, and that their goal of meeting the deadlines (especially those set by the Legislature for the 1987 Four-Lane Highway Program) is of primary importance in determining removal methods. Clearance Section personnel stated that the amount of time remaining between the date the displacee moves from the property and the let date determines whether a property can be sold or must be demolished. They also stated that the numerous changes to let dates by department management could change the methods by which they cleared structures from the right-of-way, as explained on page 10.

*The Department Has Not Developed Sufficient Formal Written Policies Regarding When Certain Removal Methods Should Be Used*

Despite legitimate constraints under which Right-of-Way personnel work, PEER found that various clearance agents and Right-of-Way management had differing ideas on when the department should use the demolition method of structure removal. For instance, one agent stated that the department may not contract to sell the structures any later than ninety days prior to the proposed highway construction contract award date (let date), and two agents stated that the department may not contract to sell structures from the right-of-way any later than sixty days prior to the let date. These agents had differing ideas of deadlines for selling structures, but agreed that demolition companies could be contracted with during the last sixty days prior to the let date to remove the structures. However, Right-of-Way management stated that all structures must be actually cleared from the right-of-way no later than sixty days prior to the let date, otherwise the construction contractor would have to remove the structures.

Because of the confusion regarding the use of demolition contractors, the department could easily convey inconsistent information to prospective buyers of structures from the right-of-way, and thus treat buyers inconsistently. PEER also found that the department did not always use methods of reducing clearance costs, some of which are readily available. The department’s lack of policies for choosing removal methods and for reducing costs are outlined below.

### The Department's Policies Do Not Provide Complete Guidance on Choosing Structure Removal Methods

Both the department's official policy (Standard Operating Procedure ROW-09-01-00-000 which relates only to property management) and the unofficial policy state that the department may clear structures from the right-of-way by one of the methods listed in Exhibit 2, page 6, but the policies do not provide sufficient guidance on when it is appropriate to use each of the methods. The department therefore does not foster uniformity in how property is cleared and how to communicate with house buyers.

Clearance Section policies include methods for conducting advertised bids and transmitting sales receipts to the department's Financial Control Division. However, the policies do not provide complete guidance for choosing a structure removal method. For instance, the policies:

- do not outline when it is acceptable to donate an improvement or how a private sale should be conducted. (This could provide opportunities for property buyers to try to negotiate favorable deals with clearance agents. See page 22 for additional discussion.);
- do not give guidelines for when demolition companies or highway construction contractors may be used to remove structures from the right-of-way. (This could result in the Chief of Right-of-Way not making consistent decisions on when to use these contractors and in agents conveying inconsistent information to citizens interested in purchasing structures.)

### The Department Does Not Have a Policy to Examine Costs and Benefits of Various Removal Methods

Department personnel stated that they had increased use of demolition contractors in recent years. (See page 10.) However, it is more expensive for the department to demolish properties than to sell them. On average, it costs the department over \$4,000 to demolish a 1,200 square foot house. On the other hand, the department's revenues from selling structures averaged approximately \$1,600 per structure during the three-year period ended September 1998. Right-of-Way management stated that the department also incurs staff costs associated with selling structures which would reduce the revenues realized by the department. However, the department has not determined the extent of those staff costs and whether they exceed the staff costs which are associated with overseeing demolition contractors.

In general, clearance demolition expenditures are not significant compared to the total estimated highway contract expenditures. For instance, expenditures for demolition and asbestos abatement cost a combined \$894,816 in Fiscal Year 1998. The Department of Transportation budget totaled \$721,000,000 for Fiscal Year 1998. Despite the costs at stake,

the department does not perform cost/benefit analyses to determine whether maximizing program revenue (from increasing structure sales and reducing demolition costs) will offset any costs incurred if construction contracts are postponed.

The Chief of Right-of-Way states that the cost of demolition is not a factor in determining the method of structure removal because:

- the department has placed a high priority on completing highway construction by the June 1999 deadline for the 1987 four-lane program;
- removal of structures by demolition is faster than selling and helps to speed the process of awarding highway construction contracts;
- the longer construction contracts are delayed, the more the construction contractors charge the department for the work (due to increased costs of items such as material, labor, oil, and gasoline).

The Chief of Right-of-Way states that delayed construction contracts cost more than the increase in demolition costs. However, he stated that the department has not performed feasibility analyses which could support this conclusion.

