Ombudsman for Property Rights

Annual Report

The use of Eminent Domain in the state of Missouri

Office of Ombudsman for Property Rights: Tom Green

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St. Louis, MO 63301

2013

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[OMBUDSMAN FOR PROPERTY RIGHTS]

The use of Eminent Domain in the state of Missouri

Executive Summary

As the Ombudsman I have traveled the state of Missouri meeting with the property owners who have sought assistance from the Office of Ombudsman. This office has been beneficial to the land owners because it provides assurance that there is someone they can bring their concerns to and that someone is monitoring the eminent domain process. The citizens of Missouri have seen the acquisition of their property by Utilities more so than by developers who get the power of Eminent domain from local municipalities. Enbridge Pipeline, Kansas City Power and Light and Ameren Missouri have had projects that they needed to acquire many tracts of land that affected many land owners. I have information included in this report on these projects. The citizens affected by these projects offered much resistance to these companies and some cases are still in the Missouri Court System. The Missouri Supreme Court had its first case involving the New Eminent Domain law that was passed in 2005. The court ruled for the property owner in that Heritage Value is a right of a property owner.

Website

The Office of Ombudsman has an official website that can provide information about the eminent domain process to the landowner. The website was created in 2007 with the assistance of the Department of Economic Development; the website has several links of information on the topic of Eminent Domain. I have provided a Web Site Analytics Report that will show how this site has been helpful to Missourians who have contacted this site for information. I will be using this information when updating this web-site so that the information that people need is easy to find and updated.

Google Analytics

Go to this report

http://www.eminentdomain.mo.gov - http://www.eminentd...
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www.eminentdomain.mo.gov

Jan 1, 2013 - Dec 30, 2013

All Visits
100.00%

Visits and % New Visits by Visitor Type

Visitor Type	Visits	% New Visits
New Visitor	1,786	100.00%
Returning Visitor	431	0.00%

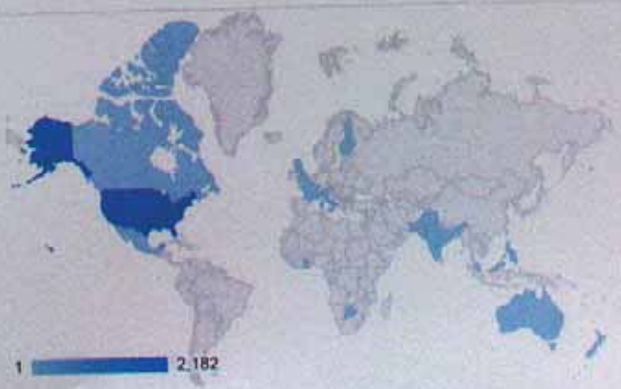
Pageviews

4,258
% of Total: 100.00% (4,258)

Pageviews and Unique Pageviews by Page

Page	Pageviews	Unique Pageviews
/faq.htm	1,960	1,611
/	925	774
/blighted.htm	369	267
/about.htm	361	266
/resources.html	342	240
/index.htm	301	219

Visits by City



New Visits

1,786
% of Total: 100.00% (1,786)

Visits by Browser

Browser	Visits
Internet Explorer	913
Chrome	485
Safari	338
Firefox	314
Android Browser	106
Safari (in-app)	14

Avg. Visit Duration and Pages / Visit

Visits and % New Visits by Language

Language	Visits	% New Visits
en-us	2,141	80.76%
en	57	70.18%
en_us	4	100.00%
en-gb	4	100.00%
ja-jp	4	50.00%
c	2	100.00%
el	1	100.00%
en_gb	1	100.00%
es	1	100.00%
fi	1	100.00%

Google Analytics

Go to this report

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www.eminentdomain.mo.gov

www.eminentdomain.mo.gov

Jan 1, 2013 - Mar 31, 2013

All Visits
100.00%

Visits and % New Visits by Visitor Type

Visitor Type	Visits	% New Visits
New Visitor	442	100.00%
Returning Visitor	143	0.00%

Pageviews

1,151
% of Total: 100.00% (1,151)

Pageviews and Unique Pageviews by Page

Page	Pageviews	Unique Pageviews
/faq.htm	478	397
/	274	233
/about.htm	116	92
/blighted.htm	105	82
/resources.html	95	68
/index.htm	83	65

Visits by City

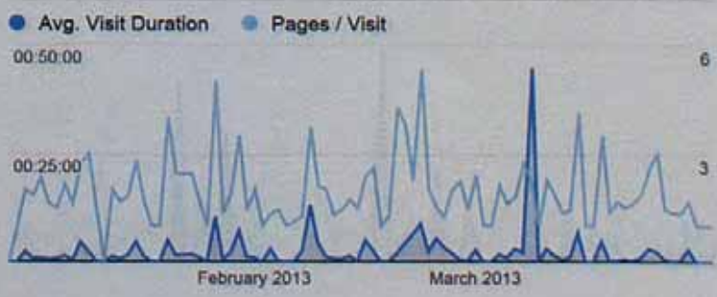
New Visits

442
% of Total: 100.00% (442)

Visits by Browser

Browser	Visits
Internet Explorer	264
Safari	98
Chrome	90
Firefox	88
Android Browser	32
Mozilla Compatible Agent	8

Avg. Visit Duration and Pages / Visit



Visits and % New Visits by Language

Language	Visits	% New Visits
en-us	563	76.73%
en	19	36.84%
en_gb	1	100.00%
es	1	100.00%
fi	1	100.00%

Google Analytics

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www.eminentdomain.mo.gov

Apr 1, 2013 - Jun 30, 2013

All Visits
100.00%

Visits and % New Visits by Visitor Type

Visitor Type	Visits	% New Visits
New Visitor	451	100.00%
Returning Visitor	87	0.00%

New Visits

451

% of Total: 100.00% (451)

Pageviews

957

% of Total: 100.00% (957)

Visits by Browser

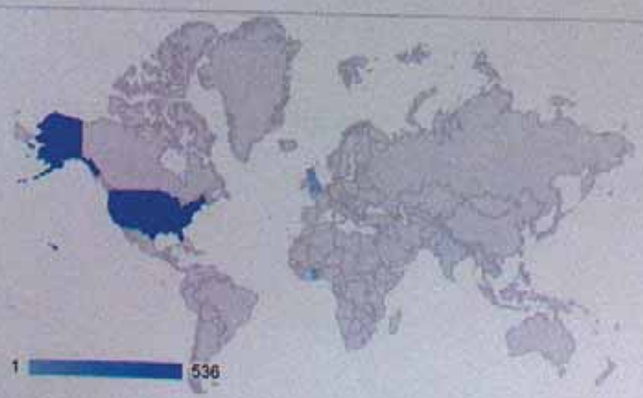
Browser	Visits
Internet Explorer	210
Chrome	123
Safari	92
Firefox	78
Android Browser	24
IE with Chrome Frame	4

Pageviews and Unique Pageviews by Page

Page	Pageviews	Unique Pageviews
/faq.htm	501	412
/	191	158
/blighted.htm	91	59
/about.htm	63	48
/resources.html	57	47
/index.htm	54	39

Avg. Visit Duration and Pages / Visit

Visits by City



Visits and % New Visits by Language

Language	Visits	% New Visits
en-us	515	83.69%
en	21	85.71%
en-gb	2	100.00%

Google Analytics

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www.eminentdomain.mo.gov

Jul 1, 2013 - Sep 30, 2013

All Visits
100.00%

Visits and % New Visits by Visitor Type

Visitor Type	Visits	% New Visits
New Visitor	468	100.00%
Returning Visitor	123	0.00%

