

**Joint Legislative Committee on Performance  
Evaluation and Expenditure Review (PEER)**

Report to  
the Mississippi Legislature



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## **A Follow-up Review of the Mississippi Department of Transportation's Methods for Acquiring Right-of-Way Properties**

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During its 1994 review, PEER identified several inconsistencies in the Department of Transportation's right-of-way acquisition process. The department has been largely unresponsive to PEER's concerns, taking little action to address identified weaknesses. As a result, the Right-of-Way Division continues to allow inconsistency and unfairness in dealing with property owners. Although the department has improved the clarity and content of information distributed to property owners, it has not heeded recommendations to improve consistency of appraisals, administrative settlements, or damage awards to property owners by updating standard operating procedures, developing and encouraging the use of consistency-enhancing tools, or developing formal documentation for the processes used.

The contracting of acquisition work to private firms has increased the department's oversight responsibility, yet the department's Internal Audit Division and the Federal Highway Administration have reduced oversight, resulting in weaker measures taken to assure consistency and fairness.

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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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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.

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The Mississippi Legislature

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On May 11, 1999, the PEER Committee authorized release of the report entitled **A Follow-up Review of the Mississippi Department of Transportation's Methods for Acquiring Right-of-Way Properties.**

A handwritten signature in cursive script that reads "Tommy Horne".

Representative Tommy Horne, Chairman

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

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# A Follow-up Review of the Mississippi Department of Transportation's Methods for Acquiring Right-of-Way Properties

## Executive Summary

During its 1994 review of the Department of Transportation's right-of-way acquisition process, PEER identified several inconsistencies in the acquisition function. These inconsistencies promoted citizens' perceptions of unfair treatment to property owners. To address the weaknesses, PEER recommended that the department improve operating procedures to ensure consistent and uniform property appraisals and administrative settlements, improve oversight of property acquisitions, provide clear and complete information to property owners, and ensure that it acquires all property within a project prior to letting the construction contract.

Since PEER's 1994 report, the Department of Transportation has taken little action to address citizens' concerns that acquisition of right-of-way be fair to all parties.

The Department of Transportation has been largely unresponsive to PEER's 1994 concerns, taking little action to address identified weaknesses. As a result, the Right-of-Way Division's acquisition process continues to allow inconsistency and unfairness to property owners. Although the department has improved the clarity and content of information distributed to property owners, it has not heeded recommendations to improve consistency of appraisals, administrative settlements, or damage awards to property owners.

The department's decision to hire private acquisition agents increased its oversight responsibility. The Department of Transportation chose to supplement in-house right-of-way acquisition efforts by contracting with private firms to procure property. This gives private firms the responsibility of interacting with property owners and places additional burden on the Right-of-Way Division to monitor those firms and ensure that they administer the process consistently and fairly.

The department's oversight responsibility has increased due to contracts with private acquisition agents and reduced federal oversight, yet the department has not acted to improve oversight of acquisition operations.

Reduction in oversight of Right-of-Way acquisitions decreases assurance that the division performs this function consistently. Since 1994, the Department of Transportation has not acted to improve internal oversight of its acquisition operations. In addition, federal authorities reduced their oversight efforts in 1998, exempting projects that cost less than five million dollars and routes that are not part of the national highway system. The lack of sufficient internal oversight will also affect acquisitions by private contractors, particularly for projects now exempt from federal oversight and subject only to the department's review.

Because the department has taken little action to control for inconsistencies in the acquisition process and assure fairness, its administration of the process continues to cause concern regarding impact on property owners. This follow-up review assesses department actions to address weaknesses PEER identified in 1994.

## Recommendations for Departmental Action

Before December 31, 1999, the department should adopt measures to improve operating procedures for consistent and uniform property appraisals and administrative settlements, improve oversight of property acquisitions, provide clear and complete information to property owners, and ensure that it promotes timeliness in bringing closure to eminent domain cases and obtaining titles.

1. The department should address weaknesses that contribute to inconsistent property appraisals by:
  - requiring review appraisers to use a checklist of appraisal components when conducting appraisal reviews.
  - developing a standard checklist of compensable items.
  - requiring reviewers to log characteristics and compensation for parcels on a project basis to ensure internal consistency. In order to establish consistency, particularly for damages and compensations, the department should develop standard operating procedures for the Appraisal Review Section to follow in logging information on a project. This project log should enable a reviewer to check consistency across all parcels throughout the acquisition process.
2. The department should take action to improve consistency of its administrative settlements by



developing criteria that the Acquisition Section will use as the basis for settlements. The department should adopt standard operating procedures requiring formal documentation and justification for awarding administrative settlements.

3. The department and the Office of the Attorney General should develop procedures for more effectively monitoring fee attorneys' progress on eminent domain cases. These procedures should promote timeliness in obtaining titles and bringing closure to eminent domain cases. Although the department has modified its parcel tracking system to record filing information on eminent domain cases, the department has not transmitted this information to the Attorney General's Office.

In the event that the Attorney General's Office increases its reliance on fee attorneys, it should establish standard procedures that formally outline criteria for their selection.

4. The department should develop guidelines and specify conditions for awarding damages to property owners. The adoption of such guidelines would help to ensure consistency in project acquisitions. To ensure that it awards damages uniformly, the department should adopt policies to ensure that review appraisers give field appraisers guidelines before the appraisal process begins.
5. Although the department has taken some action to improve the clarity and content of information distributed in its "***Citizen's Right-of-Way Acquisition Guide***," it should take additional measures to inform property owners of their rights in the acquisition process. The department should:
  - insert a statement in its Guide that the department will accept and consider a private appraisal and determination of just compensation that the property owner obtains; and,
  - establish a toll-free number for property owners to contact with questions concerning right-of-way procedures and/or their parcel.
6. In light of the reduction in external oversight by federal authorities, the department should require that its Internal Audit Division annually sample parcel files to verify that the Right-of-Way Division follow department procedures to ensure consistency and fairness.

By December 31, 1999, the department should respond to PEER concerning its actions taken to address weaknesses identified in this report. If PEER finds that the department has not addressed weaknesses, the Legislature should adopt legislation requiring the department to improve administration of the acquisition process in the areas recommended above.

## Options for Legislative Action

Landowners in Mississippi who incur unforeseeable damages after condemnation suffer an uncompensable burden in that they have no remedy against the state for these damages. To address this problem, the Legislature has at least three options:

- create a statutory cause of action for unforeseeable damages;
- amend the Mississippi Tort Claims Act to allow remedies for unforeseeable damages; or,
- create an administrative claims settlement procedure within the Department of Transportation by amending MISS. CODE ANN. Section 65-1-8.

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# A Follow-up Review of the Mississippi Department of Transportation's Methods for Acquiring Right-of-Way Properties

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## Introduction

### Authority

In response to a legislative request, the PEER Committee authorized a follow-up review of PEER's 1994 *Performance Audit of the Mississippi Department of Transportation's Appraisal and Acquisition of Real Property for Right-of-Way*. PEER conducted this review pursuant to the authority granted by MISS. CODE ANN. § 5-3-57 et seq. (1972).