#### The Department Does Not Have a Policy to Require Price Competition Between Demolition Contractors

Clearance personnel stated that they try to spread the work around between their four demolition and abatement contractors. The four contractors can be called upon to do work all around the state. If a contractor has had several small jobs and another one has had a large one, the department tries to provide work to the contractors who have not had as much work lately. Clearance personnel state that in a few instances, they have required competition between the contractors. If they have more lead time on a particular job, they state that they obtain quotes for structure removal from more than one contractor and choose the lowest price.

However, the department does not usually obtain quotes from more than one contractor to remove structures. Obtaining at least two quotes would promote competition between the contractors and would tend to result in lower costs to the department over the long run. This would also encourage contractors to credit the department for those properties that they intend to sell rather than destroy. If demolition and abatement contractors are required to compete on price to purchase those structures they intend to sell (especially when citizens are interested in bidding to buy those structures), the public's opinion of fairness of the process should improve.

## Complaints Regarding Alleged Kickbacks

**Complaint #3: Department personnel may have received kickbacks from contractors who moved structures from the right-of-way because contractors were allowed to move houses intact that citizens had been told had to be destroyed.**

***The department's lack of sufficient oversight policies and prevention measures increases the potential for improper or illegal acts such as kickbacks. Clearance files do not include the type of information which would help disclose such acts.***

### *Clearance Files Do Not Include the Type of Information Which Would Help to Disclose Potential Kickbacks*

Some complainants believed that Department of Transportation personnel may have received kickbacks from contractors who moved structures from the right-of-way. They suspected kickbacks because they believed that contractors were being paid to remove structures that others would have paid for and because clearance personnel changed removal methods several times.

PEER reviewed a random sample of clearance project files to determine clearance procedures and interviewed clearance personnel about general procedures conducted in clearing properties. Clearance files do not include the type of information which would allow PEER to make conclusions regarding improper acts such as collusion or kickbacks. For instance, clearance project files do not include documentation of interaction between department personnel and citizens for private sales and lack documentation to prove that sealed bids have occurred as required by law for advertised sales. Also, in most cases, records do not show whether the clearance contractors or subcontractors remove structures intact or by demolition. The lack of complete information (lack of a "paper trail") reduces the ability of independent parties to verify procedures. As a result, it would be difficult to determine any actual illegal acts if they had occurred.

As discussed below, if agents were required in all instances to create competition among the private sector for the privilege of removing structures from the right-of-way (whether by moving or demolition) and to document that competitive procedures had been implemented, the resulting paper trail would reduce the possibility that personnel would engage in improper acts.

*The Department Does Not Exercise Adequate Oversight to Ensure that Potential for Improper Acts is Minimized*

The Department Does Not Have a Process to Ensure Advertisement of Certain Sales as Required by Law

Neither Clearance Section nor Right-of-Way managers review files to ensure that structures valued at \$500 or more are consistently sold through advertised sale as required by Section 65-1-123 (see page 15). Managers stated that agents are aware that they cannot sell properties which are valued at more than \$500 without first advertising them. Nevertheless, in at least one instance, the Transportation Commission approved sale of a property without an advertised sale, although the structure had been valued at \$750.

The Department Does Not Adequately Document Whether Advertised Sales are Implemented by Sealed Bid as Required by Law

The Clearance Section does not have procedures to document that agents are implementing the sealed bid process. Specifically, the bid documentation form does not include a line requiring the signatures of the agent who opens the bids or the witness(es) to the opening. PEER's review of files showed that agents often do not record the date of the bid opening and therefore cannot document that bids were opened at the time agreed upon and as advertised in the newspaper.

Public entities establish sealed bid processes to ensure competition and to reduce the opportunity for collusion between government personnel and private firms who are trying to obtain government contracts. For instance, if bids are sealed until they are all opened at once, the amount of bids already received cannot be conveyed to other bidders to give them a competitive edge. Because the department does not document that its sales of structures have been executed under the sealed bid process required by MISS. CODE ANN. Section 65-1-123, the department does not have preventive measures in place to protect its own personnel as well as to discourage them from any illegal activities.

The Department Does Not Require Competition Between Bidders for Private Sales of Structures

CODE Section 65-1-123 allows private sales of structures on the right-of-way which are valued at less than \$500. However, the department does not have policies governing how these sales may be conducted. The unofficial clearance policy states only that the Clearance Agent should attempt to "sell improvements for the highest possible price," but does not require competition. The official policy dated June 1991 also does not

require that agents seek any measure of competition between bidders for these sales and provides no instructions for the conduct of sales.

