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A comparative analysis of right of way acquisitions and settlements between the South Carolina Department of Transportation right of way agents versus consultant right of way agents within Beaufort and Jasper Counties

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**A COMPARATIVE ANALYSIS OF RIGHT OF WAY ACQUISITIONS AND
SETTLEMENTS BETWEEN THE SOUTH CAROLINA DEPARTMENT OF
TRANSPORTATION RIGHT OF WAY AGENTS VERSUS CONSULTANT
RIGHT OF WAY AGENTS WITHIN BEAUFORT AND JASPER COUNTIES**

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STATE DOCUMENTS

AN ACQUISITION AND SETTLEMENT ANALYSIS
BETWEEN THE SCDOT AND CONSULTANTS

Right of way is a unit within the Engineering Pre-construction Division of the South Carolina Department of Transportation. Right of Way's primary purpose (mission) is to secure legal access to real estate property for the construction and maintenance of roads for a statewide highway system. South Carolina is divided into two regions for the purpose of assigning projects to accomplish the Right of Way mission: Western region and an Eastern region. Both the Eastern and Western regions comprise twenty-three counties. (Exhibit A).

Within the hierarchy of the Right of way region, there are number of middle managers whose responsibility is to manage the right of way program within that area. (See organizational chart – Exhibit B) Assisting with the day-to-day and long-range goals are two Team Managers whose responsibility is to manage the right of way program within that geographical area of the state. (Exhibit A1 and A2) Responsibilities of the Team Manager are to supervise the front line agents in their negotiating and purchase of legal access to properties for construction. Another primary function of the Team Manager is to evaluate and approve counter-offers presented to the line right of way agent by landowners.

It is at this level where an opportunity exists for the South Carolina Department of Transportation to reduce the cost of having to exercise the power of Eminent Domain.

Eminent Domain as defined by Blacks Law Dictionary is the “ The power to take private property for public use by the state, municipalities, and private persons or corporations authorized to exercise functions of character.”¹

Agents during the acquisition process are responsible for contacting landowners to explain the appraisal and acquisition process prior to a purchase of their property. Federal law 49 CFR parts 24 (24.101, 24.102 and 24.103) requires that a landowner must be offered the appraised amount. Properties for purchase are appraised using one of the three methods of appraising land: **Sales Approach, Cost Approach** and the **Income Approach**. In each of the approaches to determining land values, an appraiser is responsible for arriving at a value based on one of the three methods through the collection of data. Once a value is determined, reviewed and approved, a Review Appraiser will authorize the Right of Way agent to make a monetary offer based on the appraisal to the landowner. In most situations a monetary figure is presented to the landowner. However, on a few occasions the landowner will not be compensated by virtue of the benefits of the acquisition exceeds any monetary compensation. The value of the property is perceived to have a higher land value presently than the property in the before situation prior to the road project. This is known as Benefits Exceeding Damages.

“Benefits: In eminent domain valuation, the advantageous factors that arise from a public improvement for which private property has been taken in condemnation.”²

Landowners who receive an approved monetary offer by the Right of way Agent have a choice to accept or reject the monetary amount. If the owner and the representative for the SCDOT (Right of Way Agent) are not able to reach an agreement,

¹ Appraisal Institute (1980) The Dictionary of Real Estate Appraisal (3rd Ed.) Chicago

² Appraisal Institute (1980) The Dictionary of Real Estate Appraisal (3rd Ed.) Chicago

the agent will then forward the file to the Team Manager where additional attempts are made to reach a fair and equitable agreement. Team Managers are given discretion to make increases in the offer amount presented to the landowner. Adjustments in the monetary amount presented to the landowner by a Team Manager must be justifiable and based on sound facts. Team Managers have authorization to increase the monetary offer to a maximum of 25% of the offered amount. Most of the adjustments made by Team Managers do not involve the expense of re-appraising property. On occasion, an attempt maybe made to review sales, income or cost data prior to making an adjustment. Right of Way Team Managers have limited authority to make adjustments when owners reject their attempts to make an adjustment. The procedure then requires that the Right of Way District Administrator then makes an attempt to successfully reach an agreement between the landowner and the SCDOT. In the event that the an agreement is not secured, then both parties have no other choice than to proceed with the Eminent Domain process. A condemnation notice is prepared by the SCDOT and served to the landowner as required under Federal law.

