

**REVIEW OF PARTIAL ACQUISITIONS
OF RIGHT OF WAY IN NEW JERSEY**

Volume 1 - Final Report



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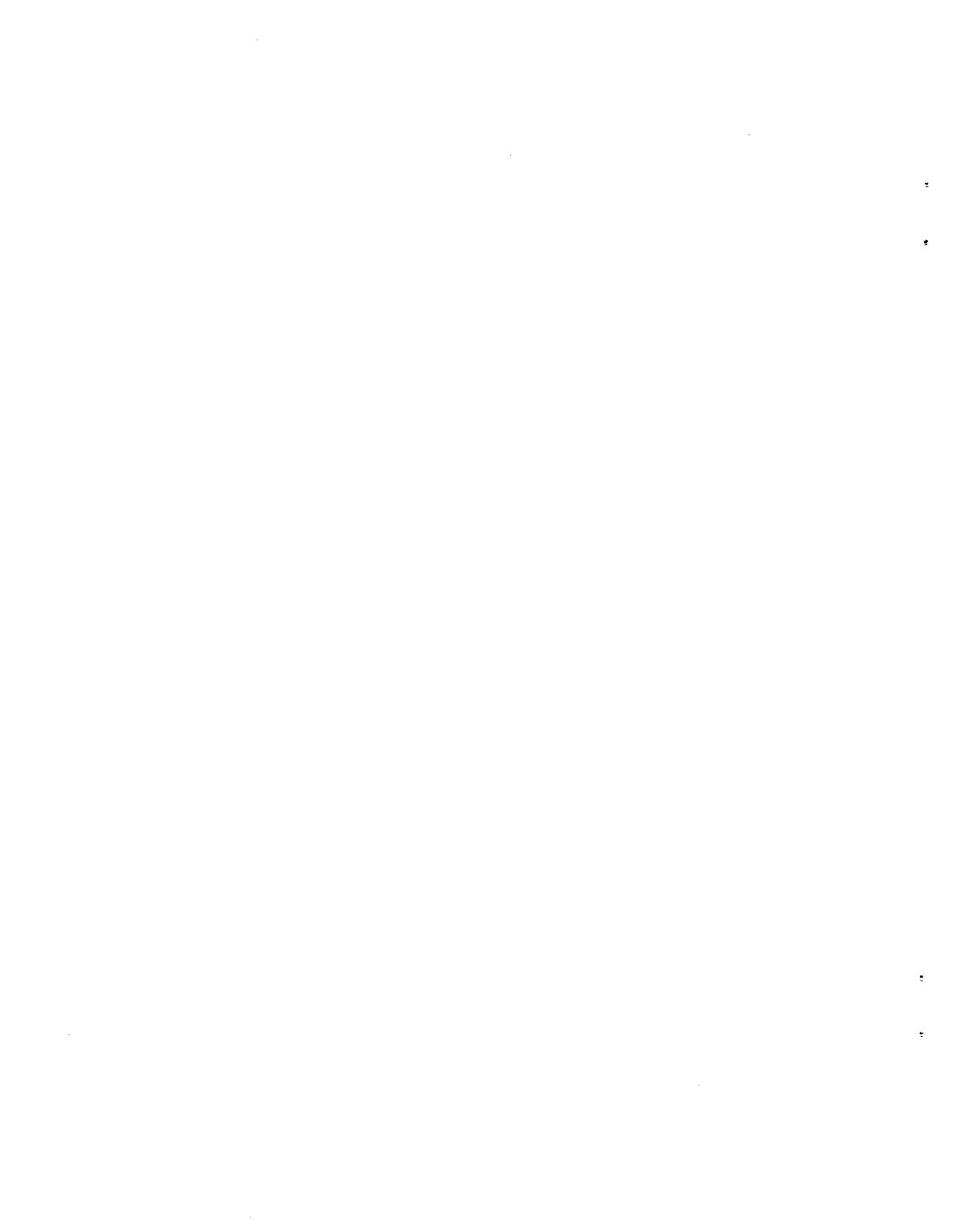
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16. Abstract In the last fourteen years NJDOT made hundreds of partial acquisitions of property to accommodate its road construction program. For many of these acquisitions a cost to cure was developed to give guidelines in mitigating resulting severance damage. This study was conducted to determine the effects of the program, particularly as it was influenced by the cost to cure, on the following eight use categories: gasoline stations, single stores, strip malls, large malls, industrial sites, large offices, small offices, and restaurants. The following relevant issues are some of those that the study addresses. <ul style="list-style-type: none">• Compare the ingress/egress, circulation, and parking conditions between the before-acquisition and after-acquisition situations. Define the reasons for the cure.• How do the Cost to Cure recommendations compare with the final layout of the property, and to what extent do the cure designers recommend site plan submissions?• How much of the final settlement is comprised of the Cost to Cure?• Are there obvious changes to the time of the process since the inclusion of the Right of Way Division in "project scoping" in 1994?• Determine the variation in costs for the following conditions: basis of final settlement, level of cost to cure, and portion of property taken.• Are there places in the process where the Division of Right of Way or the Township can perform improved roles? The primary analyses involved an individual comparison of the categories between the before and after conditions, site feature summaries, cost comparisons, and the cost to cure recommendations. The final report is covered in Volume 1, and the property parcel information is included in Volume 2.		13. Type of Report and Period Covered Final	
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REVIEW OF PARTIAL ACQUISITIONS OF RIGHT-OF-WAY IN NEW JERSEY

Executive Summary

Introduction

In the last fourteen years NJDOT made thousands of partial acquisitions of property to accommodate its road construction program. For some of these acquisitions a cost to cure was developed to give guidelines to mitigate parking and circulation property severance damage. This study was conducted to determine the effects on the remainder properties, particularly as they are influenced by the cost to cure, for the following eight categories of use of the property: gasoline stations, single stores, strip malls, large malls, industrial sites, large offices, small offices, and restaurants. The study generated two volumes:

- Volume 1 - Final Report
- Volume 2 - Data Forms for Property Parcels

Objectives

The following relevant issues are some of those that the study addresses.

- Compare the ingress/egress, circulation, and parking conditions between the before-acquisition and after-acquisition situations. Define the reasons for the cure.
- How do the Cost to Cure recommendations compare with the final layout of the property, and to what extent do the cure designers recommend site plan submissions?
- How much of the final settlement is comprised of the Cost to Cure?
- Are there obvious changes to the time of the process since the inclusion of the Right of Way Division in “project scoping” in 1994?
- Determine the variation in costs for the following conditions: basis of final settlement, level of cost to cure, and portion of property taken.
- Are there places in the process where the Division of Right of Way or the Township can perform improved roles?

Findings

The primary analyses involved a comparison of the individual categories between the before and after conditions using the subjective judgment of the study team, a summary of site features, a comparison of costs, and a review of the cost to cure recommendations. A summary of these analyses follows.

Key Findings

Including the Right of Way unit on the scoping team has the effect of forcing the design team to acknowledge the social and economic importance of small alignment changes.

Because there is a substantial increase in the State's settlement costs with each step advanced in the process, it would be to the State's interest to devise means of settling the cases early in the process.

The importance of the cost to cure cannot be overstated. It is useful to appraisers, negotiators, owners, municipalities, and the Department of Transportation. Although some of the reports lacked precise information on road construction and township codes, it was the most useful document to refer to during the study. Another compelling justification for the cost to cure is the fact that it accounts for a high proportion of the final settlement cost.

Site plan revisions were submitted to the municipalities for less than 40% of those sites recommended by the cost to cure.

Category Findings In the "After" Condition

Gasoline Station - Only half of the gasoline stations retained their function after the final settlement, substantially less than any other category. Of the 14 stations that maintained their operations, none were judged to have their access impaired, two were judged to have the station's internal traffic circulation impaired, and of the 12 sites that made improvements, 6 were completed on the basis of the cost to cure.

Single Store - Although single stores were highly affected by impaired access (4 cases or 30%), internal circulation was judged to be impaired at only one site. Ten of the sites made improvements; six were in accord with the cost to cure. There was an unusual number of sites where the number of parking spaces in the after condition could not be determined (4 of them were auto dealerships), and half of the remaining sites were left with a reduction in the number of parking spaces.

Strip Mall - A high proportion of the strip malls (12 of 14) continued to function. One of them had impaired access, one had impaired site circulation, and half the sites had the number of parking spaces reduced. Only 6 of the sites made improvements and 2 of those were based on the cost to cure.

Large Mall - The large mall is the only category that retained its use at all sites after the partial acquisition. Access was judged to be impaired at one site, circulation impaired at one site, and the number of parking spaces reduced at 5 of 8 sites. The number of parking spaces was judged to be in non-conformance with the municipal code at half the sites. Of the 5 sites that made improvements, only one was based on the cost to cure.

Industrial - Only 7 of the original 11 industrial sites continue to function as similar industries. Of those, access was judged to be impaired at 3 of them; circulation remained the same for all; only 1 site made any revisions to the parking layout. Three sites made improvements, but none on the basis of the cost to cure. Industrial sites had the lowest percent of site improvements completed of any category.

Large Office - All, except one of the large offices, continue to function. Neither access nor circulation was judged to be impaired at any; parking was reduced at 6 of the 15 sites. Ten of the sites made improvements and 3 of those were done on the basis of the cost to cure.

Small Office - Five of the 10 functioning sites were judged to have impaired access; only one site had impaired circulation; parking was reduced at 4 sites. Seven of the sites made improvements; 2 were done on the basis of the cost to cure.

Restaurant - Neither access nor circulation was judged to be impaired at the 9 functioning restaurants. Four sites had reduced parking and of the 7 sites that made improvements, 4 were made on the basis of the cost to cure.

Site Features

Large offices and restaurants are the only categories where neither access nor circulation was judged to be impaired. Impaired access was judged to result at a high proportion of small offices(50% of the sites), industrial sites(43%), and single stores(30%). Site circulation, though, was not judged to be a problem at the sites of impaired access, which is a reflection of the efforts made to mitigate the severance damages to the remainder parcels.

Where parking conditions could be determined, 54% of the sites either had the same number or an increased number of parking spaces provided in the after condition. Information on municipal code requirements was available on the number of parking spaces at 28 sites(38%); 15 of these sites were in conformance. But 45 sites (62%) had no information available on the code requirements.

Improvements were made to 64% of the 94 properties that continued in business or were abandoned; of those improved , 40% were made on the basis of the cost to cure. If the original 122 cases are considered, only 19% of the sites used the cost to cure as the basis for improvements.

Twenty five percent of the 122 original properties either changed their category of use or abandoned the site.

Cost Comparisons

There is a substantial increase in the final settlement cost to the State, above the final offer value, as the acquisition process goes from Agreement to Condemnation to Trial. The final settlement exceeded the final offer in 85% of the cases and a "Declaration of Taking" was not filed in only 10 of the 122 cases.

Industrial sites and large malls have the highest settlement costs; the difference between the final settlement and the final offer is also the highest for these categories.

The data could not suggest reasons, but over 25% of the strip mall cases were taken to Trial for settlement; this is greatly in excess of the other categories.

The owners of the 57 sites that changed use, abandoned the property, or did not make improvements were compensated for improvements that were not made. This reflects compensation to 49% of the 117 sites that could have made improvements, but did not.

Site Plan Submissions

There is a striking difference in the percent of sites that made improvements based on whether or not site plan submissions were made to the townships. Site plans were submitted in only 22% of the cases. Of these, 86% were improved. For the other 95 cases, where no plans were submitted, only 53% of the sites were improved.