New Visits

468

% of Total: 100.00% (468)

Pageviews

1,124

% of Total: 100.00% (1,124)

Visits by Browser

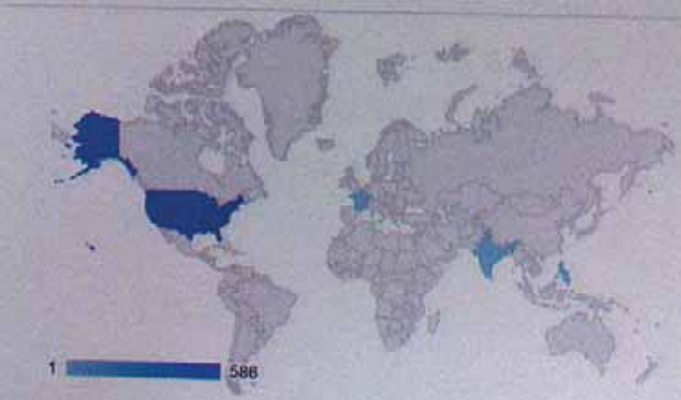
Browser	Visits
Internet Explorer	261
Chrome	117
Safari	87
Firefox	84
Android Browser	25
Safari (in-app)	6

Pageviews and Unique Pageviews by Page

Page	Pageviews	Unique Pageviews
/faq.htm	495	419
/	258	218
/about.htm	97	65
/resources.html	97	65
/index.htm	90	66
/blighted.htm	87	64

Avg. Visit Duration and Pages / Visit

Visits by City



Visits and % New Visits by Language

Language	Visits	% New Visits
en-us	569	78.73%
en	13	100.00%
ja-jp	4	50.00%
c	2	100.00%
en_us	1	100.00%
en-gb	1	100.00%
fr-fr	1	100.00%

Google Analytics

Go to this report

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www.eminentdomain.mo.gov

www.eminentdomain.mo.gov

Oct 1, 2013 - Dec 30, 2013

All Visits
100.00%

Visits and % New Visits by Visitor Type

Visitor Type	Visits	% New Visits
New Visitor	425	100.00%
Returning Visitor	78	0.00%

Pageviews

1,026
% of Total: 100.00% (1,026)

Pageviews and Unique Pageviews by Page

Page	Pageviews	Unique Pageviews
/faq.htm	486	383
/	202	165
/resources.html	93	60
/blighted.htm	86	62
/about.htm	85	61
/index.htm	74	49

Visits by City

New Visits

425
% of Total: 100.00% (425)

Visits by Browser

Browser	Visits
Internet Explorer	178
Chrome	155
Firefox	64
Safari	61
Android Browser	25
Mozilla	12

Avg. Visit Duration and Pages / Visit

Visits and % New Visits by Language

Language	Visits	% New Visits
en-us	494	84.62%
en	4	50.00%
en_us	3	100.00%
el	1	100.00%
en-gb	1	100.00%

Introduction

This report will outline the controversial area of property rights and regulatory takings that has created court battles between Property owners and condemning authorities, which has a mood of winner –take- all. The Missouri Legislature passed a new law in 2006, House Bill NO. 1944, the new law was based on recommendations from the Missouri Task Force of Eminent Domain. I will examine in this report if this new law has in fact improved the process and procedures of exercising eminent domain for the land owner and the condemning authority.

The Ombudsman is a full time position created to assist individuals seeking information regarding the condemnation process and procedures. This report will also explain how the Ombudsman's office assist the citizens through the process of Eminent Domain.

Office of the Ombudsman for Property Rights

The Missouri Office of the Ombudsman for Property Rights is charged with assisting citizens by providing guidance, which shall not constitute legal advice, to individuals seeking information regarding the condemnation process and procedures. The Ombudsman is also responsible for documenting the use of eminent domain within the state and any issues associated with its use and shall submit a report to the general assembly on January 1, 2010, and on such date each year thereafter.

The term ombudsman means people's advocate, in the public context, the Ombudsman is an official, appointed by the government, responsible for investigating and resolving complaints reported by citizens. The Ombudsman concept itself is a common place fixture in American governments, universities, and corporations. The Ombudsman is a full-time position within the Office of Public Council, and the offices are located in St. Louis. The Ombudsman is a neutral position, operating within – but independent of – a government agency, whose sole job is to answer questions from both owners and condemning authorities, and to help resolve property rights disputes.

I am usually contacted by the landowner after they have received a letter from the condemning authority stating that they want to acquire land from the owner. I then make a site visit to the land owner to explain the process of eminent domain. Occasionally, our job is simply the bearer of bad news. In such circumstances an owner may be upset to learn that their specific grievance is not actionable, but they at least feel confident that the law has been explained sufficiently by an informed and unbiased source.

After receiving the initial phone call and providing the appropriate information to the property owner, I contact the condemning authority and explained the new law to them and to bring the land owners concerns to them for consideration. By increasing the flow of information and decreasing the hostility between the parties, I have enabled some parties to voluntarily resolve their disputes that arise during this process of eminent domain.

Property rights issues have been and will continue to be controversial. However, the wisdom of having a neutral third party to help assist owners in achieving a fair and equitable resolution of property acquisitions and also ensuring that the condemning authority obeys the law will help to resolve disputes.

Use of Eminent Domain in Missouri

The Office of Ombudsman documents the cases of eminent domain that have contacted my office during my tenure as the Ombudsman for Property Rights. The Office of State Courts Administrator compiles a database of court filings and produces an "annual report" that describes the types of cases filed in each circuit, and further broken down by county. This data base includes condemnation cases and exceptions filed, the only further breakdown of these cases concerns whether the particular condemning authority is either the "state" or "other." There is no further official Database describing each specific use of eminent domain. There is also a specific website for the Office of Ombudsman that shows the area of the state that citizens who are currently going through the eminent domain process. Those reports are documented in this annual report.

Issues that often arise in condemnation of property

When a condemning authority begins the process of acquiring property for a public use their become issues that come into play for the authority and the property owner.

Introductory Stage

The new law states that at least 60 days prior to initiating negotiations to acquire a property interest, the condemning authority must give a written notice to owner of record identifying the interest in real property to be acquired; the purpose for which the property is being condemned; and a statement of the

property owner's rights: 1) the right to seek legal counsel, 2) to make a counteroffer and engage in negotiations, 3) to make a counteroffer and engage in negotiations, 4) to obtain the landowner's own appraisal, 5) to contest the condemnation proceeding, 6) to have just compensation determined preliminarily by a court-appointed condemnation commissioners and ,ultimately, a jury.

Related Issues: I have experience property owners who become alarmed when they receive this notification from the condemning authority; there is a rush to judgment that they only have 60 days until they lose their property. Once I meet with them and explain the process an answer their questions they calm down.

Negotiation Stage

The condemning authority must negotiate in good faith and their offer must be based on an appraisal. If this case goes to a condemnation hearing and it is determined by a judge that good faith negotiations have not taken place, the court must dismiss the condemnation petition and order the condemning authority to reimburse the owner for his or her actual reasonable attorney fees and cost.

Related issues: This negotiation stage happens before the condemnation hearing in an effort to resolve the dispute of just compensation. Just compensation must be paid to a land owner in order for the condemning authority to take possession of the land. The financial amount to be paid to the land owner creates the most problems in this process. The issue of appraisals and how different the amounts from each appraisal are from the condemning authority and the land owners.