### Scope and Purpose

PEER sought to determine the extent to which the Department of Transportation has addressed weaknesses of the acquisition process found in PEER's 1994 review. The weaknesses included the Right-of-Way Division's:

- failure to develop or follow existing standard operating procedures for ensuring consistency in appraisals, administrative settlements (i.e., adjustments to the departments offer to the property owner) and damage awards;
- failure to monitor progress adequately on eminent domain cases;
- failure to communicate the acquisition process clearly and completely to citizens; and,
- failure to provide sufficient oversight to the acquisition process.

These weaknesses affect citizens' perceptions of fairness in the acquisition process. PEER also examined other conditions that surround the acquisition process and how they might affect citizens.

## Method

PEER followed up on conditions outlined in its 1994 performance audit and reviewed Mississippi and federal statutes, regulations, and policies guiding right-of-way acquisitions. PEER also interviewed personnel in the Department of Transportation's Right-of-Way Division, analyzed documents related to the acquisition process, and contacted surrounding states regarding their right-of-way practices.

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## Background

To construct state highways, the Department of Transportation must acquire any privately held property along the right-of-way of the planned road. The department accomplishes this by determining, through an appraisal, the fair market value of the property and negotiating with the owners a just price.

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 the department acquire rights-of-way of not less than sixty feet wide except within towns and cities, in which case the department is authorized to obtain such width, either wider or narrower than sixty feet, as it may deem necessary.

After the department conducts studies to determine which proposed route of a highway will serve the public in the best manner, the department holds a public hearing. Local residents and federal, state, and local officials express opinions concerning the proposed route. After considering these studies, the Transportation Commission usually approves the specific route of the project.

If approved, the Transportation Commission instructs the Right-of-Way Division to begin the property acquisition phase of a construction project. This is done 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, Right-of-Way 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 process is completed, the department can begin construction of the project.

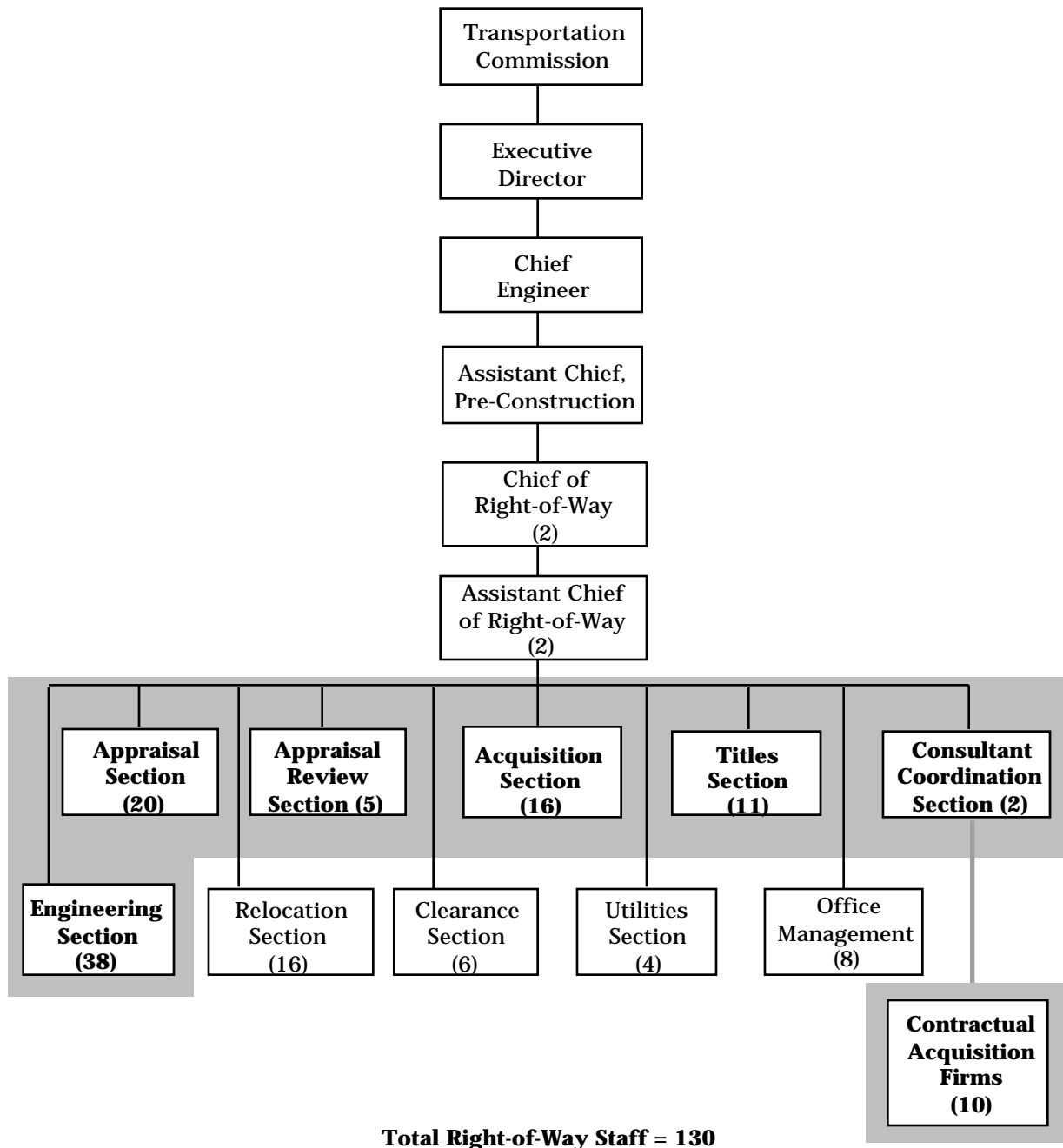
## Organization Structure of the Right-of-Way Division

The Right-of-Way Division consists of ten sections under the administration of the Chief of Right-of-Way and an assistant Chief of Right-of-Way (see Exhibit 1, page 5). Presented below is an overview of the sections primarily involved in property acquisition activities relevant to this report and the purpose of each:

- **Appraisal:** conduct site inspections of property and obtain records of comparable sales in the same geographical 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 the Appraisal Section for substance and form and establish the amount of the fair market value offer for real property.
- **Acquisition:** obtain 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.
- **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.
- **Consultant Coordination:** meet with consultants to define scope of work; serve as the liaison between consultants and section heads; prepare consultant contracts for commission approval; and, process consultants' billings.

Other right-of-way sections include Office Management, Relocation Assistance, Utility, and Clearance.

**Exhibit 1: Mississippi Department of Transportation, Right-of-Way Division  
Organization Chart, As of February 1999**



NOTES: Numbers in parentheses denote number of staff in each section.  
Highlighted functions are the focus of this review.

SOURCE: Right-of-Way Standard Operating Procedures and Staff List

## Appraisal Procedures of the Right-of-Way Division

### Initial Right-of-Way Appraisals

The Appraisal Section determines fair market value of property and provides information on the right-of-way process to landowners.