Project Scoping Process

The few cases where the ROW unit was included in the scoping team's activities seem to have resulted in a shortening of the time required for acquisition of the properties. The continued involvement of ROW in these activities should have a long term positive affect.

Cost to Cure

In almost 60% of the cases, the cost to cure estimate for severance damages accounts for at least 20% of the final settlement. The cost to cure estimate to mitigate severance damages could be as high as 90% of the final settlement.

The cost to cure report was the most useful document to refer to during the course of the study. But many lacked precise information on the sites, relative to roadway construction and conformance to township codes.

The cost to cure reports suggested that 60 sites should submit site plan revisions to the municipalities. Only 27 sites made submissions.

Conclusions and Recommendations

To effectively use the settlement costs involved with the 57 sites that changed use, made no improvements, or abandoned the property, and to maintain a business-like appearance in the municipalities (by having the properties improved after the State's partial acquisition), there are several suggested techniques that could be investigated:

- the State could consider the possibility of including the cost to cure work in the construction job;
- the State could investigate the possibility of reimbursing a contractor for cure work done to the owner's specifications;
- the State could retain that portion of the final settlement that covers the cost of cure until the work is satisfactorily completed;
- the State should investigate opportunities for the NJDOT to ameliorate its relationship with the towns during all stages of the process, particularly in the latter stages of the acquisition process, to inform the towns of the process' status.

With the conclusion of the acquisition process, gasoline stations have the greatest propensity for going out of business than any other use category studied. Improvements to the station properties to mitigate severance damage was generally satisfactory. In an effort to arrive at settlement costs that reflect the final status of the gasoline station properties, means should be investigated to

determine whether the owners of the stations have intentions of remaining in business after the final settlement. If there is no way of determining the intention of owners, one of the former approaches could prove fruitful.

It would be in the State's financial interest to reach settlement by Agreement, rather than through Condemnation or Trial.

Improvements to the remainder parcels are more readily made when the owners submit site plan revisions to the town. As suggested above, the State should investigate opportunities for the NJDOT to modify its relationship with the towns during all stages of the process, particularly in the latter stages of the acquisition process, to inform the towns of the process' status. This could serve as early and continuous notice to the municipalities of the situation of the acquisition process.

Improvements in the scoping process through early involvement with the Right of Way unit could result in accelerating the acquisition process. The length of the acquisition process appears to have been reduced with the early involvement of Right of Way with the scoping team.

For various reasons, some of the sites were very difficult to locate in the field. In addition, there was no easy means of determining if the sites were in conformance with the township's code. The cost to cure report can be enhanced in two notable ways to overcome these difficulties:

- include informative before and after plans of the sites that include a comprehensive view of the road improvements, and
- include a complete list of the township's codes, comparing the site's conformance to the code.

I. INTRODUCTION AND STUDY PURPOSE

Conditions for Partial Right of Way Acquisitions

During the course of design for the widening or realignment of roads and bridges, a department of transportation is forced to increase the road's right of way. This increase comes in the form of either a total acquisition of a property parcel or acquisition of a portion of the parcel. The partial acquisition usually results in severance damage to the property that must be rectified, and payment to the property owner for the land actually taken. The cost to cure report determines whether impacts caused by an acquisition can be fully or partially "cured." Determination of the scope of cure and/or residual damages that may result to the remaining property continue to be a difficult problem for traffic engineering specialists and real estate appraisers. The consequence is often the acquisition of property through condemnation proceedings.

The process for partial acquisition varies with each state. In New Jersey, the process changed significantly in the early 1990's. Prior to 1994 the Right of Way Division in the Department of Transportation was not informed of the need for negotiations with a property owner until the final alignment had been set by the Design Division. The major change since 1994 involved the inclusion of the Right of Way Division in the initial scoping of the project. Feasibility and cost estimates are now provided to the scoping team by Right of Way; in addition, design changes are recommended by the Right of Way unit to mitigate impacts to remaining properties.

One aspect of the appraisal of the partial acquisition that is extremely important is the estimate of damages accrued to the remaining property. Damage that can occur is a site layout loss, some of which can be "cured" at a cost. Not all acquisitions require a cost to cure; the Right of Way unit decides the necessity for the investigation.

Right of Way Process for Partial Acquisitions

Procedures used in the process of negotiating for and the acquisition of property by the New Jersey Department of Transportation (NJDOT) are detailed in the Acquisition Manual (1), the Appraisal Standards and Format (2), and the Right Of Way, Project Development Guide (3) listed in the references. The following abbreviated version is given to assist the reader in understanding the order and some of the important steps of the process. The primary extent of the process shown deals with the Division of Right of Way (ROW); although the process, prior to the Appraisal section, has changed since 1994. very few of the parcels were acquired using the new process. Hence, the pre-1994 process is outlined. There are also extensive procedures involving other units within the NJDOT that are not important to an understanding of the study. After 1994, ROW became involved with the scoping effort of the planning and design team.

Acquisition Process

Scope - Development	In the early stages of the acquisition process, ROW offers input on acquisition costs and relocation impacts, when requested.
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If a public hearing is held, ROW responds to property acquisition concerns.

After selection and approval of the alignment location, FHWA authorization is requested to start ROW activities.

ROW plans are prepared.

- Appraisal - The acquisition process commences (district office).
Notification letter (outlining the need to acquire part of the property) is mailed to the owner.
Staff or fee appraiser is assigned for each parcel in the project.
Cost to cure specialist is assigned (if required), and work is reviewed with the township(Engineer, Planner, Board of Adjustment, and/or Planning Board) to determine if approval of the cure is "reasonably probable."
Appraisal is completed, considering cost to cure; appraisal is reviewed.
A Fair Market Value (FMV) for the partial acquisition is established.
- Negotiating - Property owner is provided with the FMV and all the documents that were used to arrive at it.
Negotiations proceed to either an agreement or condemnation proceedings; the negotiator is required to keep detailed records.
- Eminent Domain - Letter of Intent is sent to property owner and/or his agent.
The condemnation process starts with the filing of a complaint in court.
Negotiations end and settlement discussions commence.
The property is then acquired, after the "declaration of taking" and a deposit of money is filed with the court.
Either an agreement is reached between the owner and the state or the condemnation process ends with a finding by the commissioners.
If a settlement cannot be reached, either party can bring the case to trial, and a jury's finding will be the final step in reaching settlement.

Objectives of Research Study of Partial Acquisitions

The New Jersey Department of Transportation has been acquiring partial properties for many years. The use of the cost to cure report as a guideline in determining the feasibility and cost of improvements to the layout of the property has been an intricate part of their process. At this juncture, it is important to investigate the cost to cure recommendations and report on the outcome. The following relevant issues are some of those that the study addresses.

- Compare the ingress/egress, circulation, and parking conditions between the before-acquisition and after-acquisition situations.
- How do the cost to cure recommendations compare with the final layout of the property, and to what extent do the cure designers suggest site plan submissions?
- How much of the final settlement is comprised of the cost to cure?

- Are there obvious changes in the time of the process since the inclusion of the Right of Way Division in “project scoping” in 1994?
- Determine the variation in costs for the following conditions: basis of final settlement, level of cost to cure, and portion of property taken.
- Are there places in the process where the Division of Right of Way or the Township can perform improved roles?

Literature Review

Limited literature exists on the subject of partial acquisitions, and that which does is unique to special situations. But the following research studies and articles on the subject have been found to be important to the current study, either as background material or for direct input to the study parameters.

“...cost to cure relates to the after-taking value of property involved in partial takings, or in other words, the damages to the remainder...Courts generally have gone along with this idea and, with various reservations, have permitted evidence of cost to cure to be introduced...as one of the factors bearing on the after-taking value of the property.”(4)

Another National Cooperative Highway Research Program(NCHRP) report in 1970(5) dealt with the value of the remaining property as it may have been enhanced due to the highway construction. The writer, Joseph Montano, noted that at that time the legal profession was more interested in the special or general benefits of the affected property, rather than in determining the value of the remainder, which he states would be more beneficial. Legal guidance is offered for the three approaches to determining a property’s value: comparable sales, cost, and income. Examples are given of the benefits to a remainder from the highway improvement. The physical aspects that could add benefit are: improved access, creation of a corner, improved drainage, fencing, new curb, gutters, hard surfacing, appearance, installation of utility lines, and creating an increased frontage. The economic aspects that could improve benefit are: higher and more profitable land use, location near an interchange, changes in vehicular traffic, and advertising value. The cost to cure reports developed by the NJDOT consultants frequently go beyond these aspects in mitigating the severance damage of the remainders.

The Texas Department of Transportation wanted to know the characteristics of remainders that affected right of way costs(6). The investigation found that the significant characteristics affecting the proportional difference between the partial taking cost and the whole acquisition cost were: ratio of size of acquisition to total parcel, size of acquisition, value of the remainder, cost of improvements and cost of damages, value of improvement on entire parcel, and different land uses. Most of these factors are considered in the current study, while analyzing the differences between the before and after conditions of the remainder and the various costs.

“The measurement of just compensation for partial takings is often a challenging analytical process irrespective of the type of real estate being evaluated, but the appraisal issues are further complicated when considering special-use properties...”(7). Although the referenced article

covers lodging facilities, Paul A. Quintiliani gives an excellent overview of the process and issues involved in partial acquisitions.

It was stressed in an article on severance damages(8) that each parcel and property use has its own unique factors that must be considered in the appraisal of the acquisition and its impact on the remainder. These were noted to be: the setback of improvements, the number of parking spaces, the display area for merchandise and the traffic pattern around gasoline pump islands, as examples. The report on the cost to cure, which is an intricate part of the current study, considers these and similar factors in trying to mitigate the severance damages to a property with a partial acquisition.

II. STUDY PROCESS

Overall Design of the Study

The research team and the client met on several occasions prior to commencing work on the study to determine the objectives and the data requirements of the study. Geographical and categorical (gas station, mall, etc.) representation, and the inclusion of a cost to cure report in the process posed unique problems in selecting the sample parcels for the study. The requirement to compare the features of the "final" parcel with the suggested plans (the cost to cure plan and the owner's plan) and the before condition required a time-ordering to describe the data collected and scrupulous attention to the type and format of the actual data.

The following sections highlight all aspects of the study design. Reference is made to the Appendix to show examples of the forms used for the data collected.

Characteristics of Parcels Included in the Study

Initially, only partial acquisitions from 1990 to 1996, requiring a cost to cure, specifically with parking and circulation problems, were to be investigated for inclusion in the study. A minimum of 20 samples in each of the following categories were sought: gasoline station, large mall (defined as having at least one large store and a couple of hundred parking spaces), small mall (usually defined as a strip mall), single store (or a business), restaurant, industrial plant (or warehouse), large office (includes hospital), and small office (less than 5000 s.f.). But it was found that sufficient samples in each of the categories were not available within the seven year period, hence, the study had to include property acquisitions starting as far back as 1982. Even with this enlarged time frame only gasoline stations had more than 20 samples.

Statewide distribution of the acquisitions was sought. Of the 21 counties in New Jersey, sites were selected in 18 of them; a total of 60 townships had at least one site each. Some townships had several sites. A total of 122 sites were finally selected for inclusion in the study. Except for gasoline stations, this represents virtually all of the completed partial acquisitions of the other categories by the New Jersey Department of Transportation during the period from 1982 to 1996, that had a cost to cure report included in the process.