Condemnation Petition and Hearing Stage

If negotiations fail, a condemning authority must prepare a Condemnation Petition and submit it to the courts. The next step is the Condemnation Hearing; this is where both sides will meet in a court room before a Judge. The new legislation passed as HB 1944 in August of 2006 ought to make these hearings a fertile ground for property owners to inquire of the governing authority that is forcefully acquiring their homes or their commercial property. Property owners can now insist on all the proof of a) authority, b) necessity, c) public use, and d) good faith offers.

The judge will approve or reject the condemnation case at this time, if the condemnation is approved then an order of condemnation is entered, the court will appoint three disinterested commissioners, who must be residents of the county in which the property lies, to assess damages, if any that were caused to the property as a result of the taking. Such assessment must be concluded in 45 days unless extended by the court for good cause shown.

Related issues: The property owners have expressed concerns over their treatment by the condemning authority and would like to express their concerns to the court, but the judge does not allow that information to be stated in the condemnation hearing.

Filing of the Commissioners' Report

When the report of the commissioners is filed with the court clerk, then the circuit clerk is to immediately forward the report to the recorder of deeds for recording. The clerk is also to forward a notice of commissioner's report and award to each party in the suit.

Filing of Exceptions Stage and the Distribution of Monies Stage

If the amount of the award is not acceptable to you're the land owner , file exceptions to commissioners' award within 30 days of the receipt of the notice of filing of commissioners report or the land owner will lose the right to further challenge the amount of the award. If the condemning authority is displeased with the commissioner's award it has two choices. It can, within 10 days of the date of the filing of the award, elect in writing to abandon the condemnation, or the condemner may also file exceptions. The condemning authority can file an exception and also pay the commissioners award into the court. At this time the condemning authority can take possession of the land and also file an exception and continue on to a jury trial to dispute the commissioner's award.

Related issues: The land owner at this stage has many concerns; they could be happy with the commissioner's award and want the process of eminent domain of their property to be over. The condemning authority needs the property so they pay the award and the plan on continuing the legal process by taking the

owner to a jury in order to recoup some of the monies they paid to the land owner in the commissioner's award. This becomes a serious concern to the land owner and a situation many have felt they were not treated fairly by the condemning authority. The land owner has received the monies from the award but if the award is lowered by a jury in the continued legal action then they must pay back the difference to the condemning authority at 6% interest. This cloud of uncertainty brings much stress to the land owner whose has just lost their property to the condemning authority and knows might owe the condemning authority monies if a jury rules for the condemning authority.

Overview of 2013 issues involving Eminent Domain

Municipalities and Utilities have continued with their new approach to the process of Eminent Domain because of the new law. The new approach is that a condemning authority will contact the citizen and indicate that they would like to purchase their property and then give them all of the documentation needed as if they were acquiring the property through Eminent Domain. They explain to the citizen that they would like to purchase the property voluntarily but they will use Eminent Domain if they can't negotiate a settlement with them. Many citizens were upset with this process. The new law does not prohibit this process but many citizens did not like the fact that if the condemning authority negotiated with them with the threat of Eminent Domain as a option if the two parties could not agree on compensation for the property. The condemning authorities seem to have the advantage in these type of negotiations and the citizens have no way of knowing about their rights because the condemning authority does not have to notify them about the Office of Ombudsman since they are not in Eminent Domain.

Ameren Missouri, Kansas City Power and Light, and Enbridge Pipelines had projects that affected many Missouri landowners throughout the state. The citizens who contacted my office were very upset with the process and would like

to see changes in the law that would give them more rights to protect their property. There is new potential Utility coming to Missouri to bring in wind power to the residents of Missouri. The company is Clean Line Energy Partners, and they are seeking regulatory approval from the Missouri Public Service Commission, which is the process to achieve a Certificate of Convenience and Necessity from the commission. That gives the Utility the power of Eminent Domain. There has been a big push back from the residents of Missouri who would be affected by the transmission line. They have started a petition drive to stop this transmission line. I have enclosed information on these projects on the next few pages.

Midwest Transmission Project
Delivering Reliable Power
Connecting to the Future

FAQs

What is the Midwest Transmission Project?
The Midwest Transmission Project is a new 345-kV transmission line from Kansas City Power & Light's (KCP& Sibley Substation located near Sibley, Missouri to a new substation (Mullin Creek Substation) located south of Missouri and on to Omaha Public Power District's (OPPD) existing Substation 3458 located near Nebraska Ci

Who is building this transmission line?
Due to its size and regional importance, the Midwest Transmission Project is being accomplished as a partner between Omaha Public Power District (OPPD) and Kansas City Power & Light (KCP&L). The two companies for the planning, routing, and construction of the new line and will work with their state regulatory commissions appropriate to obtain the necessary approvals regarding siting and rate recovery.

Why is this transmission line needed?
The Midwest Transmission Project is one of the Southwest Power Pool's (SPP) 'Priority' projects as determine Board of Directors and Members Committee in April of 2010. The Midwest Transmission Project is necessary increasing demand for electricity, improve reliability by providing an alternate bulk supply source, and provide affordable renewable power for all electric utility customers across northwest Missouri, eastern Nebraska and surrounding region.

What is the Southwest Power Pool?
The Southwest Power Pool (SPP) is a Regional Transmission Organization, mandated by the Federal Energy Commission (FERC), which supervises and coordinates power supplies, transmission infrastructure, and com wholesale prices of electricity. The SPP is a Regional Transmission Organization with members in Arkansas, I Louisiana, Mississippi, Missouri, Nebraska, New Mexico, Oklahoma, and Texas that serve more than five milli The SPP ensures reliable supplies of power, adequate transmission infrastructure, and competitive wholesale electricity.

When is the project expected to be completed?
Click here to view the Project Timeline.

How long will this transmission line be?
The line will be approximately 180 miles long.

How was the route determined?
Before the Midwest Transmission Project can be built, a routing study was conducted to determine the best ro project. The routing process involved evaluating several criteria, including proximity of residences, businesses wetlands and other natural resources, as well as public input. This process took about 12 months from Summ Summer 2013.

How will I know if my property is affected?
See the Maps page for a detailed map of affected properties. All registered stakeholders have been notified by the final route selection. Impacted property owners will be contacted by a project representative. If you are una your property, feel free to call (855) 222-1291 or email us at info@midwesttransmissionproject.com.

Which land owners will be approached about easements for the transmission line?
Project representatives will contact property owners along the final route to acquire easements.

What is an easement?
An easement is an interest in land which permits the use of that land for a specific purpose. In this case, the p easement would permit construction, operation, and maintenance of an overhead transmission power line. Th permits the trimming and removal of trees within the easement to prevent them from touching the line.

If an easement is purchased and the power line is built, will there be any restrictions on the use of my
The existence of a transmission line easement restricts some possible uses for the property. Acceptable uses easement areas include planting crops, pasture, roadways, curbs and gutters. The three most common restric include limiting the amount of allowed grade change, prohibiting construction of permanent structures or buildi easement area, and restrictions on planting trees that may grow into the lines.

Will KCP&L/OPPD trim trees on my property?
The Midwest Transmission Project (MTP) partners are required to maintain adequate clearances between veg transmission power lines for safety and reliability reasons. The MTP ownership will be required by North Amer Reliability Corporation (NERC) and the Southwest Power Pool (SPP) to maintain vegetation growing under or power lines. All vegetation management work around power lines is performed by crews that are trained and c near energized power lines.

What about irrigation systems and farming operations?
Impacts to farm operation and irrigation have been taken into account during the route selection process and v considered during the detailed design phase. Every attempt will be made to minimize impacts to your farm ope the easement acquisition process we will negotiate with you to settle all adverse impacts caused by the line be property.