Department management plans to submit a bill for introduction in the 1999 legislative session that would change the limitation for private sales from only those properties valued at less than \$500 to allowing private sales for all properties valued at less than \$5,000. Department personnel state that private sales can be handled more quickly than advertised sales and that they need flexibility to reduce the amount of time spent in selling the structures. Although PEER does not have a position on this proposed bill, if the law changes in this manner, it will be even more crucial to draft policies governing the implementation of private sales.

The lack of guidelines on the way private sales can be negotiated provides opportunities for agents and buyers to act corruptly. For instance, interested parties (especially those who are aware of the department's lax policies) could approach agents and attempt to persuade them to sell structures at prices unfavorable to the department. To reduce the potential for abuse of the system, the department should require some type of competition between bidders, such as documentation of three quotes (obtained by the agent by telephone or other means). The department should also develop ethical guidelines for agents to follow and require them to sign statements of ethics--e.g., that they will not accept gifts from interested parties with whom they deal.

#### The Department Does Not Ensure Uniform Salvage Value Determinations

Clearance agents do not include on salvage value forms the rationale for their choice of comparable structures used to develop a value, do not sufficiently describe the comparables chosen, and do not explain on the forms why in some instances (generally for structures valued at less than \$500) comparables are not provided. As a result, they cannot assure that they are being consistent in their methods for setting salvage values. Also, neither Clearance Section management nor independent parties within the department review the appraisals or determinations of salvage value set by clearance agents. Because the clearance agents who set the values are responsible for selling some structures at private sale, this opens the possibility of collusion between agents and parties interested in purchasing structures at bargain prices.

The department could establish a system of checks and balances over this process by having an independent party conduct a random review of salvage values set by the agents. The department could also separate the personnel duties of salvage value setting and sales of improvements. For instance, according to Standard Operating Procedure ROW-08-01-00-000, the Right-of-Way Acquisition Section prohibits any individuals who appraise properties located on the right-of-way from negotiating for their



purchase. According to Right-of-Way personnel, the department implemented this policy to reduce opportunities for fraud.

#### The Department Does Not Consistently Use a Checklist to Verify Implementation of Procedures

The Clearance Section does not consistently use a checklist to ensure that personnel have obtained all documentation needed to verify disposal by one of the approved methods. PEER's file review showed that information regarding the disposal of individual structures is often missing from the central file room of the Right-of-Way Division. At least twenty-one of sixty files (or 35%) reviewed by PEER were missing some types of information related to structure removal methods.

#### The Department Has Not Developed a Computerized Data System for Tracking Clearance Methods

The Clearance Section does not maintain complete computerized data on structures cleared, by type of removal method and date of clearance. This affects the section's ability to keep track of past actions. For instance, the Clearance Section cannot generate reports listing the structures cleared from the right-of-way during any given year or showing structures cleared by type. Although the section's database includes numerous types of information, many files are incomplete. During PEER's review, Clearance Section agents had difficulty in interpreting records kept in the database to determine which methods they had used to clear structures from the right-of-way. Because management cannot readily determine, summarize, and thus analyze clearance activities which have occurred during any given period or by project, its oversight ability is reduced. PEER's review has made clearance personnel aware that they should revise their data system to include a category outlining the removal method, as well as the date of removal.

## ***Recommendations***

### **Clearance Policies**

1. The Department of Transportation's Clearance Section should revise its written policies to include the full scope of its operations and necessary management controls and submit these to the Transportation Commission for approval. The department should ensure that its revised policies incorporate the policy elements required by the federal regulations governing property management, 23 CFR Section 713. The revised policies should include the following:
  - a. *Clearance policies should outline parameters and time frames for choosing a particular removal method for clearing the right-of-way.* The policy should state when private sales are appropriate, the time frames in advance of the proposed construction award date that advertised sales may take place, and when demolition of structures may occur. For instance, the policy could say that "The Department of Transportation may contract to demolish structures on the right-of-way no more than sixty days prior to the current proposed construction contract award date. Exceptions must be approved by the commission or the Executive Director and the reason documented for the record." In instances wherein the department seeks flexibility due to location of the properties and other factors, the department should develop specific cases to use as examples for guidance of Right-of-Way personnel.
  - b. *Clearance policies should outline how clearance agents can conduct private sales with potential house buyers.* For instance, agents should not be able to promise that structures be sold to one particular person without documented effort to generate competition. The department's procedures should require that agents obtain at least three quotes from individuals who are interested in purchasing houses from the right-of-way. Even if only one person is interested in making a bid, the agent should document that at least two other house movers have declined to bid. The documentation should list the name of the house mover who was asked to quote, the date that the call was made to the house mover, and the amount of the quote or a statement that the house mover declined to bid. The agent should obtain at least three quotes and document this for each quote.
  - c. *Clearance policies should require separation of the duties of the individuals responsible for assigning salvage values to structures from the duties of those who sell the structures (similar to the Right-of-Way policy number 08-01-00-000).* Otherwise, an independent party at the department should randomly select files

for review to ensure that values set by the agents are valid based on uniform standards developed by the division.)