Data Collection Process

As noted, the data collection process required the client and researchers to follow a precise order to ensure that the appropriate sites were included in the study and the data needs were fulfilled by the parcel files at NJDOT.

The first step was to determine the types of information that were required in each NJDOT file. These included:

- the Right of Way Case Study

- Review Appraiser's Fair Market Value (FMV) Statement
- Negotiator Statement
- Appraisal (pre 1994)
 - Valuation Before Acquisition (Sections II., III., IV.)
 - Nature of Acquisition (Section V.)
 - Effect on Remainder (Section V.)
- Appraisal (post 1994)
 - General Data (Section I., page 1)
 - Valuation Before Acquisition (Section II., Description of Property)
 - Nature of Acquisition (Section III., Description of Acquisition)
 - Valuation After Acquisition (Section IV., Description of Remainder)
- Attorney's Closing Memo or Administrative Settlement Memo
- Cost to Cure Report

The next step was to check the engineer's cost to cure listing to locate the files that could be included in the study. The files were then studied to determine if they had the appropriate information in them. The information required for the study was collected on data forms (a copy of the Right of Way Data Form is in the Appendix). Directions for completing the forms were also given to the data collectors (copy in the Appendix). A "MicroSoft Access" database was designed for ease of storing and analyzing the information from the data forms.

The municipal office visits were then arranged. Letters were sent to each of the Township Clerks where a site was located. The letter included the study purpose, procedures, and a description of the parcels. Follow-up phone calls were made to determine if site plan revisions were submitted; the necessity of an office visit was predicated on the submission of a site plan. If the owner had not submitted a site plan revision to the town, it was not necessary to visit the municipal office. For those offices visited, the required information was usually supplied by the planning staff, zoning board, or community development staff. The same data form used at the NJDOT office was used for the municipal office visit.

Subsequent to the municipal office visit, the study team went to the site. Observations and photographs were taken. The observations were compared to the site revision plan (if there was one) and the cost to cure report. All observations were recorded on the ROW Data Form. The recorded field data conformed to the data that described the parcel throughout the data collection process. This was an important step in the process because the severance damage that the cost to cure was to mitigate could be viewed.

With the completion of the Data Form, all information, including a photograph, was stored in the Access database, and checked for accuracy of transfer. This database served as the basis for the production of the summarized Right of Way Data Forms that comprise the second volume of the report, and the statistics that describe and define the data.

During the data collection process it was found that the cost to cure report was extremely useful. Although it had some limitations, it provided locational, layout and background information for the sites.

III. ANALYSIS AND DISCUSSION OF RESULTS

General Discussion

The nature of the study required the researchers to analyze the information in a few formats. Quantitative data was readily available for appraisals, offers, settlement values, and parking comparisons. Except for the parking, before and after site conditions had to be qualitatively compared.

Two of the final settlement values understated the actual reimbursement to the owner; the understatement was due to the conveyance of a contiguous land parcel to the owner by the State.

There is an abundance of data associated with this study that can yield enormous amounts of information and comparisons. The order of presentation of the comparisons and related information attempts to segregate them quantitatively and qualitatively in the clearest possible way.

The approximate fourteen years of time that the case studies span encompass changes in NJDOT procedures and forms, land and construction costs, and municipal policies. At any point in time the municipal policies will differ among the 60 towns in which the parcels exist. No attempt is made to normalize the information and data to account for these differences. In addition, land values rose briskly during the early years of the study period, but then fell sharply during the middle years before climbing again in the latter years. Tracking these land value changes would be difficult enough for a region, but arduous for the spread of towns in the study.

Description of Parcels and Partial Acquisitions

The eight categories of parcels that are included in the study (gasoline station, large mall, small mall, single store, restaurant, industrial, large office, and small office) are described by a wide range in the cost of cure, number of parking spaces, final settlement, percent of total property acquired, etc. Table 1 summarizes the descriptive information of the sites by category.

This table uses both the average and median values to define some of the items. The median is considered to be a more accurate descriptor when the distribution has a low mode value relative to the average, which is the case for many of the cost to cure and final settlement values.

Table 1 - Description of Parcels & Taking

Item	Categories									
	Gas Station	Single Store	Strip Mall	Large Mall	Industrial	Large Office	Small Office	Restaurant		
No. in sample	28	17	14	8	11	17	14			
No. of sites making improvements	12	10	6	5	3	10	6			
No. of sites that changed use	12	3	2	0	3	1	1			
No. of abandoned sites	2	0	0	0	1	0	2			
No. of sites not making improvements	2	3	5	3	4	5	4			
No. of sites still under construction	0	1	1	0	0	1	1			
Cost to cure (\$)										
Average	58650	58341	31482	77650	397140	53640	27340	42410		
Median	36000	35100	17782	78290	82000	44000	20040	36090		
Average	124960	197451	237902	685500	1213200	252770	1264440	256420		
Median	87750	108400	142500	354500	375000	195000	107500	85000		
Agreement	16	9	5	2	6	9	12	6		
Condemnation	11	5	6	5	5	7	2	7		
Trial	1	3	3	1	0	1	0	0		
Average	11.30%	11.13%	7.14%	8.34%	14.38%	7.31%	10.33%	13.67%		
Range	2.00%-	0.95%-	0.73%-	1.12%-	1.13%-	1.17%-	2.05%-	2.11%-		
	36.97%	21.69%	19.67%	39.96%	58.90%	17.63%	19.63%	52.83%		
Before	N/A	61	33	515	46	252	18	88		
Range	N/A	10-329	6-90	154-1170	5-72	28-915	7-27	29-192		
After	N/A	42	28	434	29	192	17	85		
Range	N/A	5-169	3-77	127-964	5-72	26-734	7-30	24-198		
Average	2280	9596	14987	89740	152220	54910	2680	6890		
Range	242-8500	914-22072	2680-59250	35598-190000	1150-675000	6200-400000	1400-4680	420-20241		

To retain a reasonable ability to make comparisons, the study primarily contrasts those sites of similar category. Because of the variance in property use and size of parcel between categories, useful comparisons may not be meaningful between categories.

Another descriptive and useful summary of the 122 parcels included in the study is found in Figure 1, in the form of a tree. The sites are differentiated by whether or not an owner submitted a site revision plan to the township after the state started negotiations for a partial acquisition of the property.

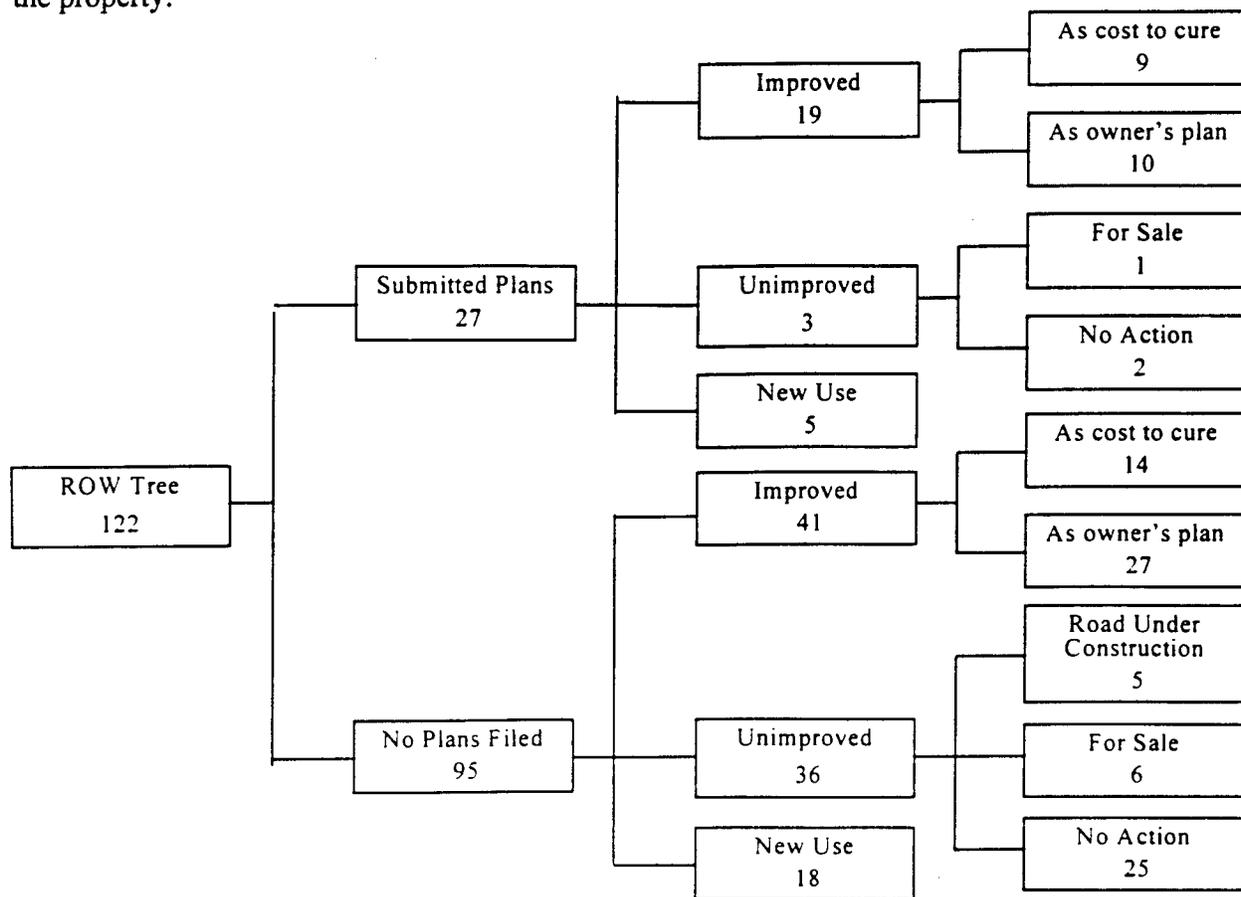


Figure 1 - Right of Way Partial Acquisition Summary Tree

The tree continues the separation by whether or not there was reconstruction (improvements) at the site, it was unimproved, or a new use or enormously expanded similar use was made of the property after the partial acquisition. If there was an improvement, the tree continues to distinguish the number of sites that were improved in accord with either the cost to cure (as developed by the state's engineer) or the owners engineering layout. A final breakdown is shown for the unimproved sites; they are further defined by indicating whether the road was still under construction or the property was put up for sale. There are several interesting observations from this tree that will be developed in the following sections.

Operational Comparison of the Before and After Conditions by Category of Use

The difference in operational demands of the various categories and subsequent comparisons of property compels a separation of the categories. For instance, gasoline stations do not put the same stress on parking that other properties do, and the position of the gasoline pumps is only relevant to gas stations. The final subsection will summarize the combined categories. The areas of discussion, namely, access, circulation, parking, gasoline pumps, and basis of improvements are briefly described.