After waiting 30 days, the SCDOT has the right to file the Notice of Condemnation with the Clerk of Court. Legal possession of the property is then transferred to the SCDOT as prescribed by law and the construction process can then begin. In this final acquisition stage of the condemnation process, the Right of Way Director and an attorney from the SCDOT's Legal Division work closely in preparation for a final attempt to settle the case for a monetary value.

In Beaufort and Jasper Counties, the South Carolina Department of

Transportation has completed two projects that extended beyond the right of way process and required the involvement of consultant-attorneys, SCDOT attorney's and Right of Way Administrators. SC Route 278 and SC Route 170 are two projects that extended into Beaufort and Jasper counties, but were handled as a single county acquisition project. In Beaufort and Jasper Counties, the South Carolina Department of Transportation completed two projects involving settlements with property owners where the cost of using South Carolina Department of Transportation attorneys can be compared to using contracted outside attorneys to litigate condemnation cases. S.C. Route 278 – File 727.473 (From: U.S. Route 17 TO: S.C. Route 170 & US Route 278 Interchange) is a project that was litigated by the SCDOT's legal counsel.

A total of twenty-four properties were determined to be needed for the construction of the project. Nine of eleven properties were selected for condemnation as a result of not having reached an agreement in the right of way acquisition process. Below is a listing of landowners and a tract number for identification.

TRACT	OWNERS
1A	Coastal Land Development Company
8A	Coastal Land Development Company
5	The Trustees of Net Realty Holding
8	R.E. Godshall
10	Westvaco Corporation
11	Ella Walker Holiday
12	Ella Walker Holiday
15	Ella Walker Holiday
13	Earline Snipes
14	Anna Bell A. Ford
20	Suzanne Bryan
22	Paul H. Anderson
23	Paul H. Anderson

In attempting to secure a settlement in a condemnation case, the SCDOT's legal office must review the appraisal amount that was authorized for each property. Each Right of Way Agent appraiser has the responsibility of placing a value on a parcel of land by using one of the three methods of appraising property.

Listed below are the approved appraisal amounts for each property.

TRACT	APPROVED APPRAISAL AMOUNT	APPRAISAL COST
1A	\$ 5525.00	\$333.00
8A	\$ 46,100.00	\$333.00
5	\$ 5400.00	\$333.00
8	\$ 63,000.00	\$333.00
10	BENEFITS	\$333.00
11	\$6575.00	\$333.00
12	\$3800.00	\$333.00
15	\$9875.00	\$333.00
13	\$2400.00	\$333.00
14	\$4125.00	\$333.00
20	\$ 275.00	\$333.00
22	\$17,950	\$333.00
23	Combined with Tract 22	\$333.00

Consideration is given at this time to having another appraisal written for the property or having the Right of Way Appraiser to defend how the appraisal was written. Attorneys within the SCDOT use their judgment and knowledge in determining which direction to proceed. If a new written appraisal is required in the review process and is written by the Review Appraiser, then the costs involved are generally the Reviewer Appraisers daily salary and any travel cost to view the property.

All appraisers whether SCDOT or contracted appraisers have certain cost that are associated with producing an appraisal. A few cost associated with the SCDOT staff appraiser are: (1) Agent's Salary, (2) Automobile gasoline, (3) camera and film, (4)

computer printer cartridges, (5) maps and records from the tax assessor's office and (6) other miscellaneous office supplies including copier paper.