How are transmission line easement widths determined?
Many factors enter into determining the width of transmission lines, including voltage capacity, structure desig the line with proximity to existing roadways. Typically lines carrying larger capacities require greater widths to clearances.

How many poles will be on our property?
The average distance between poles is between 600 to 900 feet, and poles will be located at all turns in the lir

How close to the easement can I construct a building?
Buildings, even very tall buildings, are allowed right up to the edge of the easement. OPPD and KCP&L have limit construction outside the easement area. All of this is taken into consideration when determining the easei

Will the Midwest Transmission Project ownership allow others to use the easement?
No. KCP&L and OPPD are asking for rights to construct our transmission line including communication rights company needs.

How long will the easement exist; will it ever terminate?
Transmission line easements are permanent and recorded at the Recorder of Deeds Office in the County Cou them a matter of public record.

Will the Midwest Transmission Project pay my legal fees if I consult an attorney regarding the easeme
Landowners may seek advice from anyone they wish regarding KCP&L and OPPD's acquisition of an easeme attorney. However, the landowner is responsible for the payment of any fees.

Can an easement be obtained if I do not agree to one?
KCP&L and OPPD will make every effort to reach an agreement to purchase easements through negotiations occasions these negotiations do not prove fruitful. At those times public utilities have the right to acquire the e eminent domain. The utilities will try to reach an agreement to purchase easements prior to this action.

Is this project to support wind energy in the region?
The Midwest Transmission Project is not being built for any specific wind project but will create opportunities f new future wind energy to access to the regional transmission system.

Will my community benefit from this project?
The MTP will result in increased reliability of the overall electric grid. However, it is unlikely that it will directly i service to your local community or home. The construction of the line may also result in positive economic gro community if the line routes near you.

How much does this project cost?
The project is estimated to cost approximately $400 million and will employ an estimated 50 to 70 constructior

Who's paying for this?
SPP's 'priority' projects are paid for by all of the SPP members in the 9-state organization.

What will the transmission line look like?
This project may utilize single-pole, twin-pole (H-frame), or a combination of these structure types depending other factors.

What size are the wires?
The shield wires at the top of the poles will be about 1/2 inch in diameter. We will use either one or two shield phase wires will be about 1-1/2 inch in diameter, and will have a total of six wires with insulators attached to e

How high are the wires?
At least 25 feet of clearance will be provided from the ground to the lowest wire.

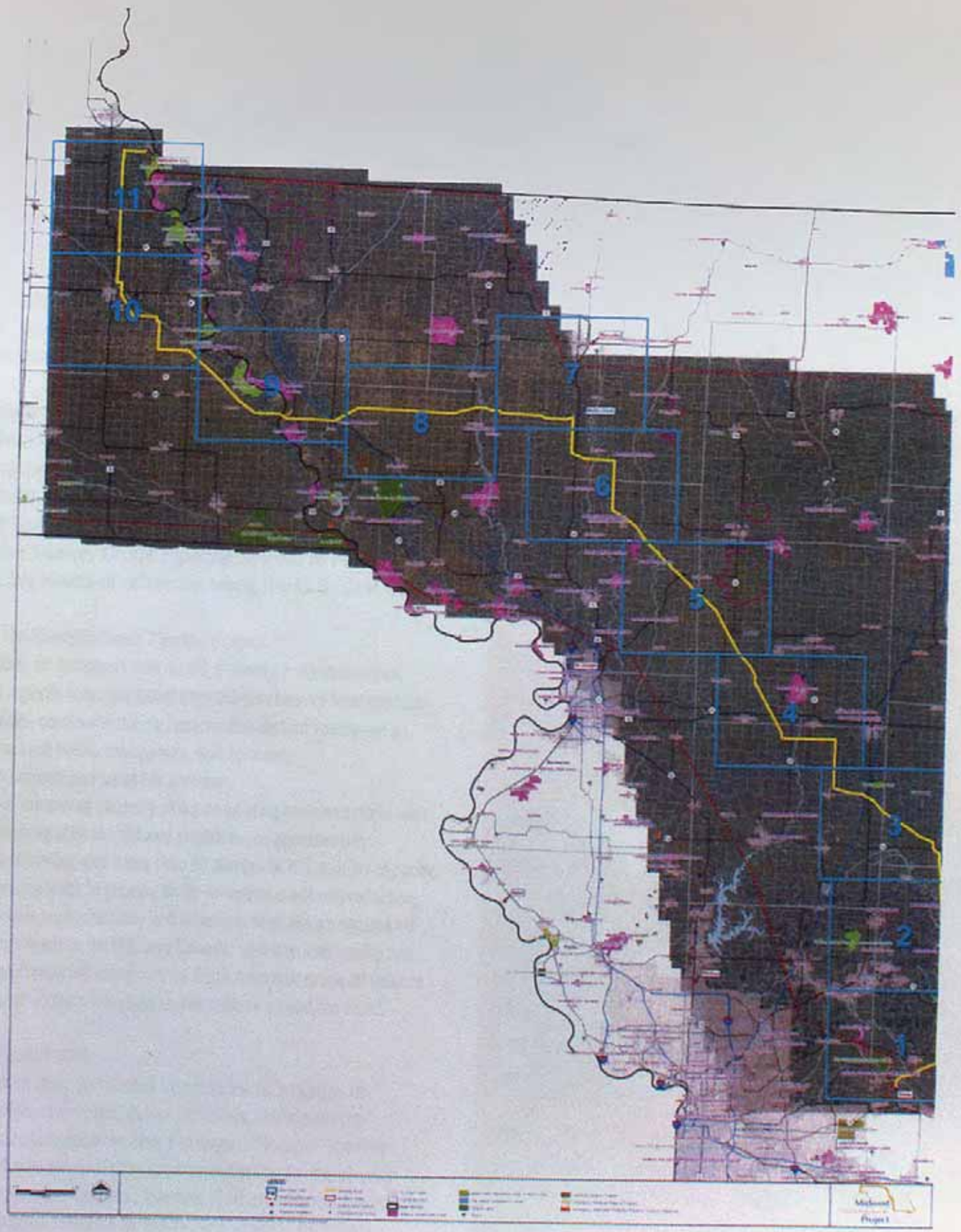
Do transmission lines cause illness or have health risks?
Although you may find many differing opinions on this topic. no causal link has ever been proven between ele lines and health issues.

Midwest Transmission Project

Delivering Reliable Power
Connecting to the Future

Final Route Index Map

Click on the area of the map you would like to view in detail. The final route appears in yellow.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FLANAGAN SOUTH PIPELINE PROJECT
Pontiac, Illinois to Cushing, Oklahoma

ENBRIDGE

Enbridge Energy Company, Inc., through its affiliate Enbridge Pipelines (FSP) L.L.C., is expanding its existing pipeline system by constructing nearly 600 miles of new interstate crude oil petroleum pipeline. The 36-inch diameter Flanagan South Pipeline will have an initial capacity of 600,000 barrels per day (bpd). The pipeline will be constructed mostly along the route of Enbridge's existing Spearhead Pipeline between the Flanagan, Ill., Terminal, southwest of Chicago, to Enbridge's Cushing, Okla., Terminal.

The Flanagan South Pipeline gives North Dakota's Bakken and western Canadian producers timely, economical and reliable options to deliver a variety of crude oil supplies to refinery hubs throughout the heart of North America or as far as the Gulf Coast. From Cushing, shippers can continue through the Seaway Crude Pipeline System to meet the crude supply needs of refineries along the U.S. Gulf Coast.