- Access - NJDOT determines the location of access points to the surrounding public roads, but the study team makes a subjective judgment on the relative merits of the change in access in the after condition and a notation on the change in the number of access points. Although access may be judged to be impaired (by the study team) there may not be a better alternative than the access provided.
- Circulation - Internal traffic circulation on the parcel of land can be affected by the following: location of gasoline pumps, access points, configuration of the building, or parking layout. The study team makes a subjective judgment on the change in circulation in the "after" condition. Impaired circulation did not mean that traffic could not maneuver; impaired circulation may only have resulted in poorer maneuverability.
- Parking - There can be a change in the number of parking spaces on the site, the layout of the parking, or the parking space's conformance to the township code.
- Gasoline Pumps - The cost to cure often recommends the relocation of gasoline pumps because of their proximity to the widened road right-of-way. Only the gasoline stations are affected, but the pump location can affect circulation.
- Basis of Improvements - A cost to cure investigation is made for a parcel to improve either maneuverability or parking, or to make architectural changes. Cost to cure reports are sometimes used as the basis for subsequent improvements to a parcel; the report may also suggest submission of a plan to the township because of the nature of the changes, as they might relate to the township's code. In reviewing the cost to cure report, the study team made the judgment that a site plan submission was suggested if the cost to cure included application fees, or stated that a submission should be made.

Gasoline Stations

Of the original 28 gasoline stations in the study,

- 14 continue to be used as gasoline stations, (the following text discusses these 14);
- 12 have changed use, and are currently used in the following ways:
 - 1 dramatically expanded the operation of the gasoline station,
 - 6 function as auto rental, used vehicle, or service shops,
 - 5 have changed the category of use entirely;
- 2 have abandoned their sites and the properties are for sale.

Access- The number of access points was not increased at any of the gasoline stations; it remained the same for 10 of them, and decreased for 4 of them. Since the parcel size for gasoline stations is usually very small, it was judged by the study team that a decrease in the number of

access points was beneficial from a safety standpoint. Access was not considered to be impaired at any of the sites.

Circulation - Circulation within the gasoline stations was judged to remain the same for 7 of the 14 sites; improved for 5 sites; impaired for 2 sites (suggested improvements to the property were not made for one of these sites, which happens to be one of the smallest remainder parcels in the study at 0.144 acres). For properties that are generally smaller than other use categories (with the expectation that circulation would be very difficult), improvements made to gasoline stations on the basis of the cost to cure reports or the owners plans have resulted in very favorable circulation patterns.

Gasoline Pumps - The pumps were repositioned at 10 of the 14 sites. But at the four sites where the pumps were not moved (it was recommended that the pumps should be moved at 3 of them), the total number of pumps were reduced at two of them.

Basis of Improvements - Cost to cure for gasoline stations was always organized to address the maneuverability (operation) of vehicles using the station. Twelve of the 14 sites that continue to be used as gasoline stations actually made improvements and 6 of those were made on the basis of the cost to cure recommendations. Only two stations did not make improvements (one is left with impaired circulation; the other has a pump island apron on state right of way). Finally, only 4 gasoline stations submitted site plan revisions to the townships, although the cost to cure report suggested that 6 of the sites make submissions. The mitigation of the severance damage to gasoline stations (whether using the cost to cure recommendations or the owner's plan) has been generally satisfactory, particularly in view of the small size of the properties.

Single Stores

Of the original 17 single stores in the study:

- 14 continue to function as single stores.
- 3 have changed use, and have the following uses:
 - gasoline station.
 - restaurant,
 - industrial site.

Access - Of the 14 sites that continue to function as single stores, improvements to the property of one site could not be made due to ongoing roadway construction, hence only 13 sites are discussed in this section. The number of access points remained the same as the "before" condition at 10 sites, increased at one site, and decreased at 2 sites. Impaired access was judged to result at 4 of the sites (over one-quarter of the functioning sites; 2 of these had their access reduced).

Circulation - Site circulation was judged to remain the same at 12 of the sites and impaired at 1 site. For parcels that are generally small compared to many other use categories, the circulation patterns at the remainder parcels of single store categories are remarkably good.

Parking - The number of sites with the change in the number of parking spaces and conformance to the municipal code(C - conformance; N- non-conformance) is as follows:

Number of Sites With a Change In Spaces			
More	Same	Less	Unknown
1(C)	3(C,C,N/A)	4(C,N,N,N/A)	5(N/A)

As noted, only 4 sites are in conformance with the number of parking spaces required by the municipalities; 2 are not; 7 sites do not have sufficient municipal code or parking space information to determine conformance.

Of the 5 sites where the revised parking conditions could not be determined, 4 are auto dealerships, where autos are usually indiscriminately parked on the property. Parking layout revisions were made to 7 of the sites, although 5 of them were minor.

Basis of improvements - The cost to cure for single stores was organized primarily to address parking problems, and secondarily to improve maneuverability. Ten of the 13 sites actually made site improvements and 6 of those were made on the basis of the cost to cure recommendations. Only three sites did not make improvements. Finally, only 4 sites submitted site plan revisions to the townships, although the cost to cure report suggested that 8 of the sites make submissions. The mitigation of the severance damage to single stores (whether using the cost to cure recommendations or the owner's plan) has been generally satisfactory, and has been pursued by the great majority of owners.

Strip Malls

Of the original 14 strip malls in the study:

- 12 continue to function as strip malls,
- 2 have changed use, and have the following use:
 - dramatically expanded the operation of the strip malls, which cannot be used to compare with the original sites.

Access - Of the 12 sites that continue to function as strip malls, improvements to the property of one site could not be made due to ongoing roadway construction, hence only 11 sites are discussed in this section. The number of access points remained the same as the "before" condition at 9 sites, and decreased at 2 sites. Impaired access was judged to result at only 1 of the sites, even though the number of access points remained the same at this site.

Circulation - Site circulation was judged to remain the same at 9 of the sites, impaired at 1 site, and improved at 1 site. For parcels that generally have very small frontages along the highway, the circulation patterns at the strip mall categories have been preserved very well.

Parking - The number of sites with the change in the number of parking spaces and conformance to the municipal code(C - conformance; N- non-conformance) is as follows:

Number of Sites With a Change In Spaces			
More	Same	Less	Unknown
2(C, N/A)	3(N/A)	5(N,N,N,N/A,N/A)	1(N/A)

As noted, only 1 site is in conformance with the parking space requirements for the municipalities; 3 are not; 7 sites do not have sufficient municipal code or parking space information to determine conformance.

Parking layout revisions were made to 3 of the 11 sites.

Basis of improvements - The cost to cure for strip malls was organized to address both parking and maneuverability problems. Six of the 11 sites actually made improvements and 2 of those were made on the basis of the cost to cure recommendations. Five sites did not make improvements. Finally, only 3 sites submitted site plan revisions to the townships, although the cost to cure report suggested that 5 of the sites make submissions. The mitigation of the severance damage to strip malls (whether using the cost to cure recommendations or the owner's plan) although generally satisfactory has not been pursued by as many strip mall owners as some of the other use categories. Ironically, the study team judged one of the improved sites as one of the best of all categories and it was the owner's plan.

Large Malls

Of the original 8 large malls in the study:

- all continue to function as large malls.

This is the only category where all of the original sites retained their business.

Access - Of the 8 sites that function as large malls, the number of access points remained the same as in the "before" condition at 5 sites, decreased at 2 sites, and increased at one. Access was judged to improve at 1 site, and remain the same at 6. Impaired access was judged to result at only 1 of the sites, which had a reduction in the number of access points at the site.

Circulation - Site circulation was judged to remain the same at 7 of the sites and impaired at 1 site (no improvements were made to this site). The circulation patterns at the large mall category have been well maintained.

Parking - The number of sites with the change in the number of parking spaces and conformance to the municipal code(C - conformance; N- non-conformance) is as follows:

Number of Sites With a Change In Spaces			
More	Same	Less	Unknown
0	3(N,N/A,N/A)	5(C,N,N,N,N/A)	0

As noted, only 1 site is in conformance with the parking space requirements for the municipalities; 4 are not; 3 sites do not have sufficient municipal code information to determine conformance. With only 20% of the sites in conformance with the known municipal code requirements for the number of parking spaces(only 5 of the sites have sufficient information), this is not an exemplary example of industry/government coordination.

Parking layout revisions were made to 5 of the 8 sites.

Basis of improvements - The cost to cure for large malls was organized to address parking and maneuverability problems. Five of the 8 sites actually made improvements and only 1 of those were made on the basis of the cost to cure recommendations. Three sites did not make

improvements. Finally, only 2 sites submitted site plan revisions to the townships, although the cost to cure report suggested that 7 of the sites make submissions. The mitigation of the severance damage to large malls (whether using the cost to cure recommendations or the owner's plan) has been satisfactory, but more of the owners could have invested that portion of the settlement funds estimated for damage mitigation on site improvements.

Industrial Sites

Of the original 11 industrial sites in the study:

- 7 continue to function as industrial sites,
- 3 have changed use, and have the following use:
 - 1 is an office building,
 - 2 are very different industries.
- 1 has abandoned the site.

Access - Of the 7 sites that continue to function as industrial, the number of access points remained the same as the "before" condition at 4 sites, decreased at 1 site, and was indeterminate at 2 sites. Impaired access was judged to result at 3 of the sites, even though the number of access points remained the same at 2 of them.

Circulation - Traffic circulation was judged to remain the same at all 7 sites. The industrial parcel perhaps has the most complex requirements for site layout of all the categories. It is a credit to those in the acquisition process that the circulation conditions of the sites have been retained.

Parking - The number of sites with the change in the number of parking spaces and conformance to the municipal code(C - conformance; N- non-conformance) is as follows:

Number of Sites With a Change In Spaces			
More	Same	Less	Unknown
0	4(N/A)	1(N/A)	2(N/A)

As noted, none of the sites have sufficient municipal code or parking space information to determine conformance.

Only 1 of the 7 sites made any revisions to the parking layout.

Basis of improvements - The cost to cure for industrial sites was organized to address parking and architectural problems, and improve maneuverability. Three of the 7 sites actually made improvements, none on the basis of the cost to cure recommendations. Four sites did not make improvements. Finally, only 2 sites submitted site plan revisions to the townships, although the cost to cure report suggested that 5 of the sites make submissions. Considering that there were 11 industrial sites that had partial acquisitions, only 3 made any improvements to their property (three more opted to sell their business). On a percentage basis, this is the worst record of all categories for site improvements.

Large Offices

Of the original 17 large offices in the study:

- 16 continue to function as large offices,
- 1 changed use to a retail outlet.

Access - Of the 16 sites that continue to function as large offices, improvements to the property of one site could not be made due to ongoing roadway construction, hence only 15 sites are discussed in this section. The number of access points remained the same as the "before" condition at 11 sites, decreased at 3 sites, and increased at 1 site. None of the sites was judged to have impaired access.

Circulation - Site traffic circulation was judged to remain the same at 14 of the sites and improve at 1 site.

Parking - The number of sites with the change in the number of parking spaces and conformance to the municipal code (C - conformance; N- non-conformance) is as follows:

Number of Sites With a Change In Spaces			
More	Same	Less	Unknown
2(C,N/A)	6(C,N,N/A,N/A,N/A,N/A)	6(C,C,N/A,N/A,N/A,N/A)	1(N/A)

As noted, only 4 sites are in conformance with the parking space requirements for the municipalities; 1 is not; 10 sites do not have sufficient municipal code or parking space information to determine conformance. Parking layout revisions were made to 7 of the 15 sites.

Basis of improvements - The cost to cure for large offices was organized to address parking and maneuverability problems. Ten of the 15 sites actually made improvements and 3 of those were made on the basis of the cost to cure recommendations. Five sites did not make improvements. Finally, only 3 sites submitted site plan revisions to the townships, although the cost to cure report suggested that 10 of the sites make submissions. Only one large office changed use or put the property up for sale since acquisition, an indication of the desire of the owners of this use category to maintain viable businesses.