In reviewing SCDOT personnel records, it was noted that the hiring range for a Right Of Way Appraiser I classification (yearly salary) starts at \$30,000.00. Within the Appraiser I classification are compensation adjustments for educational experience, and certifications. All SCDOT appraisers must either be certified or licensed to perform their duties. Review Appraisers with the SCDOT that are called upon to review or write an appraisal may also incur expenses such as salary and travel cost while reviewing an appraisal. These additional costs were not found to be documented on the project. Appraisals that were written by staff appraisers and selected for review indicated a land value along the project in the range between \$275.00 to \$63,000.00. The appraisal cost for File 727.473 – S.C. Route 278 is approximated to be \$333.00. South Carolina Department of Transportation staff appraisers are compensated on a salary basis from the State Budget and Control Board. Therefore, the ability to calculate a salary amount per project is subjective and must be approximated according to a discussion with the Right of Way Chief Appraiser, Rick Callaham. In discussions with Mr. Callaham, it was noted that an average Appraiser I with the experience to work on a project of this scope would be paid a salary of approximately \$32,000.00 per year. A project of this size would involve approximately six weeks to review information and write the appraisals. Twelve appraisals written over that time period would cost approximately \$333.00 for each appraisal per Mr. Callaham's experience in writing and reviewing appraisals over his SCDOT career.

cost estimate

Certification of title work is required by the SCDOT on appraisal amounts that meet or exceed an appraisal value of \$50,000.00. The responsibility of contracting this service is done through an arrangement with the department's legal office and the South Carolina Attorney General's office. A list of pre-approved attorney's have agreed to a contracted fee schedule for title certifications. This fee is determined to be $\frac{3}{4}$ of 1 % of the appraisal amount for appraisals approved up to but not exceeding \$50,000.00. Appraisals exceeding \$50,001.00 – \$200,000.00 will incur a title certification cost of $\frac{1}{2}$ of 1% of the appraisal amount. Appraisals over \$200,000.00 will incur a cost of $\frac{1}{4}$ of 1% of the appraisal amount.

As a means of comparison, Gulf Coast Property Acquisition Inc., (Right of Way Acquisition Consultant firm – Exhibit C) had the responsibility for the property acquisition in Beaufort and Jasper Counties: S.C. Route 170 – File 7.597/27.518 (From U.S. 278 & S.C. 170 Interchange Northerly TO: S.C. 462 & S.C. 170 Intersection).

Right of way acquisitions and litigations were handled respectively by Gulf Coast Property Acquisition, Inc. and The Stuckey Law Firm as agents for the South Carolina Department of Transportation. Twenty-six landowners were unable to reach an agreement for the sale of their property, therefore, the properties were acquired through the process of Eminent Domain. Nine tracts acquired through the process of eminent domain are listed below:

TRACT	OWNER
3B	Robert W. Sanders
3C	Robert W. Sanders
3D	Robert w. Sanders
17	New River Development Company, LLC
17A	JC Investments

35	J.C. L. Partnership, LLC
38	Jestine Brown
62PCR	Pelican Company, Inc.
72	Shuman LTD
80A	Audrey W. Moffitt

Appraisal amounts reviewed and approved for each property are listed below:

TRACT	APPRAISAL VALUE	APPRAISAL COST
3B	\$12,400.00	\$1000.00
3C	\$20,000.00	\$1000.00
3D	\$20,000.00	\$1000.00
17	\$63,000.00	\$1000.00
	\$60,000.00	\$1000.00
17A	\$ 8000.00	\$1000.00
35	\$ 7000.00	\$ 625.00
38	\$ 7000.00	\$ 625.00
62PCR	\$ 6480.00	\$ 625.00
72	\$10,000.00	\$ 300.00
80A	\$17,000.00	\$1500.00

In comparison with internal acquisitions, an appraisal is written, reviewed and approved for each property to be acquired. Gulf Coast Property Acquisition, Inc. had the responsibility of hiring an appraiser as part of its contract with the South Carolina Department of Transportation. Right of way consultant firms generally solicit bids from private appraisal companies to assist with the acquisition process. On U.S. Route 278/S.C. 170, cost for written appraisals are listed above.

As plan modifications are made during the acquisition and negotiation process, additional expenses are often incurred as a result of the fee appraiser having to submit new appraisals. Most of the re-appraisal work is handled under an agreement known as a contract modification.