Benefits of the Flanagan South Pipeline Project

- Opportunities for temporary jobs during planning and construction.
- Local and regional economic boost from the purchase of local products and materials, continuing during construction and into operation as workers use local hotels, restaurants, and services.
- Long-term property and sales tax revenues.
- Synergies of expanding capacity along an existing pipeline system with existing pumping station sites and electrical power connections.
- Gulf Coast refineries, with more than 50 percent of U.S. refinery capacity, will have more access to growing North American crude oil production.
- North American energy security and economic stimulus as engineered materials are made in the U.S. and Canada, which assure quality and jobs. Transportation infrastructure for North American crude oil reduces our reliance on imports from less stable nations around the world.

Community Consultation

Enbridge has met with and continues to engage in dialogue with agencies, local officials, landowners and others interested in the Flanagan South Pipeline Project. If you would like an opportunity to meet with Enbridge representatives, please visit the Project website, call our Project hotline at 877-797-2650, or email flanagansouth@enbridge.com.

For more information, please visit our project website at www.enbridge.com/flanagansouthpipeline.

Project Details

Ownership: Enbridge Pipelines (FSP) L.L.C., an indirect wholly-owned subsidiary of Enbridge Inc. (ENB on the NYSE).

Length: Approximately 600 miles generally along Enbridge's Spearhead Pipeline route.

Pipe: 36-inch diameter

Capacity: 600,000 bpd, and together with the Spearhead Pipeline, Enbridge will be able to transport up to 775,000 bpd of North American crude oil from Illinois to Cushing, Okla., one of America's largest storage hubs.

Construction: Beginning mid-2013

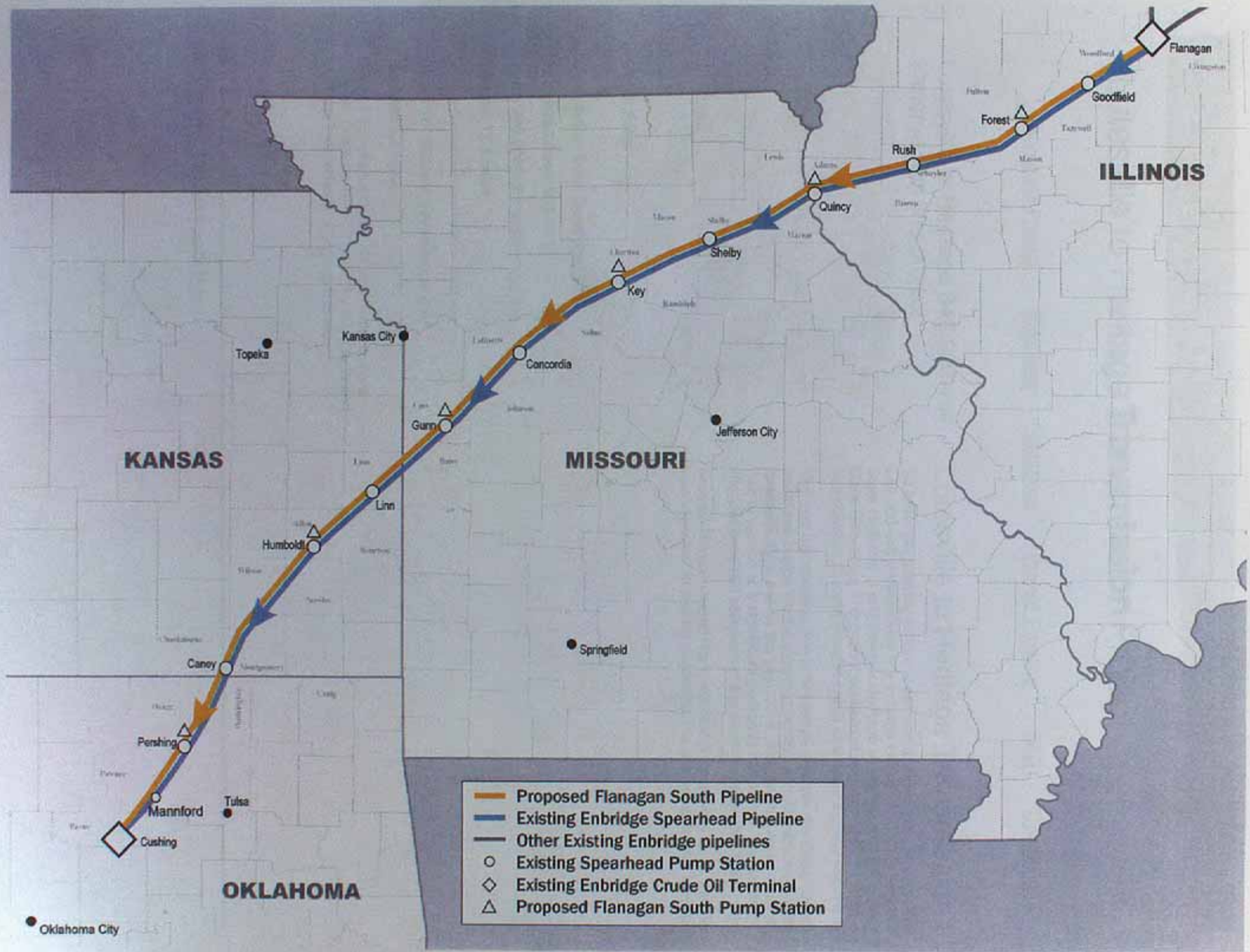
In-service Date: Mid-2014

Route

The Flanagan South Pipeline and pumping stations will generally be adjacent to the Spearhead Pipeline, with pipeline deviations in some locations to avoid congested areas or other features.

Regulatory Approvals

Construction and operation is regulated by the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration's Office of Pipeline Safety. Various local, state and federal permits, approvals or clearances will also be required. Enbridge has been committed to safe and reliable operation of our pipelines for more than 60 years; this same commitment will be inherent in the design, installation, and operation of this pipeline.


Flanagan
Goodfield
Forest
Rush
Quincy
Shelby
Key
Concordia
Gunn
Linn
Humboldt
Caney
Pershing
Mannford
Cushing
Kansas City
Topeka
Jefferson City
Springfield
Tulsa
Oklahoma City
ILLINOIS
KANSAS
MISSOURI
OKLAHOMA
Proposed Flanagan South Pipeline
Existing Enbridge Spearhead Pipeline
Other Existing Enbridge pipelines
Existing Spearhead Pump Station
Existing Enbridge Crude Oil Terminal
Proposed Flanagan South Pump Station

JUR/RIP/7.13

Lutesville to Heritage **Transmission** Project

About the Project Area Map Meetings Project Timeline FAQ Comments

Lutesville to Heritage 345,000-volt transmission line project

Quick Facts

Completion Date: December 2015

Estimated Cost: $55-75 M

Type: 345,000-volt transmission line

Length: 12.5 miles

Type: 161,000-volt transmission line

Length: 1.2 miles

Project complies with the Midwest Independent System Operator (MISO) reliability standards and Ameren Transmission Planning Criteria.