Exhibit 2, page 7, depicts Right-of-Way's procedures for obtaining needed right-of-way parcels. Once Right-of-Way receives project authorization from the Transportation Commission, Right-of-Way's Title Section prepares the necessary title and deed information. A Right-of-Way 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 the department encourages property owners to be present so that they may point out features or property improvements. The appraiser provides the owner with a copy of the *Citizen's Right of Way Acquisition Guide*, which explains the process the department will follow in acquiring the property and the basic rights of the property owner.

The department does not normally acquire entire tracts of land; rather, it acquires parcels of tracts. For a partial acquisition, the Right-of-Way Division appraises the entire tract to determine its fair market value before the department's proposed acquisition. The division 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 the department should provide as "just compensation"--payment for the fair market value of the property acquired, including damages to the remaining property.

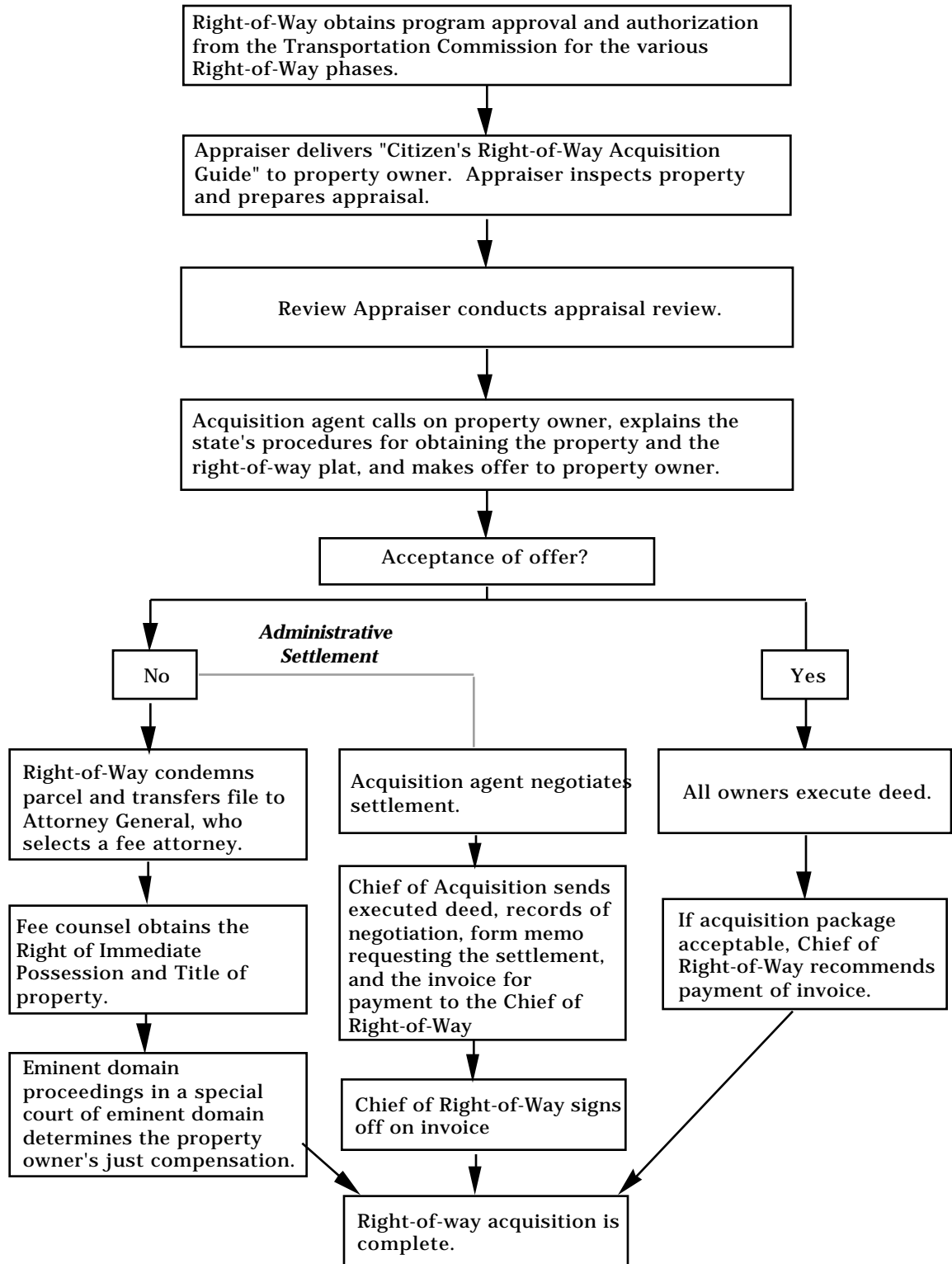
### Review of Right-of-Way Appraisals

Four review appraisers in the Appraisal Review Section work on a statewide basis to review initial right-of-way appraisals for just compensation.

The department's Appraisal Review Section, under the supervision of the Chief Review Appraiser, consists of four review appraisers who work on a statewide basis. The department'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 are responsible for reviewing each appraisal for compliance with the department's standard operating procedures and insuring 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 appraisers maintain logical consistency in their evaluations throughout an area or project. A Right-of-Way acquisition agent may not make a fair market value offer to a property owner until a review appraiser approves the fair market value.



**Exhibit 2: Right-of-Way Appraisal and Acquisition Procedures**



SOURCE: PEER analysis of Mississippi Department of Transportation's standard operating procedures.

## Acquisition Procedures of the Right-of-Way Division

### Unchallenged Acquisitions

The landowner may accept the department's offer of just compensation without challenge.

After a review appraiser approves the appraisal, an acquisition agent contacts the property owner to make a written fair market value offer which the department 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 the project requires. The acquisition agent may not offer the property owner any more than the amount of the written offer.

After consideration of the department'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. The department and the property owner will then negotiate an agreement as to a fair market value offer. One negotiation tool the department uses is an administrative settlement.

### Administrative Settlements

The landowner may present evidence to challenge the department's offer of just compensation and proceed to negotiation and possible administrative settlement.

The department utilizes administrative settlements to avoid condemning a right-of-way parcel and incurring expensive court costs. An administrative settlement is a negotiated agreement between the department and the property owner which results in the property owner signing the warranty deed. Standard operating procedures allow the Chief of Acquisitions to authorize an administrative settlement when such settlement is reasonable, prudent, and in the public interest.

The department 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 these situations, the property owner may believe that the department has not provided adequate compensation for these items. Standard operating procedures provide that after the negotiation of an administrative settlement, the Chief of Acquisitions 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 the department's granting of administrative settlements.

If the department and the property owner cannot reach agreement as to a fair market value offer through an administrative settlement, the department condemns the

parcel. The department will then initiate eminent domain proceedings against the property owner.

## Eminent Domain Proceedings

If negotiation fails, the department may condemn the parcel and initiate 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 the department 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 the department present arguments to justify their opinion as to the value of the property. A jury then determines the amount of money the owner should receive for the property.

It is sometimes necessary for the department 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 the department to obtain Right of Immediate Title and Possession in order to continue work on the highway project upon the department's deposit (to the court) of not less than 85% of a court-appointed appraiser's determination of just compensation. These funds are available to the property owner once they are deposited. The department makes supplemental payment to the property owner if the jury renders a decision of just compensation greater than that deposited with the court. If the jury award is less than the deposit, the property owner reimburses the department the difference.