Gulf Coast Property Acquisition, Inc. in their fee proposal agreed to a negotiation

acquisition fee of \$4275.00 per right of way parcel handled by its agents. Successful acquisitions that concluded in an agreement were handled at the negotiation and acquisition amount in the contract. Properties in which agreements were not obtained by the right of way agent incurred the same negotiation and acquisition fee of \$4275.00 per parcel.

Title certifications are requested to ensure that the rightful and legal owners are the persons who are participating in the acquisition process. Title certification ensure that all persons who have a recorded interest in the property are the person whom the right of way agent must negotiate a settlement. A fee of \$250.00 per parcel was the contracted fee for which Gulf Coast Property Acquisition, Inc. was able to negotiate with a paralegal title certification company.

In performing a cost comparison between the South Carolina Department of Transportation and contracted companies, it has been difficult to document the various associated cost such as: automobile gasoline, camera and film supplies, computer printer cartridges, copies of various maps and records from the tax assessor and office supplies. Consultants are charged with the responsibility of recording these associated cost in the function of their duties. The general cost of supplies used in the operation of government are less expensive than supplies purchased in the private sector. Cost of supplies within state government involves a procurement system with many layers. Therefore, the focus of this research will place an emphasis on analyzing the appraisal cost associated with the acquisition process.

ANALYSIS

As a method to evaluate the approved appraisal amounts, (both In-house and consultant) information was examined and analyzed. Results of the information examining variations (T Test of the difference of Means between appraisals in Two Counties) indicated the following:

In-house (SCDOT) Appraisals

<u>Tracts</u>	<u>AMT.</u>	Mean	15002.2727
	5525	Standard Error	6163.22345
	46,100	Median	5525
	5400	Mode	#N/A
	63,000	Standard Deviation	20441.0997
	6575	Sample Variance	417838557
	3800	Kurtosis	2.51924838
	9875	Skewness	1.86483002
	2400	Range	62725
	4125	Minimum	275
	275	Maximum	63000
	17950	Sum	165025
		Count	11

Hardy assisted.

Consultant Appraisals

<u>Tracts</u>	<u>AMT.</u>	Mean	26088
	12,400	Standard Error	9469.19741
	20,000	Median	14700
	20,000	Mode	20000
	63,000	Standard Deviation	29944.2314
	8000	Sample Variance	896656996
	7000	Kurtosis	3.16436669
	6480	Skewness	1.95808262
	10,000	Range	90520
	97,000	Minimum	6480
	17,000	Maximum	97000
		Sum	260880
		Count	10

t-Test: Two-Samples Assuming Unequal Variances

	Variable 1	Variable 2
Mean	15002.27273	26088
Variance	417838556.8	8.97E+08
Observations	11	10
Hypothesized Mean Diff.	0	
df	16	
t Stat	-0.981187576	
P(T<=t) one-tail	0.170552476	
t Critical one-tail	1.745884219	
P(T<=t) two-tail	0.341104952	
t Critical two-tail	2.119904821	

Both Counties are rural with undeveloped property. The type of property, therefore is held constant, i.e. there is no difference between the two samples of property being appraised. At the 0.5 level of confidence, there is a significant difference between the two types of appraisals. The consultant appraisals are consistently higher.

In reviewing all the data available from both projects, it is my conclusion, which is supported by the analysis that the acquisition cost associated with using consultants to acquire right of way within Beaufort and Jasper counties is more expensive in terms of appraisal cost, and right of way settlements. However, the use of consultant firms to work projects are done as a means to expedite the property acquisition. Expediting the purchase of land for construction has benefits such as reducing the timeframe for the expansion of a current road or highway, correction of current ineffective intersection designs and access, and also to address possible economic growth along the infrastructure as it relates to commerce and the state development plan.

Weighing the use of consultants must always take into consideration the issue of

profitability. Consultant firms must always approach each project with the concept of minimizing expense to arrive at a profit when the final costs are totaled. In some situations, an argument can be made that the customer service given to the landowner suffers in using outside consultants compared to using SCDOT Right of Way Agents and staff. As the use of consultant firms increases in the acquisition process, more data will be available for a detailed comparison of the benefits of their in relation to the higher cost.