Lutesville to Heritage Transmission L

To meet the growing electrical demand in the region, Ameren Mis 345,000-volt transmission line in Cape Girardeau County betweer State Highway U and the new Heritage substation that will be loca Cape Girardeau. The project consists of approximately 14 miles o transmission lines on wood H-frame structures erected within a 1

The new transmission line is needed to maintain the Cape Girard additional support to the existing transmission infrastructure. With forecasts show that by the year 2016, outages that could occur du loss of service to a significant portion of this region. Transmission line, are essential elements of the electric system that deliver ene

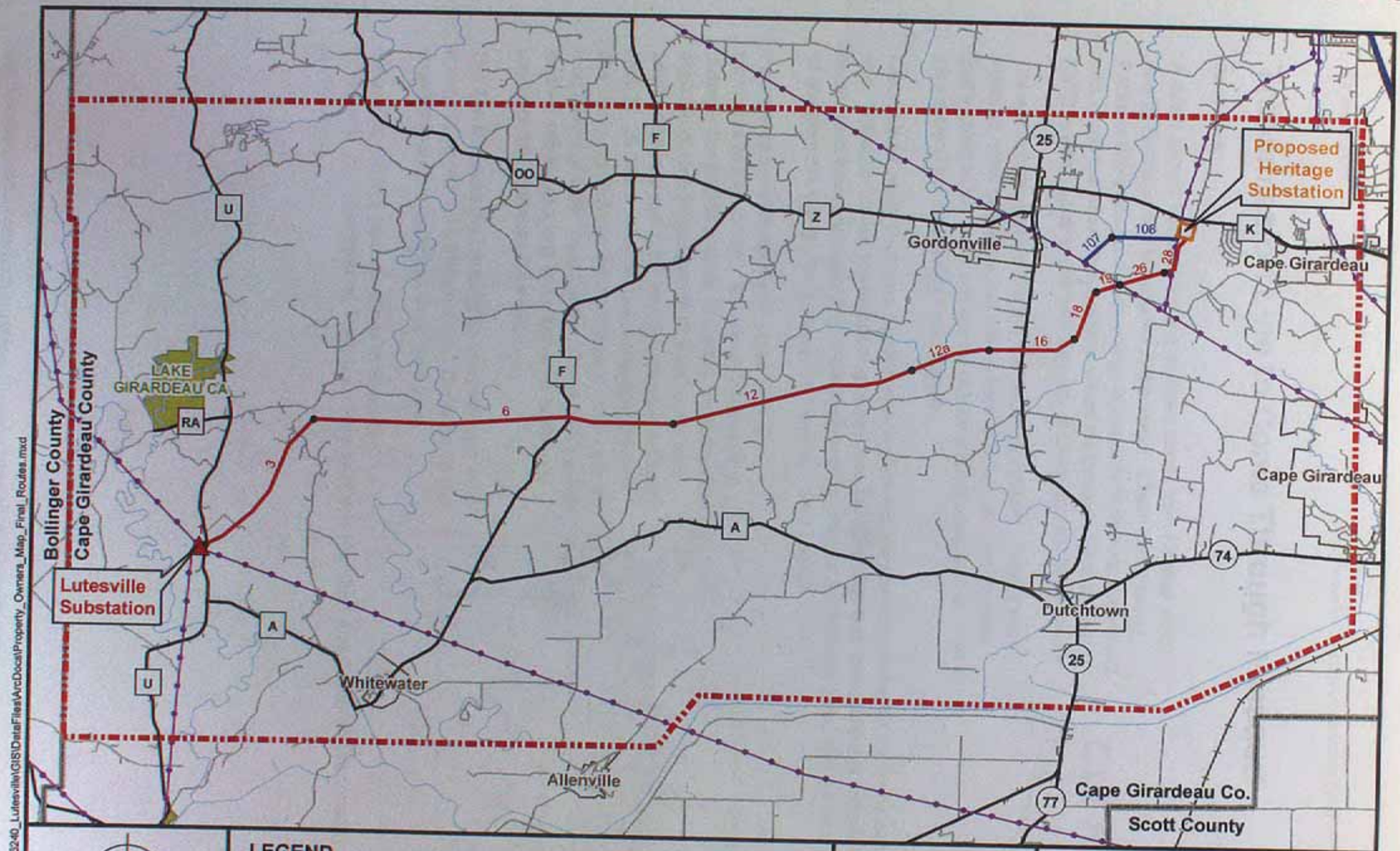
Ameren Missouri would like to thank the community for its particip was important in helping determine the best route for this transmis

Lutesville to Heritage **Transmission** Project

Project Timeline

All dates are tentative and subject to change.

April 2012	Project presented to Missouri Public Service Commission
May - July 2012	Project study area determined and preliminary route network developed
August 2, 2012	Public Open House #1
August - September 2012	Route network evaluation with public comments
October 16, 2012	Public Open House #2 with proposed route(s)
October/November 2012	Final evaluation of routes
November/December 2012	Proposed route selected, announced, and filed with Missouri Public Service Commission
Spring 2013	Preliminary project design begins
Spring 2014	Construction begins
December 2015	In service date .



Source: MSDIS GIS Data; Smart Data Strategies, Inc.; TIGER Roads; Burns & McDonnell.

W:\SPSRV\Data\Projects\Ameren\66240_Lutesville\GIS\DataFiles\ArcDocs\Property_Owners_Map_Final_Routes.mxd

kmzu.com

http://www.kmzu.com/transmission-line-to-come-through-missouri/

Transmission Line to Come Through Missouri

Sarah Scott

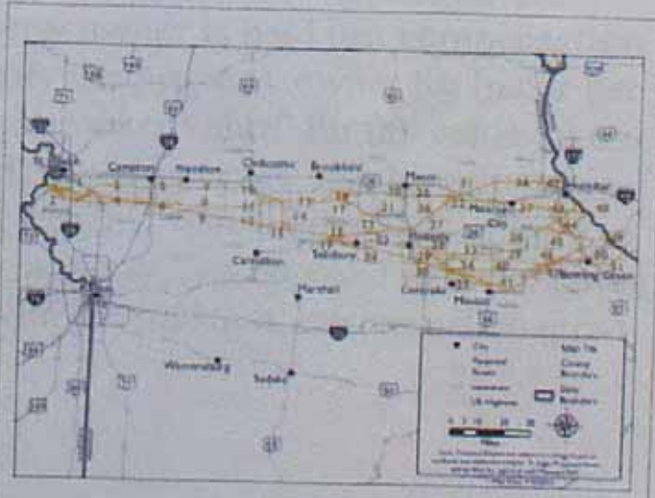
A direct current transmisiion line to move power from Kansas wind energy farms across Missouri is in the works. Clean Line Energy Partners has been holding meetings in the area to discuss the project and scope out where the structure would be located. Click to hear KMZU's Brian Lock speak with Director of Development Mark Lawlor:

CLEAN LINE ENERGY PARTNERS

The entire transmission line is a $2 billion investment. "About two hundred miles of that project will be here in Missouri. And so what that's going to translate into is a lot of jobs around construction, a lot of jobs around manufacturing," said Lawlor.

Clean Line Energy Partmers plans to use in-state and nearby companies for the items needed to build the line. "Missouri's a big manufacturing state. And the jobs, also that come with this include things like, you know, road work and supplying of concrete and aggregate, and survey work, and the like. So there's a lot of components that go into putting this together," said Lawlor.

Permanent benefits will come in the form of payments to the county. "We will pay substantial property tax on this project, wherever it's located, to the tune of tens of thousands of dollars, per mile, each and every year. So you can imagine a county with 20, 25 miles of transmission line are going to see really significant property tax payments over a long period of time," said Lawlor. Those with the line on their private property will receive an easement payment and structure payment.



Click to enlarge.

The line will have the capacity to carry enough wind energy to power 1.4 million homes. Decision on the proposed route is expected early next year.