- d. *Clearance policies should require that agents follow ethical guidelines developed by the department and require agents to sign a statement of ethics* (e.g., a statement similar to that signed by Right-of-Way acquisition agents that they have “no direct or indirect, present or contemplated future personal interest in the abovementioned parcels nor will in any way benefit from the acquisition [clearance] of such property.”)
- e. *The department should rewrite official policies to correspond with actual right-of-way procedures, especially for performance bonds and owner buyback of property, as follows:*
  - (1) The department should clarify its policy to state whether displacees are required to put up bonds when they are purchasing either their own houses or other houses from the right-of-way. Policies should also clarify when or if a maximum performance bond amount will be in effect.
  - (2) The department should write Clearance Section policies to reflect the actual manner in which houses on the right-of-way may be retained by the owners displaced from them. (Written policies state that houses may be transferred to displacees in some instances. However, in practice displacees may only purchase them back from the department when they plan to use them as replacement housing.) The department should also rewrite related Relocation Section policies (ROW-12-12-01-000 3. f.) to reflect this department practice.

### **Communication of Policies to the Public**

2. To help ensure consistency in the department’s procedures and to promote public confidence, the Department of Transportation should improve communications with the public or with those with whom they will be dealing in selling houses. The department should make available to the public and interested parties a guide sheet of its policies for clearing structures from the right-of-way. The list should explain types of clearance methods (advertised sales, private sales, owner buyback of structures, demolitions by abatement and construction contractors), when the various methods will be used, and how changes in construction letting dates will affect and change the methods to be used. The department should display these policies at its remote and satellite Right-of-Way offices and should distribute these to proposed bidders along with the notices of sales to bidders.

### **Competitive Bidding Procedures**

3. The Legislature should amend MISS. CODE ANN. Section 65-1-123 (1) to require documentation of private sales and sealed bids. Agents should document that they have contacted at least three house movers to bid on structures which are to be sold privately. For sealed bids, the Clearance Section should require that agents and witnesses present for the bid opening should sign that the opening of sealed bids has taken place in accordance with state law and department policy. Agents should also document the date that sealed bids are opened.
4. To encourage the sale of houses rather than the more costly method of demolition, the Department of Transportation should consider establishing a qualified bidders' list for house movers. To implement this suggestion, the department should establish a set of objective, but unrestrictive, criteria for necessary qualifications. For instance, the department could require house movers to agree to remove all houses within a certain period after purchase (e.g., thirty days), to remove intact all houses with asbestos in them according to Department of Environmental Quality guidelines, and to engage in ethical dealings with individuals or entities with which they contract to sell the structures. Once the house movers get approved, they may bid on any houses. The department should distribute copies of and communicate its policies to the qualified house movers.
5. Clearance Section personnel should follow written policies for obtaining performance bonds from individuals who win bids to move structures from the right-of-way.
6. To promote competition and the best price, departmental personnel should obtain bids from at least two demolition contractors on each separate demolition job.
7. In overall bids to demolish structures on a project, the Department of Transportation should require that demolition contractors include a bid for purchasing those structures that they move intact from the right-of-way. The department should obtain assurance that contractors have informed the department when they will move rather than destroy structures. For instance, the department could require contractors to sign a statement in their project demolition bid that they will compensate the department for any structures that they move intact.

### **File and Data Administration**

8. Clearance Section personnel should file in a central location all information related to clearance of structures. Personnel should use a detailed checklist to ensure the presence of all items necessary to

document the method of removal. Right-of-Way management should revise the project filing system to require that all clearance information be filed in one section of the folder to help ensure information is not lost.

9. The Clearance Section should revise its data system to include categories outlining:
  - the actual method by which each structure was removed from the right-of-way, and,
  - the date of removal of each structure.