Recommendation

It is my recommendation that a comparison of appraisal and acquisition cost between geographical regions (Western Right of Way and Eastern Right of Way) be performed to determine if there is a pattern of consultant appraisals and acquisition cost being higher than using In-house services. Analyzing a larger sample of data collection would aide in establishing and evaluating statistical trends. These trends could be compared to other regions within the State of South Carolina and also to other states in the southeast as well as nationally. Analysis of these trends would present an opportunity for Right of Way Agents to project future expenses such as appraisal fee and settlement cost.

A second recommendation is to consider establishing Right of Way Teams to work on complex or large acquisitions in an effort to reduce the expense of hiring consultants. Acquisition agents could be divided into units that would specialize in certain task. In the appraisal process, one agent would be responsible for developing the sales brochure and securing photographs while another agent would only inspect

properties and write the appraisal. This could eliminate duplication of certain expenses in the appraisal and settlement process.

As South Carolina State Government struggles to provide services while developing the infrastructure, it will be crucial for the South Carolina Department of Transportation to find alternative ways to maximize the limited funds allocated in the state budget. Therefore, it may be necessary to re-evaluate the continued use of Right of Way consultants for acquisitions.

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EXHIBIT A

Counties comprising the Eastern Right of Way Region

**Chester
Chesterfield
Clarendon
Darlington
Fairfield
Florence
Georgetown
Horry
Kershaw
Lancaster**

**Lee
Lexington
Marion
Marlboro
Newberry
Richland
Sumter
Union
Williamsburg
York**

Counties comprising the Western Right Of way Region

**Abbeville
Aiken
Allendale
Anderson
Bamberg
Beaufort
Berkeley
Calhoun
Charleston
Cherokee
Colleton
Dorchester**

**Edgefield
Greenwood
Greenville
Hampton
Jasper
Laurens
McCormick
Oconee
Orangeburg
Pickens
Saluda
Spartanburg**

Exhibit A

COUNTIES

WESTERN REGION

EASTERN REGION

Western

Southern

Central

Eastern

- (1) ABBEVILLE
- (4) ANDERSON
- (1) CHEROKEE
- (19) EDGEFIELD
- (24) GREENWOOD
- (23) GREENVILLE
- (30) LAURENS
- (33) MCCORMICK
- (37) OCONEE
- (39) PICKENS
- (41) SALUDA
- (42) SPARTANBURG