Small Offices

Of the original 14 small offices in the study:

- 11 continue to function as small offices,
- 1 has changed use to a restaurant,
- 2 have abandoned the site and have the property for sale.

Access - Of the 11 sites that continue to function as small offices, improvements to the property of one site could not be made due to ongoing roadway construction, hence only 10 sites are discussed in this section. The number of access points remained the same as the "before" condition at 9 sites, and decreased at 1 site. Impaired access was judged to result at 5 of the sites. This may be expected due to the small parcel of land that this category occupied.

Circulation - Traffic circulation was judged to remain the same at 8 of the sites, improved at 1 site and to be impaired at 1 site. For parcels that are generally small compared to many other use categories, and to have impaired access at many of the sites, the circulation patterns at the small office category are remarkably good.

Parking - The number of sites with the change in the number of parking spaces and conformance to the municipal code(C - conformance; N- non-conformance) is as follows:

Number of Sites With a Change In Spaces			
More	Same	Less	Unknown
2(N/A)	4(N/A)	4(C,C,N/A,N/A)	0

As noted, only 2 sites are in conformance with the parking space requirements for the municipalities; none are in violation, but 8 sites do not have sufficient municipal code information to determine conformance. This is a good example of the need for information in the cost to cure reports on municipal code requirements.

Parking layout revisions were made to 6 of the 10 sites.

Basis of improvements - The cost to cure for small offices was organized to address parking and maneuverability problems. Seven of the 10 sites actually made improvements and 2 of these were made on the basis of the cost to cure recommendations. Three sites did not make improvements. Finally, none of the site owners submitted site plan revisions to the townships, although the cost to cure report suggested that all 10 of the sites make submissions. The mitigation of the severance damage to small offices (whether using the cost to cure recommendations or the owner's plan) has been generally satisfactory, and was pursued by a majority of owners.

Restaurants

Of the original 13 restaurants in the study:

- 10 continue to function as restaurants,
- 1 has changed use to a gasoline station, and
- 2 have abandoned their sites and have the property for sale.

Access - Of the 10 sites that continue to function as restaurants, improvements to the property of one site could not be made due to ongoing roadway construction, hence only 9 sites are discussed in this section. The number of access points remained the same as the "before" condition at 6 sites, and decreased at 3 sites. Similar or improved access (compared to the before condition) was judged to exist in the after condition for the 9 sites.

Circulation - Traffic circulation was judged to remain the same, or improve, at all sites. Considering the substantial acquisition of property at some of the restaurant sites (over 50% of one of the parcels was acquired), the improvements made to the parcels achieved a high level of operational success.

Parking - The number of sites with the change in the number of parking spaces and conformance to the municipal code(C - conformance; N- non-conformance) is as follows:

Number of Sites With a Change In Spaces			
More	Same	Less	Unknown
4(C,C,N,N)	1(N/A)	4(C,N,N/A,N/A)	0

As noted, only 3 sites are in conformance with the parking space requirements for the municipalities; 3 are not; 3 sites do not have sufficient municipal code information to determine conformance. Parking layout revisions were made to 7 of the 9 sites. Parking arrangements were found to be more innovative for restaurants than for any other category. Two restaurants allowed cars to be parked on state right-of-way, and one took advantage of easements on the property.

Basis of improvements - The cost to cure for restaurants was organized to address parking and maneuverability problems. Seven of the 9 sites actually made improvements and 4 of those were made on the basis of the cost to cure recommendations. Only 2 sites did not make improvements. Finally, only 3 sites submitted site plan revisions to the townships, although the cost to cure report suggested that 6 of the sites make submissions. The mitigation of the severance damage to restaurants (whether using the cost to cure recommendations or the owner's plan) has been generally satisfactory, and has been pursued by the majority of owners.

Summary of Site Conditions for All Categories

This subsection combines the categories to give overall results between the before and after conditions; it shows distinctions between the separate categories for each of the above areas of discussion. Of the original 122 cases, site investigations revealed that 23 changed use to an extent that they could not be compared to the before condition, 7 abandoned the property and had it for sale, and 5 sites could not be improved due to ongoing condition of the road construction. The remaining 87 sites (71% of the original) formed the basis of this summary section.

The foregoing sections addressed the individual use categories separately. Table 2 is a quantification of the number of sites within each category for each of the operational features. The table provides an easy, casual comparison between the use categories. It can be referred to in the following discussion of the operational features combining the categories.

Access - Access to the partially acquired sites in the after condition was judged to be impaired compared to the before condition in 17% of the cases. But there was a wide variance between the categories as shown in the following table.

<u>Category</u>	<u>% Impaired</u>
Gasoline Station	0
Single Store	30
Strip Mall	9
Large Mall	13
Industrial	43
Large Office	0
Small Office	50
Restaurant	0

Sometimes the small size of the parcel worked against it in trying to provide better access, but many times the location of the parcel and the necessary road improvements forced the final decision on access.

Circulation - Circulation was judged to be improved or similar to the before condition in 93% of the cases. Except for impaired circulation at 2 gasoline stations, all other categories had either no sites or only 1 site at which circulation was judged to be impaired.

Table 2 - Operational Comparison of Before and After Conditions

		Gas Station	Single Store	Strip Mall	Large Mall	Indus. Site	Large Office	Small Office	Restr.
Sample Size		14	13	11	8	7	15	10	9
Number of Access Points	Increased	0	1	0	1	0	1	0	0
	Same	10	10	9	5	4	11	9	6
	Decreased	4	2	2	2	1	3	1	3
	Unknown	0	0	0	0	2	0	0	0
Access Performance	Improved	4	2	2	1	0	1	0	3
	Same	10	7	8	6	2	14	5	6
	Impaired	0	4	1	1	3	0	5	0
	Unknown	0	0	0	0	2	0	0	0
Circulation	Improved	5	0	1	0	0	1	1	2
	Same	7	12	9	7	7	14	8	7
	Impaired	2	1	1	1	0	0	1	0
Number of Parking Spaces	Increased	-	1	2	0	0	2	2	4
	Same	-	3	3	3	4	6	4	1
	Decreased	-	4	5	5	1	6	4	4
	Unknown	-	5	1	0	2	1	0	0
Parking Conformance Status	Conform	-	4	1	1	0	4	2	3
	No-Conform	-	2	3	4	0	1	0	3
	Unknown	-	7	7	3	7	10	8	3
Purpose of Cost-to-Cure	Parking	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Maneuverability	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Architecture	No	No	No	No	Yes	No	No	No
Basis of Improvement	Imprd.(C-T-C)	6	6	2	1	0	3	2	4
	Imprd.(owner's)	6	4	4	4	2	7	5	3
	Unimproved	2	3	5	3	5	5	3	2
Filing Status	Submitted	4	4	3	2	2	3	0	3
	Suggested	6	8	5	7	5	10	10	6

Parking - Gasoline stations were not included in the parking analysis, since most of them did not put a premium on parking. Of the remaining sites (73), the resulting parking situation in the after condition could not be determined for 9 sites. Reviewing the 64 sites where parking could be determined, 35 of them (54%) either had the same number or an increased number of parking spaces provided in the after condition.

Of the 28 sites where information on municipal code requirements was available for the number of parking spaces, 15 were in conformance. But 62% of the sites (45) did not have information available on the code requirements. Most of the sites in non-conformance had the number of parking spaces reduced in the after condition.

Basis of Improvements - In determining the percent of those sites where improvements were made, the 7 abandoned sites are included since a final settlement was reached with the owners. Of the 94 sites, 60 (64%) made improvements to the parcel. The following table compares the categories on the basis of the percent making improvements.

<u>Category</u>	<u>Percent Making Site Improvements</u>	<u>Percent Making Recommended Site Plan Submissions To Municipalities</u>
Gasoline Station	75	67
Single Store	77	38
Strip Mall	55	67
Large Mall	63	29
Industrial	29	29
Large Office	67	30
Small Office	58	0
Restaurant	64	50

Except for the industrial sites, with only 2 improved sites out of 7, all categories fit into a relatively tight range of having 55% to 77% of the sites improved.

The table also summarizes another interesting statistic, namely, the percent of each use category that submitted site layout revision plans to the municipalities, when the submissions were suggested in the cost to cure report. Although individual municipalities can enforce their own regulations, there does not seem to be a pattern of enforcement across the state. There are a few exceptions to this observation. The range in submissions is wide, and a category's showing relative to regulations is perplexing.

Where improvements were made, the cost to cure was used as the basis for the improvement in 40% of the 60 cases. The owners plan was the basis in the other 60%. Generally, the improvements were judged to be very good and the owners showed a desire to retain very viable businesses. On a combined basis, gasoline stations were the most compliant and industrial and small office sites the least compliant.

Site Plan Submissions and Site Improvements in the Townships

Each of the sixty townships, that were included in the study of partial acquisitions, have governmental units to process the revisions that owners planned to make to their property. Regulations requiring site plan submissions are defined by each of the town's codes. When the study teams called the towns many responded that no plans were filed relative to the State's partial acquisition of property. Hence, the study teams did not visit all sixty of the municipal offices for the information needed. A site visit was all that was required in these cases.

Of the 122 cases in the study, site plan revisions were submitted to the municipalities for only 27 cases(22%). The number of site plan revisions made to the towns ranged from none, for some towns, to all sites for other towns. It is not possible to detect a pattern among towns to determine how submissions were made, because there were 32 towns that only had one site and 13 with only two sites (certainly not a sufficient number on which to base findings).

The 122 sites had sufficient changes to the property that all could have been expected to submit changes to the town; the cost to cure actually only suggested that 57 of the sites have plans submitted. But there were 95 cases (78%) where site plans were not submitted. In 59 of these cases there were either improvements or a new use made of the property. An important aspect of the study was to report on the progress of improvements made at the sites by the owners. At the time of the site reviews, 60 of the 122 sites were improved, 23 had been converted to a new use, 7 were abandoned, 27 had not been improved, and 5 still had road construction underway. There is a sense of orderliness and groomed appearance to properties when they have made the improvements that were deemed appropriate by the cost to cure report. The overall appearance of the town is also enhanced when the properties are maintained.

The tendency for the submission of site plan revisions seems to be restricted to particular towns. But when plan revisions were submitted, 86% of the sites that retained their use were improved. When plans were not submitted, only 53% of the sites were improved. There may be opportunities for the NJDOT to alter the manner it interrelates with the towns during the latter stages of the acquisition process by informing the towns of the process' completion. This may have the positive affect of encouraging the owners to file plan revisions or serve as a reminder to the towns to follow up on the site work.

Other techniques that may compel or induce site improvements involves the following:

- the State could investigate the possibility of including the site work in the construction job;
- the State could investigate the possibility of reimbursing a contractor for work done to the owner's specifications;
- the State could retain that portion of the final settlement that covers the cost of the improvements until the work is satisfactorily completed.

Changed Use Sites

There were several sites that changed the category of use between the time that the state started negotiations to acquire part of the property and the study team made the site visit. Of the 122 original cases, 23 sites (19%) substantially changed use of the property. There were an additional 7 sites (6%) that abandoned the property and have it for sale.

The process for abandonment or changing use can start at any time. In the case of a single store, revision plans for a changed use to the property were filed with the municipality at about the same time that the state started negotiations for the partial acquisition. In another case, a restaurant burned to the ground prior to the final settlement and the site is currently abandoned, awaiting the opportunity to change its use to a retail outlet. One of the interesting aspects of these cases is the fact that the owners settled with the state for an amount in excess of the first or final appraisal.