*Agency Response*

**Zack Stewart**  
Northern District Commissioner

**Wayne O. Burkes**  
Central District Commissioner

**Ronnie Shows**  
Southern District Commissioner

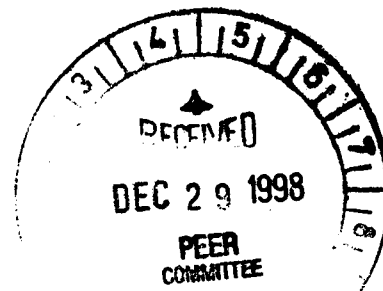


**Kenneth I. Warren**  
Executive Director

**James H. Kopf**  
Deputy Executive Director/  
Chief Engineer

*Mississippi Department of Transportation / P.O. Box 1850 / Jackson, Mississippi 39215-1850 / Telephone (601) 359-7001 / FAX (601) 359-7110*

December 29, 1998



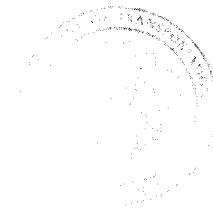
Ms. Kathryn Stark Frith  
Senior Analyst  
PEER Committee  
222 N. President Street  
Jackson, MS 39201

RE: A Review of the Mississippi Department of Transportation's Methods  
for Clearing Structures from the Right-of-Way

Dear Ms. Frith:

The 1987 AHEAD Road Program mandated that 1,077 miles of 4-lane roadway be let to contract by June 1999. In 1992 the Mississippi Legislature mandated that the number of Mississippi Department of Transportation (MDOT) employees be reduced by 10%. The substantial increase in our Construction Program (43% in real dollars) and reduction in staff has resulted in a streamlining of procedures. As pointed out by this review, the emphasis to meet the Program Construction Schedule has resulted in deficiencies in documentation, record keeping, updating of procedures, etc. The need to update of our policies and Standard Operating Procedures (SOPs) has been recognized by our staff and is underway. The review comments contained herein are very timely and will be evaluated for inclusion.

The two primary reasons that contracts are delayed due to right-of-way are: (1) relocatees have not been moved in the appropriate time, and (2) the utilities have not been relocated to allow the contractor to work. These go hand in hand as the utilities in many instances cannot be moved because the relocatee has not moved out of the house and the house cannot be removed or demolished. Right of Way Management determines, depending upon the project schedule, to either advertise improvements for sale or hire a demolition contractor. The main goal of this decision is to clear the right-of-way in a timely manner. The number one objective of the Clearance Section is to prepare the right-of-way for the road construction project. The choice of the most efficient means to obtain this objective may change during the course of the work due to a modification in the Program Construction Schedule or other developments.



Ms. Kathryn Stark Frith  
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December 29, 1998

Revised SOPs will address inconsistencies in the bid process for the removal of improvements and disposal of items with a salvage value of greater than \$500.00. Current procedures require a 10% bid bond with a maximum of \$500.00. In several instances bidders have submitted 10% of the bid which was in excess of the \$500.00 maximum. To avoid delays in the process, amounts in excess of the \$500.00 maximum have not been returned. A review of the documentation would therefore conclude an inconsistency in the amount of bond required. With regards to the sale of improvements that have a salvage value in excess of \$500.00 without a bid, we have taken appropriate measures to prevent future occurrences.

In reply to the allegation(s) of personnel receiving kickbacks from contractors and the finding "did not reveal situations that would suggest specific instances of kickbacks", we are not aware of a single incidence and have confidence in the integrity of the staff in the Right of Way Division Clearance Section. We do, however, recognize the need to improve documentation processes.

The final decision/authority regarding the disposal of improvements rest appropriately with the MDOT. To do otherwise would seriously jeopardize the ability to meet the Program Construction Schedule. Our initiative will be to establish procedures to clarify and address the context of the PEER review.

We appreciate the manner in which the PEER Staff has conducted their review. The recommendations will be given great weight in the development of policies.

Sincerely,



Kenneth I. Warren  
Executive Director

KIW:WTR:clp

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## PEER Staff

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Max Arinder, Executive Director  
James Barber, Deputy Director  
Ted Booth, General Counsel

### Evaluation

Sam Dawkins, Division Manager  
Linda Triplett, Division Manager  
Pamela O. Carter  
Katherine Stark Frith  
Kimberly Haacke  
Barbara Hamilton  
Lee Anne Hamilton  
Kelly Lockhart  
Joyce McCants  
Michelle M. Owen  
David Pray  
John Ringer  
La Shonda Stewart  
Lynn Watkins  
Larry Whiting

### Editing and Records

Ava Welborn, Editor and Records Coordinator  
Sandra Haller  
Pam Sutton

### Administration

Mary McNeill, Accounting and Office Manager  
Shirley Anderson  
Thelisa Chapman  
Pat Lockett

### Data Processing

Larry Landrum, Systems Analyst

### Corrections Audit

Louwill Davis, Corrections Auditor

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