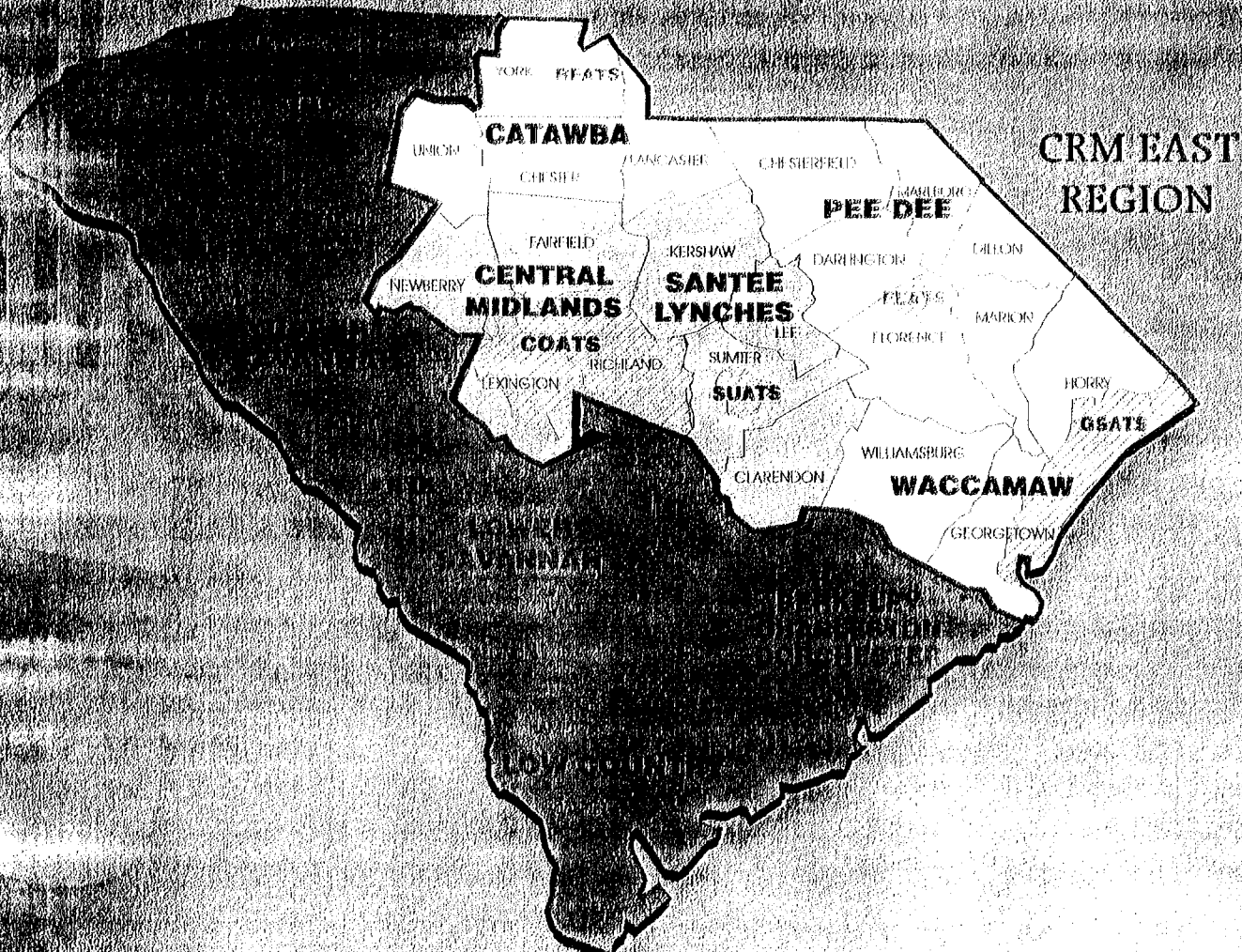
- (2) Aiken
- (3) Allendale
- (5) Bamberg
- (6) Barnwell
- (7) Beaufort
- (8) Berkeley
- (9) Calhoun
- (10) Charleston
- (13) Colleton
- (18) Dorchester
- (25) Hargett
- (27) Jasper
- (38) Orangeburg

- (12) Chester
- (20) Fairfield
- (28) Kershaw
- (52) Lexington
- (36) Newberry
- (29) Lancaster
- (40) Richland
- (44) Union
- (46) York

- (18) Chesterfield
- (16) Darlington
- (17) Dillon
- (21) Florence
- (26) Horry
- (22) Georgetown
- (31) Lee
- (14) Marion
- (34) Marion
- (35) Marlboro
- (43) Sumter
- (45) Williamsburg

Opposite?

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION CONSTRUCTION AND RESOURCE MANAGEMENT SERVICES CONTRACT AND APPENDICES