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# Appraisal and Acquisition of Property

The Department of Transportation has not taken action to improve consistency of appraisals, administrative settlements, or damage awards to property owners by updating standard operating procedures, using checklists, and developing formal documentation when needed. Therefore, the acquisition process continues to allow for non-uniform practices which may lead to perceived or actual unfairness in the treatment of landowners.

## Ensuring Internal Project Consistency

### Consistency of Appraisals

#### *Promoting Consistency*

*The Department of Transportation has not addressed weaknesses that contribute to inconsistent property appraisals.*

The department's failure to provide appraisers with uniform appraisal guidelines and reviewers with standard review checklists compromises the department's ability to provide consistent appraisals.

The Right-of-Way Division employs review appraisers (or reviewers) who evaluate property appraisals conducted by the division's appraisers. Reviewers are also responsible for assuring internal project consistency. PEER's 1994 performance audit recommended that reviewers use a checklist of appraisal components (e.g., property sketches, comparable sales, zoning information, or site descriptions) and compensable items during the review to help ensure that appraisals are thorough and uniform. Compensable items may include items such as landscaping, mailboxes, trees, and fencing that may have market value. Although most appraisals met minimum requirements, PEER found in 1994 that more thoroughness and uniformity in appraisals would improve the consistency of the acquisition process and would increase the public's perception that the process is fair.

This review found that the department has not implemented PEER's 1994 recommendations designed to improve consistency in the appraisal process by:

1. Requiring review appraisers to use a checklist of appraisal components when conducting appraisal reviews.
2. Developing a standard checklist of compensable items.
3. Requiring reviewers to log characteristics and compensation for parcels on a project basis to ensure internal consistency.

Rather than using a formal, written checklist when reviewing appraisals, reviewers check appraisal forms for technical deficiencies. If deficiencies exist, reviewers write a deficiency report and return the appraisal for correction. If the reviewer finds no such deficiencies, the reviewer approves the appraisal as the basis for the fair market value offer to the property owner. Checklists would help ensure internal project consistency as well as consistency from one reviewer to the next, thereby also ensuring consistency across projects. Although the Chief of Right-of-Way believes he can develop a list of non-compensables, the department has not taken any action to compile such a list.

The department's failure to implement a procedure for logging appraisal information on a project basis compromises its ability to insure consistency in handling damages and compensation.

PEER's 1994 review showed that the Appraisal Review Section needed standard operating procedures for logging information on a project in order to establish consistency, particularly for damages and compensation. The Appraisal Review section maintains that it uses the same method of logging that was in use during PEER's 1994 review. However, PEER concludes that the current logging method is merely a record-keeping device, since individual parcels are sent to Acquisitions as reviewers approve each appraisal. Right-of-Way neither requires use of the log nor its filing with the project. Although reviewers go to each project site and inspect parcels, methods for ensuring consistency within a project are reviewer-dependent. Some reviewers make notes on project plats while others maintain a written project log of actions. Although the Chief of the Right-of-Way Division stated that he prefers parcel characteristics noted on the plats, the department has not established a consistent method that requires uniform recording of information in an easily accessible form.

Methods of ensuring consistency are important, particularly because projects conducted by in-house staff tend to have four to five appraisers. All reviewers stated that their primary method for ensuring internal consistency is through meetings at the beginning of a project with appraisers under their supervision. Reviewers stated that they answer all questions and review standards and expectations with the appraisers. The reviewers also stated that deadline pressures require having more than one or two staff appraisers on a project, which allows for more variance in appraisals. Requiring the use of a true project log which conveys easily accessible, relevant information would enable a reviewer to check consistency across parcels throughout the acquisition process.

## ***Reviewing Consulting Acquisition Firms***

Increased use of consulting acquisition firms increases the need for uniform right-of-way acquisition procedures.

In 1998, the department began distributing right-of-way acquisition work to selected private consultants. PEER reviewed the administration and selection of consultants to determine whether the process is fair and by what standards the department binds consultants (see Appendix, page 27). Although the department requires that all consultants follow its standard operating procedures regarding right-of-way acquisitions, these firms are also subject to identified weaknesses in insuring consistency. Right-of-Way personnel orient consulting firms to their procedures.

Departmental supervisors also maintain a close working relationship with the consultants by helping with problematic acquisitions. This relationship is particularly important with appraisal reviews, since allowable damages and compensables vary from state to state and many of the private contractual firms are from other states. Appraisals of consulting appraisers require careful review by in-house appraisal reviewers regarding damages.

## **Consistency of Administrative Settlements**

***The Department of Transportation has not taken action to improve consistency of its administrative settlements by formally documenting and justifying its reasoning in individual cases.***

The department's failure to use standard criteria in awarding administrative settlements contributes to inconsistency in treatment of landowners and could expose the state to additional costs.

When acquisition agents meet with the property owner to make a fair market value offer, the property owner may or may not accept the offer as just compensation. The Right-of-Way Division allows the Chief of Acquisitions to determine whether negotiations with the property owner are advisable. If so, the Acquisition Section may adjust the offer through an administrative settlement to avoid court costs.

PEER's 1994 review found that administrative settlements lacked formality and explicit justifications. The department made the majority of settlements in order to meet the owners' desired amounts of compensation. Therefore, the possibility existed for excessive departmental expenditures, as well as non-uniform settlements among property owners. For example, PEER's 1994 review noted that, "[The Department of Transportation's] inconsistency in awarding administrative settlements could cause a [right-of-way] project to cost [the department] 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."

The department did not implement PEER's recommendation that criteria based on standard operating procedures for

awarding administrative settlements be outlined and made the basis for settlements. However, the memo that the Chief of Acquisitions sends to the Chief of the Right-of-Way Division to request an administrative settlement now includes a sentence containing the reason for the request. The division will more readily know the reason for a settlement; however, inconsistency in awarding settlements still could exist.

## Monitoring Eminent Domain Cases

***The Department of Transportation and the Office of the Attorney General have not developed procedures with which to monitor fee attorneys' progress in obtaining titles and bringing eminent domain cases to closure in a more timely manner.***

Fee attorneys represent the department in property acquisition cases it settles in court--eminent domain or condemnation proceedings. PEER found in 1994 that these fee attorneys were not bringing closure to cases in a timely manner. In order to monitor fee attorneys more effectively, the Department of Transportation should have provided reports to the Office of the Attorney General, which is responsible for selecting fee attorneys within the locale of the case and monitoring their billings, to help track fee attorneys' progress on cases.

The Department of Transportation does not provide detailed data pertaining to time spent on cases in its monthly reports to the Attorney General's Office.

PEER's 1994 review made two recommendations to help remedy this problem. One recommendation was that the department's Eminent Domain Section modify its parcel tracking system to report the length of time since a fee attorney's last action on a case. This type of report would assist the Attorney General's Office in using the leverage it has on the productivity of fee attorneys by tying their payments to services rendered. The department has made efforts to keep better records of fee attorneys' actions on eminent domain cases by making daily updates in its parcel tracking system. However, the department does not provide detailed data pertaining to time on cases in its monthly reports to the Attorney General's office. Therefore, the Attorney General lacks sufficient information regarding the performance of fee attorneys and bills fee attorneys submit.