Clean Line Energy held meetings in Salisbury, Chillicothe, and Carrollton on Tuesday. They will be in Hamilton and Cameron Wednesday, and St. Joseph on Thursday.

Missouri Condemnation Procedures and Law

Eminent domain, also known as condemnation, is the legal process by which a governmental agency is given the legal power to acquire private property for a public use. The "condemnor" is the public or private entity having the legal power of eminent domain. In tax increment financing projects, the private developer borrows the government's name in undertaking condemnation.

Under the Constitution, private property may be condemned so long as the taking is for a public purpose and the property owner is paid just compensation. "Just compensation" is designed to indemnify the property owner for his or her losses. This is often done by paying the "fair market value" for the value taken. If only a portion of the property is acquired, the owner may also be entitled to consequential damages to the property that remains. The owner has the right to be paid for the "highest and best use of the property," as opposed to the existing use. If the business is closely intertwined with the location, business damages may also be awarded.

THE PROCESS IN MISSOURI:

Briefly, the condemnation process is as follows:

The government (condemnor) makes an offer to purchase the property to be condemned; the offer is rejected by the property owner and the government then files a petition with the court seeking permission to condemn the property.

The judge holds a condemnation hearing, at which the property owner may challenge the government's right to condemn. The judge then approves or rejects the government's right to condemn.

The judge appoints three commissioners to determine the owner's compensation.

The commissioners conduct a hearing to determine the amount of compensation.

The commissioners report their decision to the court.

The government (condemnor) pays into court the compensation determined by the commissioners.

The government (condemnor) takes title to the property by reason of putting the money into court.

If the parties agree to the amount of the Commissioners' Award, the case may be settled. Otherwise, either side may file exceptions, which means requesting a jury trial.

The owner or tenants seek relocation benefits and services, if applicable.

If a tenant is involved, the Commissioners' Award might be divided between the landlord and tenant. If necessary, a hearing is called for a Motion for Apportionment, is held before a judge to decide dispute over how much of an award a tenant may be entitled to receive.

If the case does not settle, a jury trial is held to determine the amount of compensation. The jury is not told of the commissioner's decision.

Missouri law has eminent domain legislation to protect property owners. It affects negotiations, legal procedures, valuation and compensation. Below is a review of these laws.

- **Blighting laws**
- **Negotiations and procedure before court actions**
- **Changes in property valuation**
- **Commissioners' hearing procedures**
- **Other changes**

BLIGHTING LAWS

Preponderance of the properties within the blighted area must be blighted (Section 523.274)

A municipality must now consider each individual parcel within a proposed project area and can only blight areas where a "preponderance" of the properties are blighted.

Eminent domain cannot be used solely for economic development (Section 523.271)

It is not permissible to condemn "solely" for "economic development."

Farmland cannot be blighted

Any land that is classified as farmland cannot be blighted. The law defines "farmland" broadly to include, for example, land used for forest cropland, agricultural purposes, feeding, breeding, and management of livestock, and dairy operations. In addition, land that is included under a soil conservation or agricultural assistance program of the federal government will also be considered farmland.

The court must now find "substantial evidence" supporting a finding of blight. (Section 523.261)

When blighting is used in condemnation a trial court must find "substantial evidence" to support a finding of blight. The burden is on the local government to prove an area is actually blighted.

The legal process to challenge blight is expedited (Section 523.261)

Any time there is a blighting ordinance, it can be challenged by any targeted property owner. In addition, an owner can usually wait until the condemnation petition has been filed to challenge blight during an eminent domain case. When any of these occur, the trial judge "shall give the case preference in the order of hearing to all other cases in order to conclude the case within 30 days of having been filed." Also, after a decision by the trial judge on blight, there is an automatic right to appeal the decision, and the appeal will be expedited.

Five years to condemn after blight ordinance (Section 523.274)

An eminent domain case must be filed within five years of the ordinance adopting blight. This time period can be extended in five year increments by legislative action.

Chapter 353 Redevelopment Corporations created after December 31, 2006 cannot condemn. (Sections 523.262)

353 corporations can only condemn property if they have a redevelopment

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agreement effective prior to December 31, 2006. This is because after that date, only governmental bodies, or agencies whose governing body is elected, or whose governing body is appointed by elected officials, can exercise eminent domain powers.

NEGOTIATIONS AND PROCEDURES BEFORE COURT ACTIONS

Pre-Condemnation Notice (Section 523.250)

At least 60 days prior to filing a condemnation petition, the condemning authority must give a written notice to the owner of record that has the following information:

- Identifying the interest in real property to be acquired
- Stating the purpose for which the property is being condemned
- Information about the property owner's rights regarding the condemnation
- The right to seek legal counsel at the owner's expense
- The right to make a counteroffer and engage in further negotiations
- The right of the property owner to obtain the condemning authority's appraisal
- The right to have compensation determined by commissioners
- The right to seek assistance from the Office of the Ombudsman
- The right to contest the condemnation in court
- The notice shall be by certified or registered mail

Changing the location of a proposed condemnation project (Section 523.265)

Within 30 days after receiving a Notice of Acquisition, the Owner targeted with potential condemnation on part of his land may demand the condemning authority to consider an alternate location on his property. This procedure involves the landowner proposing, in writing, alternate locations on the same parcel in sufficient detail. A written response by the condemning authority is required giving the reasons why the alternatives are rejected or accepted.

Offer made to property owner 30 days prior to condemnation and with attached appraisal (Section 523.253)

No fewer than 30 days prior to filing a condemnation petition, a written offer

Property condemned which has been in the same family for more than 50 years will receive an additional 50% over the fair market value of the property.

Valuation - Homestead Property - 25% bonus (Section 523.001)

When a primary residence is condemned, the owner will receive an additional 25%. In partial takings, this only applies when the taking is within 300' of the residence and the owner shows that the taking prevents the owner from utilizing the property. Note that if the property is owned for more than 50 years in the same family, it is better for the owners to apply for the Heritage Value bonus of 50%. An owner cannot apply for both Homestead Value and Heritage Value.

COMMISSIONERS' HEARING PROCEDURES

Commissioners Hearing - time requirements (Section 523.040)

The new law requires that the commissioners view the property, hear testimony about the value of the property, and review information offered by the parties. The commissioners shall file a report within 45 days after being appointed, which may be extended by the court for good cause shown. Before their hearing, the Commissioners are required to give at least 10 days notice to the parties.

OTHER PROVISIONS OF THE LAW

Relocation benefits (Section 523.205)

The minimum residential payment for relocation is $1,000. Alternatively, actual costs are paid.

The minimum benefit for businesses is $3,000 for moving expenses. In addition, entitled businesses to an additional $10,000 for reestablishment expenses.

Abandonment of condemnation, award of attorney's fees, expenses, and damages (Section 523.259)

In the event a condemning authority abandons a condemnation, the owner may recover attorney's fees, expert fees, expenses, and damages.

Procedures to abandon easements

If any easement created after Dec. 31, 2006 is abandoned for more than 10 years, the owner may petition to eliminate the easement. The owner must pay the compensation originally paid when the easement was acquired. This right may be waived at time of conveyance, or later.

Taxes

A property owner may reduce his gross adjusted income by the amount recognized as a gain under Federal Tax Code Section 1033.

Blanket easements are abolished (Section 523.282)

This section abolishes blanket easements created after Dec. 31. 2006 as against public policy.

Does not include easements that become fixed after completion of the initial improvements.

Easements cannot expand their uses (Section 523.283)

Road easements, utility easements and railroad easements that are acquired by condemnation or by negotiations in lieu of condemnation after August 28, 2006, cannot have expanded uses beyond the original purposes of the acquisition.