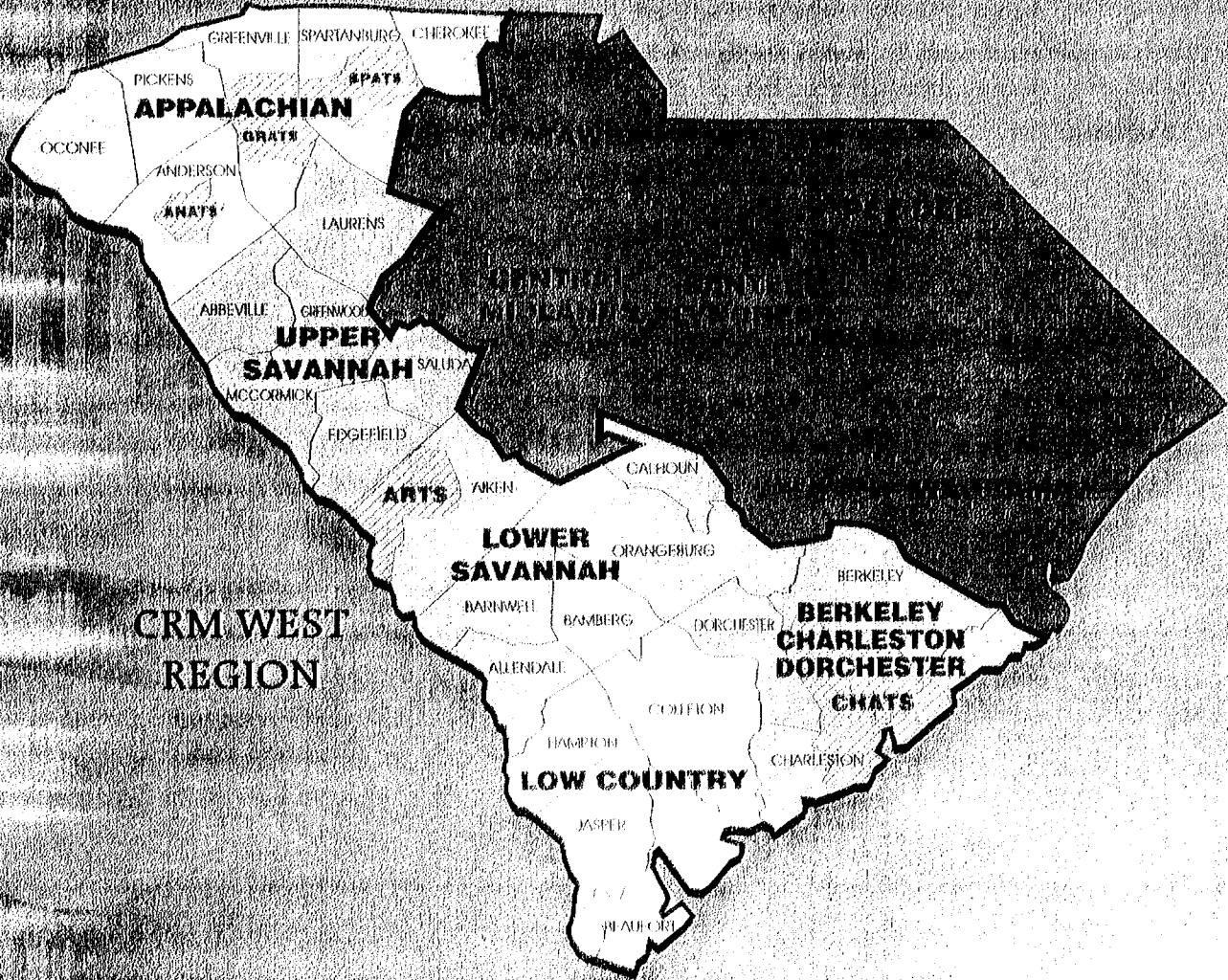
100 YEARS

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JULY 22, 1999

**SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
CONSTRUCTION AND RESOURCE MANAGEMENT DIVISION
CONTRACT AND APPENDICES**