Another PEER recommendation was that the Attorney General's Office develop standard operating procedures for selecting fee attorneys. PEER suggested this because none existed. The Office of the Attorney General has not implemented this recommendation. The Attorney General has stated that although no formal standard operating procedures exist, his office selects fee attorneys based on experience, proximity, "trust," and efficiency. According to departmental officials, the department's staff also plays a role in the selection by advising the Attorney General's office on previous work of fee attorneys. The Attorney General and the Eminent Domain

Coordinator both stated that they use telephone contact as the method for monitoring the progress of fee attorneys.

A March 1999 Mississippi Supreme Court ruling that Mississippi's "quick take" law is unconstitutional increases the importance of monitoring the progress of fee attorneys in processing eminent domain cases.

The issue of monitoring fee attorneys' progress has recently increased in importance because of the Mississippi Supreme Court's March 1999 ruling that the state's "quick take" law granting specific authority to the department (CODE Section 65-1-301 to -347) is unconstitutional. This opinion declared that portions of the law did not adequately protect the property owner's rights to due process by allowing the owner to contest the "public need" of the taking. Passed by the Legislature in 1997, the quick take law allowed the department to take property without delay and reduced the need for fee attorneys in cases which property owners did not contest. (PEER's 1994 review had found that the Department of Transportation had let contracts for road construction projects prior to obtaining all titles or rights to title for condemned properties, a practice which put the department in an awkward position with contractors by delaying construction as well as creating additional costs. The quick take law subsequently passed gave the department more control over obtaining title to property prior to construction.)

Because the Supreme Court has ruled that the quick take law violates citizens' right to due process and that citizens should have the right to question whether the taking of their property is for public use, the department must now return to basing its condemnations on MISS. CODE ANN. Sections 11-27-81 through 11-27-87 (which govern the department's process for gaining possession, with title to be granted subsequent to a hearing). The department will have greater reliance on fee attorneys to obtain its right to title and additional time will be required for the Court to appoint a disinterested appraiser to conduct an independent appraisal of the condemned property and to consider arguments for its "public use."

## Awarding Damages to Property Owners

***The Department of Transportation has not taken action to develop guidelines and specify conditions for awarding damages to property owners in a "partial take" acquisition.***

There are two types of acquisitions--a total take and a partial take. A total take normally results in purchasing an entire parcel from a property owner, while a partial take leaves a remaining piece of the property to the owner and results in the possibility of damages. The awarding of damages in such cases requires that appraisers conduct "before" and "after" estimates of land value. Appraisers estimate the value of property taken by computing the difference between the value of the property before the taking and the value of the owner's remaining property after the taking. Appraisers consider any damage awards in deriving the "after" value.



In partial takes, appraisers rely on their personal knowledge of types of damages and use this knowledge for guidance on which damages to award. According to the department's reviewers, the appraisers estimate three types of damages:

- severance damages occur when a road splits property into two parts;
- proximity damages are awarded when the closeness of the road reduces the market value of houses, commercial buildings, or other structures; and,
- consequential damages comprise a broad class of damages that result from road construction near acquired property. An example of consequential damage would be restoring a dam to property that once had a pond.

## **Inconsistent Compensation for Damages Resulting from Acquisition**

PEER's 1994 review found that the department was inconsistent in compensating property owners for damages due to increased highway proximity and destruction of landscaping and fencing. The department compensated some property owners, but not others. PEER found that the department should document the guidelines and conditions for awarding damages and develop better methods to ensure consistency in project acquisitions.

Current methods of logging damages limit comparison of damages throughout the project.

This follow-up found that the department has not developed and implemented guidelines to insure consistency in making damage awards. Reviewers continue to log compensated damages by project under a comments column, which makes retrieval and comparison of information difficult. Furthermore, the current method of logging damages after reviewers receive parcel appraisals from appraisers does not adequately address inconsistencies because it limits comparison of damages throughout a project.

## Inability to Recover Future Damages in Mississippi

Current Mississippi law does not allow property owners to recover unforeseen damages after the conclusion of an eminent domain case.

Once the roadway has been constructed, actual damages to remaining property could occur that were not foreseen by the department or the property owner. An issue of fairness arises because Mississippi property owners are restricted in their rights to recover such unforeseen damages after the conclusion of an eminent domain case. Current Mississippi case law imposes a harsh burden on landowners who do not prove all their damages, even unforeseeable ones, in the initial eminent domain proceeding. Further, Mississippi lacks administrative procedures for settlement of claims for unforeseeable damages.

Since the Mississippi Supreme Court's 1992 decision in *King v. Mississippi State Highway Commission*, 609 So. 2d. 1251 (Miss. 1992), Mississippi law has barred the recovery of damages to property that has been the subject of a partial condemnation; hence all damages must be sought and obtained in the initial eminent domain proceeding. This doctrine precludes suit for damages that could not have been reasonably foreseen at the time of the condemnation proceeding on the court's application of the doctrine of *res judicata*. Res judicata is a procedural doctrine that requires that all claims between the same parties arising out of the same cause of action be brought in one proceeding. While all jurisdictions in the United States apply the doctrine of res judicata, some are more liberal in allowing subsequent inverse condemnation proceedings against the state in cases for damages that the plaintiff could not have reasonably foreseen at the time of the original condemnation proceeding.

Without a change in the court's opinion, any change in a citizen's right to sue for unforeseen damages would require a change in state law. In addition to judicial remedies, some surrounding states allow citizens an administrative remedy to recover unforeseen damages.

## Judicial Remedies for Recovery of Future Damages

Among the surrounding states, Louisiana and Tennessee provide judicial remedy for recovery of unforeseen damages.

The following is a discussion of the surrounding states' application of the doctrine of res judicata in inverse condemnation proceedings for unforeseen damages.

In Alabama, there are no reported decisions in its Supreme Court dealing with this issue. In Arkansas, ARKANSAS CONSTITUTION, Article 5, Section 20, would bar any suit for unforeseeable damages in an Arkansas court.

In Louisiana, res judicata would bar future actions that deal with issues already litigated between the same parties (see *Ortego v. Louisiana Department of Transportation*, 689 So 2d.

1358 [La. 1997]). While the *Ortego* case would bar recovery in a suit for inverse condemnation, certain features of Louisiana civilian legal doctrine would allow suits for recovery of damages similar to those suffered by the Kings without the use of an inverse condemnation proceeding. Article 667 of the Louisiana Civil Code has historically allowed for strict liability recovery against landowners who use their lands so as to deprive adjacent landowners of the use and enjoyment of their lands. Such actions do not require proof of negligence. Historically a case could be made under Article 667 by showing that an act of a landowner was the proximate cause of injury to an adjacent landowner. Recent amendments to Article 667 have weakened the strict liability doctrine somewhat but still make it available for damages caused by blasting and pile driving.