Between the "changed use" and the "abandoned" sites, the cost to cure estimate for mitigation of severance damages was taken into account in 25% of all cases. None of these cases incorporated the "cure" into the final layout. Further discussion of the effect of these cases is found in "Basis For Final Settlement" and "Site Plan Submissions and Site Improvements in the Townships."

Time Change In Acquisition With "Project Scoping" Process

A potential improvement to the acquisition process was instituted with the inclusion of the ROW unit in the project scoping process. Prior to 1994, ROW did not have meaningful input to the selection of the alignment (see the Right of Way Process for Partial Acquisitions in Section I). Including ROW on the scoping team invites ROW to advise the team of the consequences of alignment selections before final locations are made. This has the effect of forcing the design team to acknowledge the social and economic importance of small alignment changes.

Although Table 3 shows 10 cases that were started since 1994, a direct comparison to the total time of settlement with the earlier years is made for the shortest 6 or 2 cases for the earlier years (the number of settled cases in 1994, 1995, or 1996). There are several other cases started since 1994 that have not been settled. The comparison yields the following:

- the average time for settlement of the shortest 2 cases from 1982 to 1993 was 19.3 months, exceeding the 1995 and 1996 averages of 18.5 and 6.0 months, respectively.
- the average time for settlement of the shortest 6 cases from 1982 to 1993 was 31.6 months, exceeding the 1994 average of 20.3 months.

This is certainly indicative of the favorable decision to include ROW in project scoping. But the ROW unit at NJDOT does not feel that their contributions to the scoping process have been sufficiently developed to reflect too much of a change. Time should improve their involvement and consequently it should improve the entire acquisition process.

Table 3 - Total Settlement Time

Year	Sample Size	Average Time (Months)
82	3	49.0
83	1	42.0
84	6	34.8
85	19	53.8
86	11	39.3
87	22	37.9
88	10	40.3
89	5	38.2
90	6	43.2
91	8	28.5
92	14	34.7
93	4	33.3
94	6	20.3
95	2	18.5
96	2	6.0
Total	119	38.3

Cost Comparisons

This section is added to the analysis simply to give more detail on how costs are affected by different parameters. Several comparisons can be made of the variations and differences in cost on the basis of:

- basis of settlement,
- assessment estimate of cost to cure, and
- land acquired.

These comparisons have value in determining recommendations for future actions, and they are useful in getting a perspective of the way costs vary.

Basis For Final Settlement

Final settlement of the 122 acquisitions was reached in the following way:

- Agreement - 65 cases (53%)
- Condemnation - 48 cases (40%)
- Trial - 9 cases (7%)

In the Agreement grouping, the process of eminent domain was started in 85% of the cases, but final settlement appears to have been reached prior to a Commission hearing. The significance of settling a case by Agreement is noted in Table 4 which summarizes the trend in cost on the basis of settlement.

Table 4 - Trend in Excess Cost on Basis of Settlement

Basis of Settlement	Median Value of (Final Settlement - Final Offer)
Agreement	\$8,000
Condemnation	60,950
Trial	138,925

This difference is simply the excess payment to an owner over the State's estimate of FMV reflected by the final offer. The final offer value is substantially and progressively exceeded as the process advances from Agreement to Condemnation to Trial. There were two cases where the final settlement was less than the final offer, but the State enhanced the settlement in both cases by conveying a contiguous parcel of land to the owner of the partially acquired parcel.

Table A.1 in the Appendix details the difference between the final settlement and the final offer for each of the categories studied, for the cases settled by Agreement and Condemnation. Substantially higher differences are reflected for industrial parcels, and to a lesser extent large malls. It is interesting that industrial sites were not brought to Trial by the State. Neither the industrial sites nor the large malls exhibited an increase in the difference between the final settlement and the final offer when settlement advanced beyond Agreement. The strip mall and the single store were the categories most frequently brought to Trial (21% and 18% of cases, respectively). The other categories ranged from 0% to 12% for the cases brought to trial. The small office category had the greatest tendency to be settled by Agreement (86% of cases). The other categories ranged from 25% to 57%, for those settled by Agreement. There is no indication from the data that would tend to give reasons for these differences.

The filing of a "Declaration of Taking" and the subsequent Commission hearing and finding does not automatically determine the settlement value. Either party can appeal to the courts, or compromise on a settlement value between themselves. When the parties compromised, the final settlement was less than the Commission award in 12 cases; this is almost as many times as it was greater, which was 11 cases. The files did not always reveal the Commission award, hence this comparison can not be made for all the cases that were settled through Condemnation.

Because there is a substantial increase in the State's settlement costs with each step increase in the process, it would be to the State's interest to devise means of settling the cases early in the process. A view of the distribution of the difference between the final settlement and the final offer is shown in Figure 2 below. In 85% of the cases, the final settlement exceeds the final offer

and in almost 20% of the cases that difference exceeds \$100,000. There may be significant reductions in the final settlement cost to the State, if the acquisition process could be prevented from advancing to a Commission hearing or a Trial.

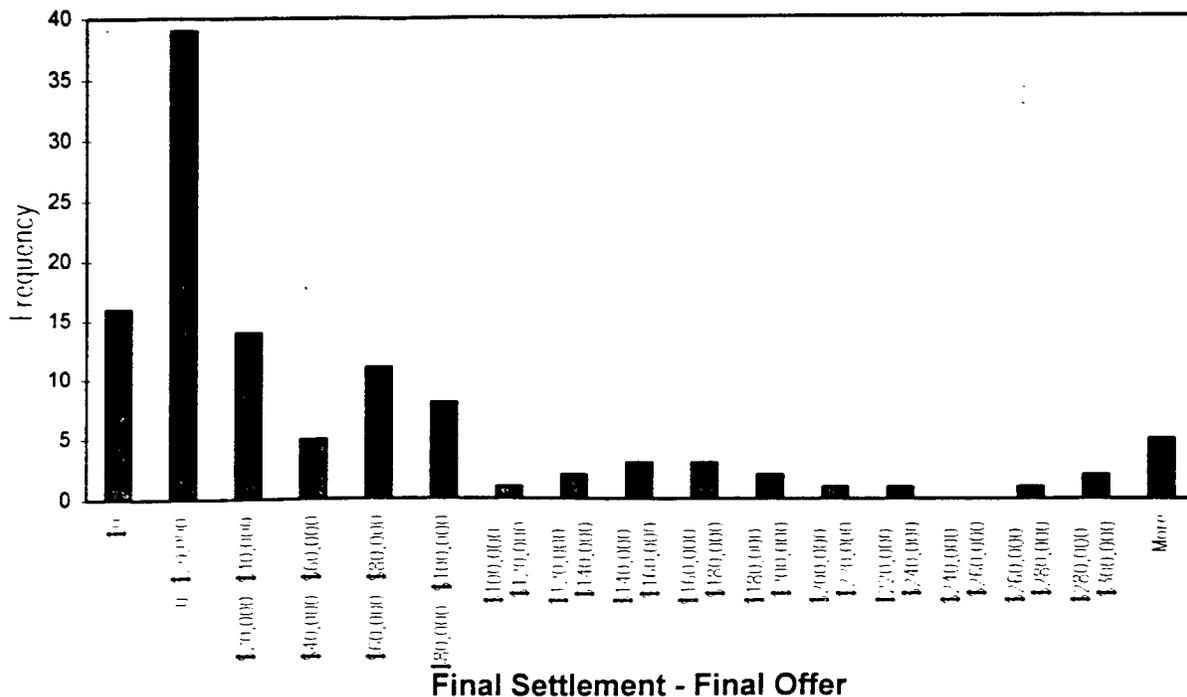


Figure 2 - Frequency of (Final Settlement - Final Offer)

Another way of reviewing the data is reflected by the ratio of the final settlement to the final offer, shown in the Appendix in Figure A.1. The Appendix figure indicates the proportional difference between the final settlement and the final offer as opposed to the absolute monetary difference shown in Figure 2, above. To highlight the magnitude of the costs, in 33% of the cases, the final settlement exceeds the final offer by at least \$60,000. Further, for 89% of the cases brought to trial, the final settlement exceeds the final offer by \$65,000.

For the individual categories, the tabulation below shows the difference between the final settlement and the final offer as the cases advance from Agreement to Commission Hearing. There were so few cases that went to trial that they could not be included in the comparison.

<u>Category</u>	<u>Median Increase in Final Settlement-Final Offer From Agreement to Condemnation</u>
Gas Station	\$67,000
Large Office	57,256
Strip Mall	37,500
Single Store	18,617
Small Office	14,600
Restaurant	10,200

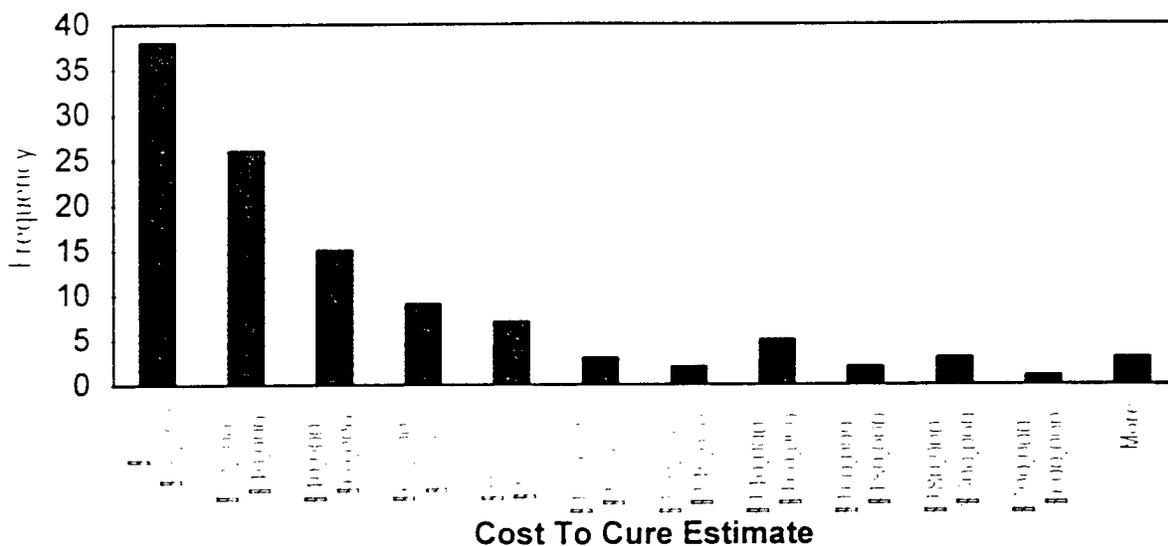
The summary of resolutions in the above table shows a wide variance between use categories. It would appear that the restaurants, in addition to the industrial and large mall sites, can be taken through condemnation proceedings without experiencing an excessive increase in settlement cost.

Range of Assessment of Cost To Cure

The importance of the cost to cure cannot be overstated. Besides providing the negotiators with engineering solutions and associated cost to mitigate severance damage, owners are given guidance and suggestions that can be used for improvements, municipalities are forewarned of site layout submissions and the potential for variance application by owners, and the roadside property improvements are coordinated with the roadway improvements to enhance the overall movement and circulation of traffic. Figure 3 depicts the distribution of the estimate of the cost to cure for the severance damage to properties in this study.