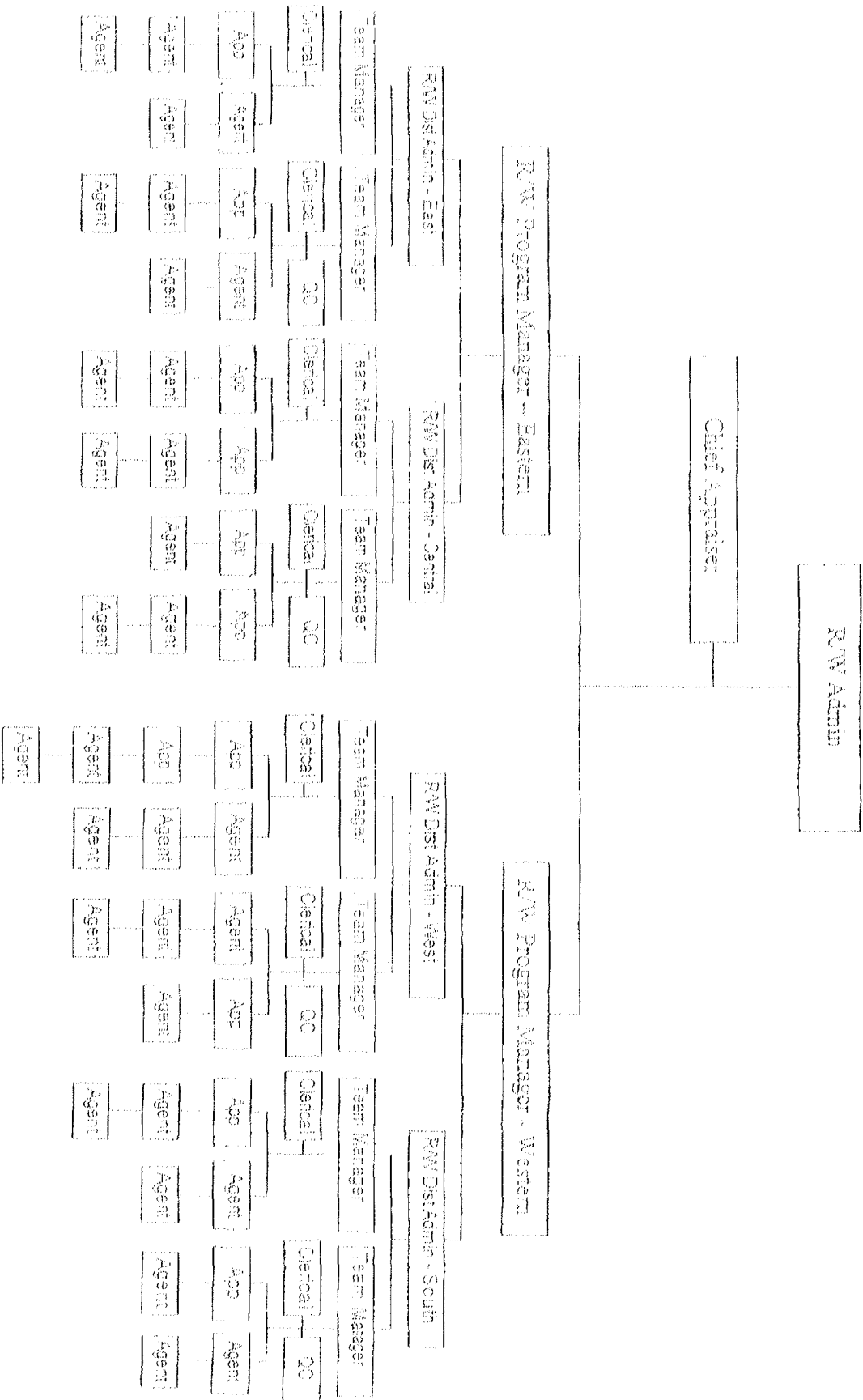
**CRM WEST
REGION**



FLUOR DANIEL

JULY 22, 1999

Exhibit B



ORGANIZATIONAL CHART

for
RIGHT OF WAY SERVICES
S.C. Route 278/S.C. Route 170 Overlap
Beaufort/Jasper Counties
File 7.597/27.518

Exhibit C

LEGEND:
■ SC Department of Transportation
■ Gulf Coast Property Acquisition, Inc.
■ Subconsultant

SCDOT
OSCAR RUCKER
Right of Way Administrator

SCDOT
KEN FEASTER
Consultant Coordinator

GULF COAST
PAUL McMAHAN
Project Manager

NIMMICH, ANDERSON & ASSOCIATES
LISA NIMMICH
Appraisal Services

GRABER AND BALDWIN
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SCOTT GRABER
Title Services

GULF COAST
RAY YOUMANS
QA - Assistant Project Manager

GULF COAST
PAUL WEST DAVID ANDERSON
STEVE SKAKANDY JOEL RINDERLE
Acquisition Specialists

GULF COAST
BETSY DAYGER
Scheduling and Controls