Tennessee case law specifically permits persons who have been parties in a condemnation proceeding to bring a subsequent action for unforeseen damages. In *Jones v. Oman et al*, 184 SW 2d. 568 (Tenn App, 1944) and *Fuller v. City of Chattanooga*, 118 SW 2d. 886 (Tenn App, 1938) the Tennessee Court of Appeals adopted the general rule of res judicata that all matters which were litigated in the condemnation proceedings, or might have been litigated in such proceedings, are barred from future litigation, but that actions for damages which could not have been foreseen or would have been matters of conjecture at the time of the eminent domain proceeding are not barred from future suit. Thus persons who were parties to an eminent domain proceeding could bring a subsequent action for inverse condemnation, including unforeseeable damages, if they could show that the damages sought could not have been anticipated or would have been considered conjectural in the first action.

## Administrative Remedies for Recovery of Future Damages

Among the surrounding states, Alabama and Arkansas provide administrative remedy for recovery of unforeseen damages.

Both Alabama and Arkansas have claims commissions which may hear a variety of cases in which petitioners allege that they have been wronged by the state. The Arkansas State Claims Commission has jurisdiction to hear cases for unforeseen damages to property which was partially condemned in an earlier eminent domain proceeding. Thus a case for flooding which could not have been foreseen at the time of the taking could be filed against the state in the claims commission. There is no damage cap applicable to the awards of the commission.

Alabama has a State Board of Adjustment which may hear claims brought by parties who have suffered damage as a result of state action. The rules of the Board of Adjustment do not require that a petitioner establish a legal right to make a recovery. The board may recommend payment of settlements

if it determines that the state is morally obligated to compensate an injured person for damages. The board may hear cases for unforeseen damages following a condemnation proceeding.

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# The Acquisition Guide for Property Owners

Although the Department of Transportation has taken action to improve the clarity and content of information distributed, guidelines still do not inform property owners that the department will consider independent appraisals. The department has not chosen to provide a toll-free number for contacting the department.

In 1994, PEER found that the Acquisition Guide did not fully inform citizens of their rights in the acquisition process and the procedures involved. During PEER's 1994 review, property owners stated that their attempts to have questions answered by writing to the department proved ineffective.

PEER recommended that rights be more fully communicated and the acquisition process be developed into a flowchart to assist property owners in their understanding of appraisal and acquisition procedures. PEER's 1994 review also recommended that the department provide a toll-free number in the Guide so that property owners could readily have questions answered regarding the process.

This follow-up review finds that the department improved the clarity and content of information it distributes by implementing the following recommendations regarding the Guide:

- (1) including a flowchart of the acquisition process; and,
- (2) including a description of the process for conducting a court-appointed appraisal and the fact that the department may be required to deposit 85% of that amount in court for cases that involve condemned property.

However, the department has not improved the Guide by implementing two other recommendations: providing additional information to property owners that explains the department will consider appraisals from property owners, and establishing a toll-free number.

Areas of the Acquisition Guide that the department has revised are noteworthy. However, the Guide could better inform citizens of their rights in the acquisition process by addressing the areas the department did not implement. In 1994, PEER recommended that the department:

- (1) insert a statement in its Guide that the department will accept and consider a private appraisal and determination of just compensation which is obtained by the property owner, and

- (2) establish a toll-free number for property owners to contact with questions concerning right-of-way procedures and/or their parcel.

Review appraisers stated that they consider appraisals provided by property owners, particularly when they have questions about how the Department of Transportation's appraisers arrived at their estimate. Yet, the Guide only requests that "property owners give the appraiser whatever information they feel will be helpful." The Chief of the Right-of-Way Division stated that property owners should use the local number provided in the Guide as the first line of contact for their questions.

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## Internal and External Oversight

Reductions in internal and external oversight of the acquisition process weaken assurances of consistency and fairness.

### Failure to Exercise Internal Audit Oversight

*The department's Internal Audit Division has not audited the Right-of-Way Division annually, as PEER recommended in 1994.*

Although the Internal Audit Division of the Department of Transportation had audited the Right-of-Way Division prior to PEER's 1994 review, it had not provided oversight of the acquisition process. PEER's 1994 review recommended that the department's Internal Audit Division annually review a random sample of parcel files to verify that department procedures are followed concerning the contents of appraisal and parcel files. This follow-up review found that the Internal Audit Division does not annually sample parcel files for completeness.

The lack of annual audits of the Right-of-Way acquisition process creates more potential for the division to apply acquisition standards inconsistently. Also, the need for internal audits of the acquisition process has increased due to a reduction in external oversight by federal authorities.

### Reduction of External Oversight Efforts

*In 1998, the Federal Highway Administration reduced its oversight of Mississippi highway projects by exempting projects costing less than \$5 million.*

During the follow-up, PEER found that in November 1998, the Federal Highway Administration reduced its oversight of non-interstate national highway system projects that cost under \$5 million. Because of this reduction, these projects that were regularly overseen by federal authorities will no longer benefit from this external review unless complaints arise. This reduction in federal oversight creates a greater need for the department to monitor projects to assure adherence to standards of procedure.

The Federal Highway Administration has never provided oversight of projects that are state funded. According to the department, approximately three-fourths of projects do not rely on federal funds.

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## Recommendations

Improvements in guidelines and standard operating procedures are needed to assure consistency and fairness.

Before December 31, 1999, the department should adopt measures to improve operating procedures for consistent and uniform property appraisals and administrative settlements, improve oversight of property acquisitions, provide clear and complete information to property owners, and ensure that it promotes timeliness in bringing closure to eminent domain cases and obtaining titles.

1. The department should address weaknesses that contribute to inconsistent property appraisals by:
  - requiring review appraisers to use a checklist of appraisal components when conducting appraisal reviews.
  - developing a standard checklist of compensable items.
  - requiring reviewers to log characteristics and compensation for parcels on a project basis to ensure internal consistency. In order to establish consistency, particularly for damages and compensations, the department should develop standard operating procedures for the Appraisal Review Section to follow in logging information on a project. This project log should enable a reviewer to check consistency across all parcels throughout the acquisition process.
2. The department should take action to improve consistency of its administrative settlements by developing criteria that the Acquisition Section will use as the basis for settlements. The department should adopt standard operating procedures requiring formal documentation and justification for awarding administrative settlements.
3. The department and the Office of the Attorney General should develop procedures for more effectively monitoring fee attorneys' progress on eminent domain cases. These procedures should promote timeliness in obtaining titles and bringing closure to eminent domain cases. Although the department has modified its parcel tracking system to record filing information on eminent domain cases, the department has not transmitted this information to the Attorney General's Office.

Improved monitoring of fee attorneys is needed to increase assurance of timely acquisition of property.



In the event that the Attorney General's Office increases its reliance on fee attorneys, it should establish standard procedures that formally outline criteria for their selection.

4. The department should develop guidelines and specify conditions for awarding damages to property owners. The adoption of such guidelines would help to ensure consistency in project acquisitions. To ensure that it awards damages uniformly, the department should adopt policies to ensure that review appraisers give field appraisers guidelines before the appraisal process begins.
5. Although the department has taken some action to improve the clarity and content of information distributed in its *Citizen's Right-of-Way Acquisition Guide*, it should take additional measures to inform property owners of their rights in the acquisition process. The department should:
  - insert a statement in its Guide that the department will accept and consider a private appraisal and determination of just compensation that the property owner obtains; and,
  - establish a toll-free number for property owners to contact with questions concerning right-of-way procedures and/or their parcel.
6. In light of the reduction in external oversight by federal authorities, the department should require that its Internal Audit Division annually sample parcel files to verify that the Right-of-Way Division follow department procedures to ensure consistency and fairness.