As might be expected, the cost to cure reflected that over 55% of the properties cost less than \$40,000 to mitigate the damages. The most expensive use category for damage mitigation was the industrial sites (median value of \$82,000), closely followed by large malls (median value of \$78,290). The actual value for some of the industrial sites was over a million dollars. The least expensive sites to mitigate damage were strip malls and small offices (median values of \$17,782 and \$20,040, respectively). Referring to Table 1, it can be seen that the other categories (gasoline stations, single stores, large offices, and restaurants) were in the \$35,100 to \$44,000 range.

Tables A.2 and A.3 in the Appendix show the frequency distributions for the cost to cure ranges and the value of the difference between the final settlement and the final offer for the cases resolved by Agreement and the Condemnation process (prior to trial). The distributions for each category are similar.



Another way of viewing the cost to cure is reflected in its ratio to the final settlement cost. This gives an indication of the importance of the cost to cure to the total settlement costs. Figure 4 graphically shows that in almost 60% of the cases, the cost to cure accounted for over 20% of the final settlement. This is perhaps the most compelling argument for the indispensability for cost to cure estimates.

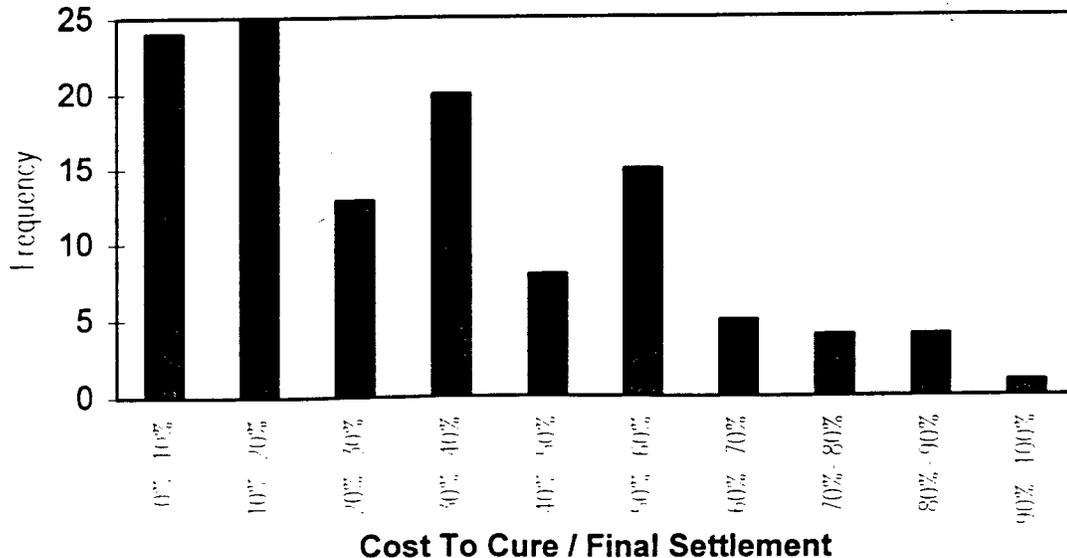


Figure 4 - Percent of Cost to Cure to Final Settlement

Land Acquisition Comparisons

A final cost comparison was made to reflect the ratio of cost to the portion of acquired parcel.

1. In the first analysis, shown in Figure 5, the ratio of the final settlement to initial parcel value was plotted against the ratio of land acquired to initial land area. The initial property value includes land plus improvements. If land was the only consideration in the settlement costs, we could expect all plotted points to fall below the 45 degree line, because the initial value includes improvements to the property. But the plot reflects cost ratios that are multiples of those expected. This is an indication of high final settlements.

2. In the second analysis, shown in Figure 6, the cost to cure estimate was deducted from the final settlement to reflect the only other tangible cost associated with the acquisition. Again, the ratio of the reduced settlement cost was plotted against the ratio of the land acquired to the initial land area. The final settlement, when reduced by the cost to cure, should now reflect only land acquisition cost. Again, because the initial value includes improvements as well as land, the expectation is that the plotted values would be well below the 45 degree line. There is a noticeable reduction in the plotted points, but most are considerably above the 45 degree line. This is a further reflection of high final settlements relative to land acquisition and severance damages.

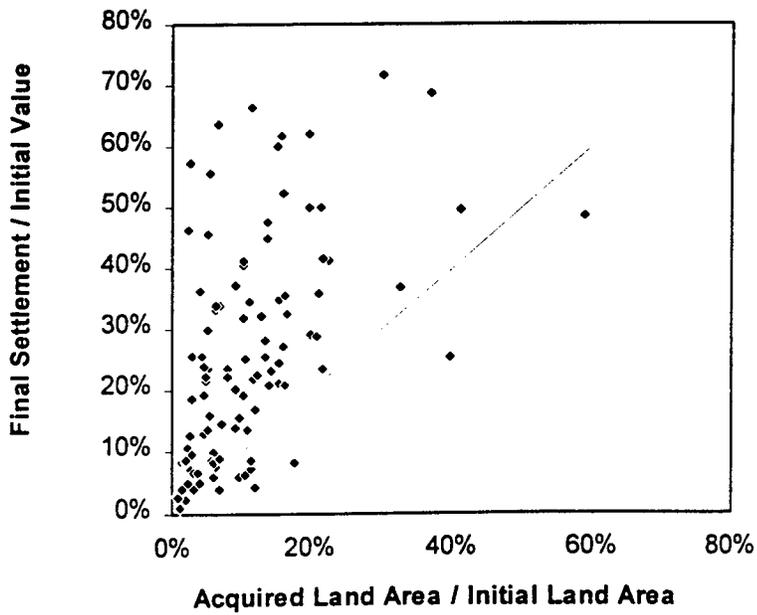


Figure 5 - Final Settlement Value / Initial Value vs. Acquired Land Area / Initial Land Area

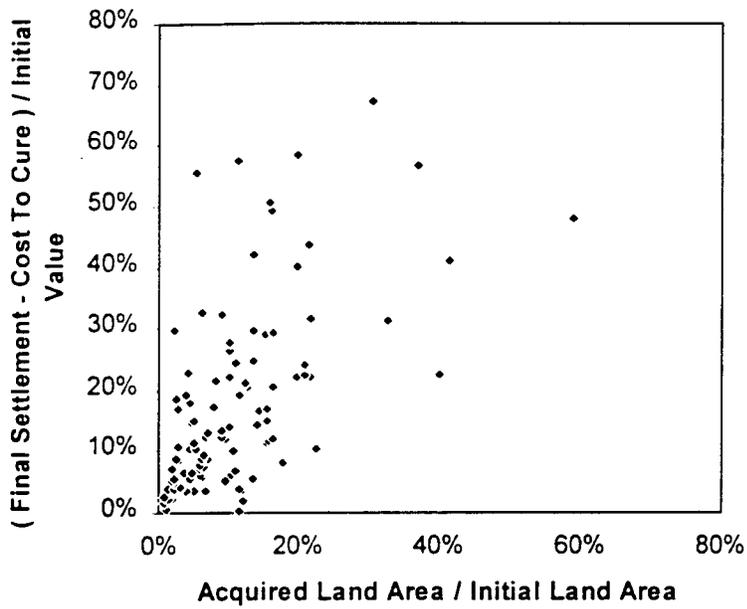


Figure 6 - (Final Settlement - Cost to Cure) / Initial Value vs. Acquired Land Area / Initial Land Area

IV. FINDINGS

In the fourteen year period between 1982 and 1996, NJDOT made thousands of partial acquisitions of property to accommodate its road construction program. With some of these acquisitions a cost to cure was developed to mitigate resulting severance damage. This study was conducted to determine the effects on the remainder properties, particularly as they are influenced by the cost to cure.

The 122 cases represent most categories of land use and reflects the population of partial acquisitions using a cost to cure, specifically with parking and circulation problems, acquired by the NJDOT in the 14 year period. Depending on the analysis, the study used the following number of cases:

122 - used for the history of all cases;

87 - used for the comparison of before and after conditions, because of changed uses of the property and current ongoing road construction;

114 - used for cost comparisons, due to the lack of a final offer in some cases.

Other comparisons throughout the study reflect varying numbers of cases that had to be used in the individual analyses.

Category Findings In the "After" Condition

Gasoline Stations - Only half of the gasoline stations retained their function after the final settlement, substantially less than any other category. Of the 14 stations that maintained their operation, none were judged to have their access impaired, two were judged to have the station's internal traffic circulation impaired, and of the 12 sites that made improvements, 6 were completed on the basis of the cost to cure.

Single Stores - Although single stores reflected a high degree of impaired access (4 cases or 30%), internal circulation was judged to be impaired at only one site. Ten of the sites made improvements; six were in accord with the cost to cure. There was an unusual number of sites where the number of parking spaces in the after condition could not be determined (4 of them were auto dealerships), and half of the remaining sites were left with a reduction in the number of parking spaces.

Strip Malls - A high percent of the strip malls (12 of 14) continued to function. One of them had impaired access, one had impaired site circulation, and half the sites had the number of parking spaces reduced. Only 6 of the sites made improvements and 2 of those were based on the cost to cure.

Large Malls - The large malls is the only category that retained its use at all sites after the partial acquisition. Access was judged to be impaired at one site, circulation impaired at one site, and the number of parking spaces reduced at 5 of 8 sites. The number of parking spaces were judged to be in non-conformance with the municipal code at half the sites. Of the 5 sites that made improvements, only one was based on the cost to cure.

Industrial - Only 7 of the original 11 industrial sites continue to function as similar industries. Of those, access was judged to be impaired at 3 of them; circulation remained the same for all; only 1 site made any revisions to the parking layout. Three sites did make improvements, but none on the basis of the cost to cure. This is the lowest percent of site improvements made by any category.

Large Office - All, except one of the large offices, continue to function. Neither access nor circulation was judged to be impaired at any; parking was reduced at 6 sites. Ten of the sites made improvements and 3 of those were done on the basis of the cost to cure.

Small Office - Five of the 10 functioning sites were judged to have impaired access; only one site had impaired circulation; parking was reduced at 4 sites. Seven of the sites made improvements, 2 were done on the basis of the cost to cure.

Restaurants - Neither access nor circulation were judged to be impaired at the restaurants. Four sites had reduced parking and of the 7 sites that made improvements, 4 were made on the basis of the cost to cure.

Site Features

Large offices and restaurants are the only categories where neither access nor circulation was judged to be impaired. A high degree of impaired access was judged to exist at small offices(50% of sites), industrial sites(43%), and single stores(30%). Site circulation, though, was not judged to be a common problem at the latter categories, which is a reflection of the efforts made to mitigate the severance damages to the remainder parcels.

Where parking conditions could be determined, 54% of the sites either had the same number or an increased number of parking spaces provided in the after condition. Information on municipal code requirements was available on the number of parking spaces at 28 sites(38%); 15 of these sites were in conformance. But 45 sites (62%) had no information available on the code requirements.

Improvements were made to 64% of the 94 properties that continued in business or were abandoned. Of those improved, 40% were made on the basis of the cost to cure. If the original 122 cases are considered, only 19% of the sites used the cost to cure as the basis for improvements.

Twenty five percent of the 122 original cases either changed their category of use or abandoned the site.

Cost Comparisons

There is a substantial increase in the final settlement cost to the State, above the final offer value, as the acquisition process goes from Agreement to Condemnation to Trial. The final settlement exceeded the final offer in 85% of the cases and a "Declaration of Taking" was not filed in only 10 of the 122 cases.

Industrial sites and large malls have the highest settlement costs; the difference between the settlement and the final offer is also the highest for these categories.