Periodic oversight of the acquisition process is needed to increase assurance of consistency and fairness.

By December 31, 1999, the department should respond to PEER concerning actions taken to address weaknesses identified in this report. If PEER finds that the department has not addressed weaknesses, the Legislature should adopt legislation requiring the department to improve administration of the acquisition process in the areas recommended above.

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## Policy Options for Legislative Action

Landowners in Mississippi who incur unforeseeable damages after condemnation suffer an uncompensable burden in that they have no remedy against the state for these damages. This is well established in case law (see page 16). To address this problem, the Legislature has at least three options:

### **Option One: Create a Statutory Cause of Action for Unforeseeable Damages**

*King v. Mississippi State Highway Department* could be overruled by legislation specifically allowing eminent domain parties to sue for unforeseeable damages.

The Legislature could pass legislation which would effectively overrule the Mississippi Supreme Court's ruling in *King v. Mississippi Highway Department*, supra, by enacting legislation allowing past eminent domain parties who suffer unforeseeable damages to their property to bring an action in circuit court to recover their unforeseeable damages.

While this would provide injured parties with a remedy for their injuries, PEER cannot project the potential costs to the state for paying such recoveries because there is no basis for projecting how much damage such persons have suffered in the past. A judicial remedy such as this would require that the state expend resources defending a lawsuit should persons file actions. These costs are likewise indeterminate because of the lack of experience upon which costs of litigation could be estimated. In conducting research on this matter, PEER determined that Tennessee, which allows suits for unforeseeable damages, only has about four such suits per year.

### **Option Two: Amend the Mississippi Tort Claims Act to Allow Remedy for Unforeseeable Damages**

The Tort Claims Board, an existing administrative body which reviews claims against the state, could determine unforeseeable damages at costs potentially less than those of litigation.

Since 1993, the State of Mississippi has had in place an administrative claims adjudicative body known as the Tort Claims Board (MISS. CODE ANN. Section 11-46-18 and 11-46-19). This board reviews claims made against the state for damages arising out of the negligence of the state, and either approves an award of damages or oversees litigation in matters in which an administrative settlement cannot be reached.

While unforeseeable damages would not necessarily be a result of the state's negligence, the Legislature could amend the Tort Claims Act to give the board jurisdiction over this type of civil claim and thereby provide injured parties the benefits

of a remedy administered through an administrative body skilled in reviewing claims against the state. The use of an administrative body for claims review could also lessen the state's costs in handling claims because administrative procedures are generally less expensive to all parties than court proceedings. This would not, however, eliminate the possibility that claims for unforeseeable damages would not ultimately be brought in the courts. Generally, tort claims can be brought against the state and its subdivisions if settlements cannot be achieved through the board. In cases in which administrative settlements cannot be achieved, it is likely that litigation will follow.

### **Option 3: Create an Administrative Claims Settlement Procedure Within the Department of Transportation**

A departmental claims adjudication procedure could provide the state with an expeditious, economical method for dealing with unforeseen damages. However, the impartiality of the department as an adjudicative body could be questioned.

The Legislature could enact legislation amending MISS. CODE ANN. Section 65-1-8, providing an administrative claims adjudication procedure for unforeseen damage claims within the Department of Transportation. Such a procedure might entail the appointment of a body of departmental employees who could hear a damage claim and recommend payment to the entire Transportation Commission. The commission could then render a final decision on the evidence presented to the department. Such a procedure could provide potential plaintiffs and the department with an expeditious and economical procedure for dealing with such claims. A major weakness of this method is that as an interested party, the Department of Transportation would be involved in the adjudication of the dispute, thus necessitating judicial oversight of the process in order to insure fairness.

While such an administrative procedure could be implemented, the presence of the department in the adjudicative process might cause plaintiffs to pursue court appeals if they feel that a disinterested judicial body would provide them with the impartiality that a departmentally controlled procedure would lack. Under such an arrangement, the efficiency of an administrative proceeding, which is generally less expensive for all parties than court procedures, might be lost.

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## Appendix:

# The Department of Transportation's Process for Selecting Consulting Acquisition Firms

In 1998, the Department of Transportation selected private acquisition firms by sending out a request for proposals (RFP) for the purpose of developing a pre-qualified list of consultants. Right-of-Way assigns work to the private acquisition firms based on the capacity of the firm (defined by number of permanent staff) and the availability of the firm at the time the department needs its assistance.

### Development of Selection Pool

The Chief Engineer advertised requests for proposals for right-of-way acquisition work in the *Clarion-Ledger* during May 1998. The Consultant Coordinator also mailed notices to firms who had previously expressed interest in right-of-way acquisition work.

### Selection Criteria

The department rated firms on six qualifying dimensions: Quality of the Principal in Charge, Appraisal, Acquisition, Relocation, Clearance, and Title. Although the rating process specified categories, evaluations were subject to inconsistency because the Chief of the Right-of-Way Division communicated instructions verbally to the raters. The process did not include written definitions of the qualities upon which the raters based their judgments. Written definitions help ensure the validity and reliability of the ratings. The Chief of the Right-of-Way Division stated that the raters based their ratings on whether the firms provided documentation of their experience and capability in the above services.

If the department had excluded firms on the basis of such weakly defined criteria, their selection method would not have assured an accurate and consistent assessment of firms' capabilities. However, the department's method did not exclude any of the ten firms responding to the RFP.

## **Raters**

Three Right-of-Way section heads and the Chief of the Right-of-Way Division served as raters. The raters judged the dimensions on a scale of one to ten, with ten being the highest. Right-of-Way gave each of the six dimensions varying weights. Appraisal had the highest proportion of significance in the acquisition process with a weight of 0.30.

## **Selection Committee**

The Chief of Right-of-Way, the Assistant Chief Engineer, and the Department of Transportation's Civil Rights Attorney served on the selection committee. This committee questioned the raters about their ratings, and considered the raters' recommendations as to which firms they believed to be best qualified.

## **Hiring Ratio**

According to department officials, the department accepted all applicants due to the increased demand to complete right-of-way acquisitions. The Transportation Commission approved hiring all applicants at its May 26, 1998, meeting. The department approved one Mississippi firm and nine out-of-state firms to acquire right-of-way property. Of the ten applicants responding to the RFP, Right-of-Way has used all to provide acquisition services.

## **Distribution of Work Assignments**

The department contracted with the acquisition firms for two years with an option to renew for a third. The department has hired all ten to perform acquisition services on projects since it administered the selection process. During calendar year 1998, consultants acquired 703 parcels under warranty deeds, while in-house staff acquired 1,014 parcels under warranty deeds.

## **Compensation**

The department has compensated the private acquisition firms by the number of parcels they acquire.

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# Agency Responses

**Zack Stewart**  
Northern District Commissioner

**Dick Hall**  
Central District Commissioner

**Wayne H. Brown**  
Southern District Commissioner



**Kenneth I. Warren**  
Executive Director

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

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

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May 11, 1999

Mr. Sam Dawkins  
Evaluation Division Manager  
PEER Committee  
Post Office Box 1204  
Jackson, MS 39215



RE: Follow-up Review of the Mississippi Department of Transportation's Methods for Acquiring Right-of-Way Properties

Dear Mr. Dawkins:

The Mississippi Department of Transportation (MDOT) acquired 6,393 parcels between 1995 and 1998. The aggressive legislated construction program (AHEAD) passed in 1987 and the Gaming Program substantially increased acquisition workload while the mandated reduction in work force resulted in a higher case load per Right of Way (ROW) worker. Nationwide statistics gathered by the Federal Highway Administration (FHWA) show that since 1995, MDOT's Right of Way workload has been one of the largest when compared to all 50 states. In most categories, including number of parcels, displaced persons, and parcels acquired with purely state funds, MDOT has ranked in the top 5. Only California, Texas, and North Carolina consistently move more homes and businesses than Mississippi, and their number of employees dwarf MDOT's.

Although we do not agree that our process is "inconsistent and unfair", we have recognized since the 1994 report that our process can be improved. We believe steps have been taken to address alleged inconsistencies and improve (fairness) public awareness of the process.

In order to deliver projects on schedule it has been necessary to supplement in-house efforts with private firms. We agree that monitoring those firms to ensure consistency and fairness has placed an additional burden on the staff of the ROW Division. However, the MDOT continues to perform reviews of all appraisals and relocation assistance offers in an effort to assure consistency. Additionally, all appraisals are performed by licensed appraisers.

The process meets the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Federal Standard) and is monitored by FHWA. The same process is used for state and Federal projects, whether or not exempted from Federal oversight.

We are currently processing an agreement with a nationally recognized management consultant experienced in State/DOT ROW processes to review and evaluate our procedures. The recommendations of both the 1994 and 1999 report will be considered in the process review.

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Mr. Sam Dawkins  
Page 2  
May 11, 1999

The measures adopted from the consultant's recommendation will be implemented as soon as possible. We estimate that revised Standard Operating Procedure will not be fully implemented in eight months.

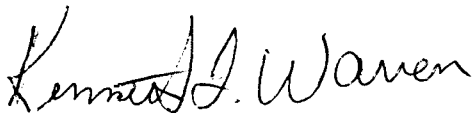
Specific comments to the recommendations are as follows:

- Items 1 and 4 - Improving the documentation procedures to address the perception of inconsistencies is our goal. The recommendation in the report, such as a checklist, will be one of the procedures our Consultant will be directed to evaluate.
- Item 2 - Administrative settlements are subjective. Factors other than differences of appraisals such as litigation cost, construction schedules, etc. often come into consideration. This dissimilarity of cases statewide prohibits totally eliminating the perception of inconsistency. Our objective will be to assure that our process meets standard practice.
- Item 3 - ROW/Division Staff meet regularly to review court cases. Final court dates are beyond our control. These comments have been referred to the Attorney General's Office.
- Item 5 - The suggestions regarding improvement to the "Citizens Right-of-Way Acquisition Guide" and a toll-free number will be considered. A "toll-free" call regarding process has merit; however, if it is used for specific questions about a file in negotiation the person on our end of the call will be unfamiliar with the case. The agent in the field is the most knowledgeable of case details.
- Item 6 - The current oversight initiative by the FHWA is not considered a significant factor. Our procedures are the same for all acquisitions. Processes are audited. The recommendation will be reviewed with the Audit Division.

Our procedures are in compliance with current state statutes. In the event the Legislature considers the proposed Policy Options for Legislative Action, we will contribute in anyway deemed beneficial (e.g. provide information/statistics, participate in discussion, etc.).

The MDOT recognizes the burden faced by the citizens impacted by transportation projects. Our staff seeks to be fair and as cooperative as the schedule will permit, in all negotiations.

Sincerely,



Kenneth I. Warren  
Executive Director

KIW:WTR:clp

STATE OF MISSISSIPPI



OFFICE OF THE ATTORNEY GENERAL

MIKE MOORE  
ATTORNEY GENERAL

May 28, 1999



Mr. Sam Dawkins  
Evaluation Division Manager  
PEER Committee  
Post Office Box 1204  
Jackson, MS 39215

Re: Follow-up Review of the Mississippi Department of Transportation's Methods for  
Acquiring Right-of-Way Properties

Dear Mr. Dawkins:

This is in response to Item 3 in PEER'S recommendations in the above cited report which reads as follows:

*The department and the Office of the Attorney General should develop procedures for more effectively monitoring fee attorneys' progress on eminent domain cases. These procedures should promote timeliness in obtaining titles and bringing closure to eminent domain cases. Although the department has modified its parcel tracking system to record filing information on eminent domain cases, the department has not transmitted this information to the Attorney General's Office.*

*In the event that the Attorney General's office increases its reliance on fee attorneys, it should establish standard procedures that formally outline criteria for their selection.*

The Office of the Attorney General appreciates the time and effort expended in the review of the eminent domain process. We agree that additions to the monitoring system should be put into effect. I am requesting, by copy of this letter to the Mississippi Department of Transportation that the necessary personnel in the Office of the Attorney General be given computer access to the parcel tracking system. I am further requesting that the system be modified to produce a report of all eminent domain cases in which no right of immediate title and possession has been obtained within 90 days of the initial filing of pleadings. Also, the system



should be further modified to produce a report of all cases which are more than six months past this filing date and in which no trial date has been set.

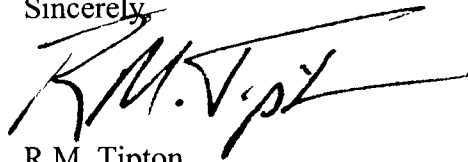
With regard to your suggestion that the Attorney General's office establish standard procedures that formally outline criteria for their selection, be advised that we will use the following criteria for the selection of its fee attorneys in the area of eminent domain:

1. Experience in the field of eminent domain.
2. General proximity to the property being taken, or familiarity with the local.
3. Trial ability.
4. Trustworthiness.
5. Timeliness of past performance.
6. Compatibility with the Client (MDOT).
7. Reasonableness of past billing practices.
8. Willingness to work for the set hourly rate.
9. Lack of any conflict of interest.

I believe that these criteria are sufficient for the selection of attorneys, especially in light of the fact that all such attorneys serve at the will and pleasure of the Attorney General, and may be removed from representation if warranted.

Again, let me thank you for your efforts on behalf of the taxpayers of the State of Mississippi and the courtesy of your staff while conducting this inquiry. The Office of the Attorney General will continue cooperate with MDOT to make this process work for the public in a cost efficient and well managed manner. Please contact me if you have any further questions or suggestions.

Sincerely,

A handwritten signature in black ink, appearing to read "R.M. Tipton", with a long horizontal flourish extending to the right.

R.M. Tipton  
Special Assistant Attorney General

cc: Executive Director, MDOT

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