The data could not suggest reasons, but over 25% of the strip mall cases are taken to Trial for settlement; this is greatly in excess of the other categories.

The owners of the 57 sites that changed use, abandoned the property, or did not make improvements, were compensated for improvements that were not made. This reflects compensation to 49% of the 117 sites that should have made improvements, but did not.

There is an indication of high final settlements relative to land acquisition and severance damages.

Site Plan Submissions

There is a striking difference in the percent of sites that made improvements based on whether or not site plan submissions were made to the townships. Site plans were submitted in only 22% of the cases and 86% of those were improved. For the other 95 cases, where no plans were submitted, only 53% of the sites were improved.

Project Scoping Process

The few cases where the ROW unit was included in the scoping team's activities, suggests a shortening of the time required for acquisition of the properties. The continued involvement of ROW in these activities should have a long term positive effect.

Cost to Cure

In almost 60% of the cases, the cost to cure estimate for severance damages accounts for at least 20% of the final settlement. The cost to cure estimate to mitigate severance damages could be as high as 90% of the final settlement.

The cost to cure report was the most useful document to refer to during the course of the study. But many lacked precise information on the sites, relative to roadway construction and conformance to township codes.

The cost to cure reports suggested that site plan revisions to the municipalities should have been submitted for 60 sites. Submissions were only made for 27 sites.

V. CONCLUSIONS AND RECOMMENDATIONS

The conclusions emanate from the findings and the recommendations offer suggestions for enhancing the partial acquisition process.

To effectively use the settlement costs involved with the 57 sites that either changed use, made no improvements, or abandoned the property, and to maintain a business-like appearance in the municipalities (by having the properties improved after the State's partial acquisition), there are several suggested techniques that could be investigated:

- the State could consider the possibility of including the cost to cure work in the construction job;
- the State could investigate the possibility of reimbursing a contractor for cure work done to the owner's specifications;
- the State could retain that portion of the final settlement that covers the cost of cure until the work is satisfactorily completed.
- the State should investigate opportunities for the NJDOT to ameliorate its relationship with the towns during all stages of the process, particularly in the latter stages of the acquisition process, to inform the towns of the process' status.

With the conclusion of the acquisition process, gasoline stations have the greatest propensity for going out of business than any other use category studied. Improvements to the station properties to mitigate severance damage were generally satisfactory. In an effort to arrive at settlement costs that reflect the final status of the gasoline station properties, means should be investigated to determine whether the owners of the stations have intentions of remaining in business after the final settlement. If there is no way of determining the intention of owners, one of the former approaches could prove fruitful.

It would be in the State's financial interest to reach settlement by Agreement, rather than through Condemnation or Trial.

Improvements to the remainder parcels are more readily made when the owners submit site plan revisions to the town. As suggested above, the State should investigate opportunities for the NJDOT to modify its relationship with the towns during all stages of the process, particularly in the latter stages of the acquisition process, to inform the towns of the process' status. This could serve as early and continuous notice to the municipalities of the situation of the acquisition process.

Improvements in the scoping process through early involvement with the Right of Way unit could result in accelerating the acquisition process. The length of the acquisition process appears to have been reduced with the early involvement of Right of Way with the scoping team.

For various reasons, some of the sites were very difficult to locate in the field. In addition, there was no easy means of determining if the sites were in conformance with the township's code. The cost to cure report can be enhanced in two notable ways to overcome these difficulties:

- include informative before and after plans of the sites that include a comprehensive view of the road improvements, and
- include a complete list of the township's codes, comparing the site's layout to the code.

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Mei Chen, Yongfang Sun, and Lichuan Wang served as student research assistants and collected the data from the NJDOT files, the municipal offices, and the field sites. They also input the data in computer files, and ran statistical tests.

Nicholas Antiniou, Research Associate at the Institute for Transportation helped organize the study and set up the electronic files used for data input.

Disclaimer

This document represents the position of the authors and not necessarily that of the NJDOT or the Region II University Transportation Center. The State Access Code was not referenced for any of the judgments, nor was it used to arrive at any of the findings in the report. The report does not constitute a standard, specification, or regulation and neither the State of New Jersey nor the Region II University Transportation Center assumes liability for the contents or the use thereof.

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APPENDIX

Right of Way Impact Data Form

Directions for Completing the Right of Way Impact Data Form

Table A.1 - (Final Settlement - Final Offer) for Each Category

Figure A.1 - Ratio of Final Settlement to Final Offer

Table A.2 - Cost to Cure vs. (Settlement - Final Offer) for Agreement Cases

Table A.3 - Cost to Cure vs. (Settlement - Final Offer) for Condemnation Cases

"RIGHT OF WAY IMPACT" DATA FORM

Parcel Description Block _____
Lot _____

Route _____ Section _____ Parcel _____

Local Name _____

Type(Activity): Commercial _____ gas station _____ single store
 strip mall _____ large mall
 restaurants; fast foods _____
 Industrial _____ light (no manufacturing) _____
 Office _____ large _____ small (less than 5000 sf) _____

Costs /Estimates and Dates

Initial Value	_____	_____
First Appraisal	_____	_____
Cost-To-Cure Report	_____	_____
Declaration of Taking	_____	_____
Owners Claim	_____	_____
Final Appraisal (Offer)	_____	_____
Final Settlement	_____	_____

Basis of Final Settlement

Agreement	Condemnation Process	Court Action
Other _____		
Comments: _____		

Property Descriptions

I. Before Taking

Features of Parcel _____

Parking Spaces _____

Circulation _____

Ingress/Egress _____

Zoning _____

Area Land _____ Building _____

Comments: _____

II. Remainder

Parking Spaces _____

Circulation _____

Ingress/Egress _____

Area

Land _____

Building _____

Comments: _____

III. Scope of Cure

Parking Spaces _____

Circulation _____

Ingress/Egress _____

Other

Comments: _____

IV. Site Investigation

Parking Spaces _____

Circulation _____

Ingress/Egress _____

Other

Comments on Changes: _____

Municipal Files

Planning Board _____

II. Remainder -A, B, C-

Parking Spaces _____ # and a description of the space layout remaining _____
Circulation _____ Describe circulation without changes _____
Ingress/Egress _____ Describe access/egress without changes _____
Area Land _____ -A-, Acres _____ Building _____ -A-, SF _____
Comments: -Note other conditions of the taking; shape of remainder, -B-
-Note building, landscaping, drainage, etc. changes

III. Scope of Cure -C-

Parking Spaces _____ # _____
Circulation _____ Describe traffic pattern on property _____
Ingress/Egress _____ Describe access/egress conditions _____
Other _____ List other changes to property & bldg. _____
Comments: -Note unusual conditions that did not exist before taking
-Note all suggested changes to parcel, in addition to parking,
access & circulation

IV. Site Investigation

-Field inspect site for current condition and take a picture (do not contact the owner)

Parking Spaces _____ # _____
Circulation _____ Describe traffic pattern on property and give a general statement compared to Cost-to-Cure _____
Ingress/Egress _____ Describe access/egress conditions and give a general statement compared to Cost-to-Cure _____
Other _____ List other changes to property & bldgs. _____
Comments: _____ Comment on the extent of changes & give general statement
Were changes made?
Were design changes from the Cost-to-Cure report?
Has use changed?

Municipal Files

-Visit municipal offices and inspect files

Planning Board _____ Property description of plan filed? Was plan approved (if filed)?
Summary file remarks (minutes of Board) ;

Notes:

- A- ROW Price Approval Form
- B- Appraisal of Property- Partial Taking Form, Sections III. & V.
- C- Cost-To Cure Report
- D- Final Settlement Memo of NJDOT Attorney, action Slip or Administrative Settlement Memo
- E - Reviewer's fair market value(FMV) statement

Make Copies of the following documents for each case and include in file:

- * Right of Way Case Summary
 - Review Appraiser's FMV Statement
 - Negotiator Statement
- * Appraisal (Pre 1994)
 - Valuation Before Taking (II, III, IV)
 - Nature of Taking (V)
 - Effect on Remainder (V)
- * Appraisal (Post 1994)
 - General Data (I., Page 1 only)
 - Valuation Before Taking (II. Description of Property)
 - Nature of Taking (III. description of Taking)
 - Valuation After Taking (IV. Description of Remainder)
- * Attorney's Closing Memo or Administrative Settlement Memo
 - * Cost-To-Cure report (take extra copy if one exists)



Figure A.1 - Ratio of Final Settlement to Final Offer

Table A.1 - (Final Settlement - Final Offer) for Each Category

Basis of Settlement	Type	Number	Count	Mean	Median
Court Action	Gas Station	1			
	Large Mall	1			
	Large Office	1			
	Single Store	2			
	Strip Mall	4			
	Sub Total	9	9	\$133,829	\$138,925
Condemnation	Gas Station	11	11	\$71,987	\$68,000
	Industrial	5	5	\$307,763	\$153,000
	Large Mall	5	5	\$221,000	\$85,600
	Large Office	7	7	\$94,414	\$67,000
	Restaurant	7	7	\$52,200	\$22,200
	Single Store	5	5	\$30,327	\$26,617
	Small Office	2	2	\$23,750	\$23,750
	Strip Mall	6	6	\$78,167	\$45,000
	Sub Total	48	48	\$107,076	\$60,950
Agreement	Gas Station	16	15	\$8,476	\$5,000
	Industrial	6	5	\$863,640	\$195,000
	Large Mall	2	2	\$103,500	\$103,500
	Large Office	9	8	\$14,184	\$9,744
	Restaurant	6	5	\$18,133	\$12,000
	Single Store	9	7	\$11,171	\$8,000
	Small Office	12	10	\$17,450	\$9,150
	Strip Mall	5	5	\$12,540	\$7,500
	Sub Total	65	57	\$91,784	\$8,000
Total		122	114	\$99,731	\$22,250

Table A.2 - Cost to Cure vs. (Settlement -Final Offer) For Agreement Cases

Cost to Cure Value Range	Frequency	Settlement Value - Final Offer	
		Mean	Median
\$0-\$20,000	18	\$17,017	\$6,700
\$20,000-\$40,000	16	\$8,284	\$6,800
\$40,000-\$60,000	5	\$7,800	\$8,800
\$60,000-\$80,000	5	\$10,432	\$8,200
\$80,000-\$100,000	4	\$52,500	\$7,500
\$100,000-\$120,000	2	\$5,000	\$5,000
\$120,000-\$140,000	1	\$57,500	\$57,500
\$140,000-\$160,000	2	\$60,500	\$60,500
\$160,000-\$180,000	1	\$180,000	\$180,000
More	3	\$1,374,400	\$873,500
Total	57	\$91,784	\$8,000

Table A.3 - Cost to Cure vs. (Settlement - Final Offer) For Condemnation Cases

Cost to Cure Value Range	Frequency	Settlement Value-Final Offer	
		Mean	Median
\$0-\$20,000	17	\$72,188	\$23,400
\$20,000-\$40,000	8	\$64,303	\$68,400
\$40,000-\$60,000	9	\$103,592	\$74,125
\$60,000-\$80,000	4	\$64,605	\$69,210
\$80,000-\$100,000	2	\$34,150	\$34,150
\$100,000-\$120,000	1	\$831,100	\$831,100
\$120,000-\$140,000	1	\$130,600	\$130,600
\$140,000-\$160,000	3	\$116,167	\$68,000
\$160,000-\$180,000	1	\$298,000	\$298,000
More	2	\$275,626	\$275,626
Total	48	\$107,502	\$60,950