Ombudsman Office (Section 523.277)

An Office of Ombudsman for property rights was created to assist citizens involved with eminent domain. The statute clearly states that the ombudsman shall not provide legal advice.

Conclusion

A primary duty of the Ombudsman is to "document the use of eminent domain within the state and any issues associated with its use. There are still concerns that the new law hasn't addressed all of the issues involved with the use of eminent domain by a condemning authority. The issues of just compensation, good faith negotiations, blighting of property, and the power of the condemning authority during the court process are all concerns raised by the citizens who are affected by this process.

As I stated in this report in my overview for the year 2013, condemning authorities have taken a new approach to Eminent Domain as a reaction to the new law. There is new case law being decided by the courts as citizens take their cases through the appeals process. The Missouri Supreme court has ruled on the issue of Heritage value this year and they ruled in favor of the property owner and stated that Heritage value is constitutional , I have enclosed a copy of the ruling. The Missouri legislature could make some changes to the new law to empower the citizen more in the process of Eminent Domain.

In conclusion , the concerns I have heard from citizens is that they feel they need to have more say so in the process when it comes to how their property is going to be affected. The law gives the landowner the right to propose an alternative location on his or her property which must be considered by the condemning authority, the condemning authorities many times does not accept the citizens proposal and leaves the citizens feeling helpless when it comes to their property rights.

Table 36
Circuit Court, FY 2013
Real Estate Cases Filed by Case Type

Cir. No.	County	Application-Enforce Mechanic's Lien	Emin. Domain/Condemn./ State	Other	Exception	Fore-Closure	Partition	Quiet Title	Rent and Possession	Unlawful Detainer	Landlord Complaint	JIS Other	Total Cases Filed
25	Maries	0	0	0	0	0	1	1	0	0	0	1	3
	Phelps	0	0	1	0	0	0	4	0	2	0	3	10
	Pulaski	0	0	0	0	2	0	4	0	0	0	4	10
	Texas	0	0	0	0	0	4	2	0	0	0	2	8
	Circuit Total	**0**	**0**	**1**	**0**	**2**	**5**	**11**	**0**	**2**	**0**	**10**	**31**
26	Camden	2	0	0	0	25	5	27	0	0	1	24	84
	Laclede	0	1	0	0	0	1	7	0	0	0	2	11
	Miller	3	0	0	0	0	1	5	1	0	0	1	11
	Moniteau	1	0	0	0	0	2	1	0	0	0	1	5
	Morgan	0	0	0	0	0	1	7	0	0	0	7	15
	Circuit Total	**6**	**1**	**0**	**0**	**25**	**10**	**47**	**1**	**0**	**1**	**35**	**126**
27	Bates	0	0	0	0	0	0	4	0	0	0	0	4
	Henry	0	0	0	0	1	1	6	0	0	0	0	8
	St. Clair	0	0	0	0	0	1	4	0	0	0	1	6
	Circuit Total	**0**	**0**	**0**	**0**	**1**	**2**	**14**	**0**	**0**	**0**	**1**	**18**
28	Barton	0	0	0	0	0	0	1	0	0	0	1	2
	Cedar	0	0	0	0	0	0	0	0	0	0	1	1
	Dade	1	0	0	0	1	0	3	0	0	0	1	6
	Vernon	0	0	0	0	0	1	2	0	0	0	2	5
	Circuit Total	**1**	**0**	**0**	**0**	**1**	**1**	**6**	**0**	**0**	**0**	**5**	**14**
29	Jasper	1	0	1	0	0	2	20	0	0	0	11	35
	Circuit Total	**1**	**0**	**1**	**0**	**0**	**2**	**20**	**0**	**0**	**0**	**11**	**35**
30	Benton	0	0	0	0	1	1	5	0	0	0	3	10
	Dallas	0	0	0	0	0	2	2	0	0	0	3	7
	Hickory	0	0	0	0	1	0	3	0	0	0	4	8
	Polk	0	0	1	0	0	1	4	0	0	0	2	8
	Webster	0	0	0	0	0	2	9	0	0	0	4	15
	Circuit Total	**0**	**0**	**1**	**0**	**2**	**6**	**23**	**0**	**0**	**0**	**16**	**48**
31	Greene	7	2	2	0	3	6	37	2	1	0	21	81
	Circuit Total	**7**	**2**	**2**	**0**	**3**	**6**	**37**	**2**	**1**	**0**	**21**	**81**
32	Bollinger	0	1	0	0	0	0	5	0	0	0	0	6
	Cape Girardeau	2	0	0	0	0	2	6	1	1	1	3	16
	Perry	1	0	0	0	0	1	3	0	0	0	1	6
	Circuit Total	**3**	**1**	**0**	**0**	**0**	**3**	**14**	**1**	**1**	**1**	**4**	**28**
33	Mississippi	0	0	0	0	0	0	2	4	0	0	0	6
	Scott	0	0	0	0	0	1	8	3	0	0	2	14
	Circuit Total	**0**	**0**	**0**	**0**	**0**	**1**	**10**	**7**	**0**	**0**	**2**	**20**
34	New Madrid	0	0	0	0	0	3	3	0	0	0	1	7
	Pemiscot	0	0	0	0	0	1	1	0	0	0	0	2
	Circuit Total	**0**	**0**	**0**	**0**	**0**	**4**	**4**	**0**	**0**	**0**	**1**	**9**
35	Dunklin	0	0	0	0	0	4	8	0	0	0	1	13
	Stoddard	0	0	0	0	0	4	4	0	0	0	2	10
	Circuit Total	**0**	**0**	**0**	**0**	**0**	**8**	**12**	**0**	**0**	**0**	**3**	**23**
36	Butler	0	0	0	0	0	4	10	0	2	0	5	21
	Ripley	0	0	0	0	0	1	7	0	0	0	2	10
	Circuit Total	**0**	**0**	**0**	**0**	**0**	**5**	**17**	**0**	**2**	**0**	**7**	**31**
37	Carter	0	0	0	0	0	1	9	0	0	0	0	10
	Howell	0	0	0	0	0	3	7	0	0	0	3	13
	Oregon	0	0	0	0	0	0	4	0	0	0	0	4
	Shannon	0	0	0	0	0	2	1	0	0	0	2	5
	Circuit Total	**0**	**0**	**0**	**0**	**0**	**6**	**21**	**0**	**0**	**0**	**5**	**32**
38	Christian	1	0	0	0	2	1	15	4	3	0	5	31
	Taney	2	0	0	0	2	1	9	4	2	1	6	27
	Circuit Total	**3**	**0**	**0**	**0**	**4**	**2**	**24**	**8**	**5**	**1**	**11**	**58**
39	Barry	0	0	1	0	0	4	18	0	0	1	2	26
	Lawrence	0	0	0	0	1	1	9	0	0	0	3	14
	Stone	4	0	0	0	0	3	17	1	0	0	7	32
	Circuit Total	**4**	**0**	**1**	**0**	**1**	**8**	**44**	**1**	**0**	**1**	**12**	**72**
40	McDonald	1	0	0	0	0	0	20	0	0	0	5	26
	Newton	0	0	0	0	2	1	16	0	1	0	3	23
	Circuit Total	**1**	**0**	**0**	**0**	**2**	**1**	**36**	**0**	**1**	**0**	**8**	**49**
41	Macon	3	0	0	0	0	1	6	0	0	0	1	11
	Shelby	0	0	0	0	0	1	3	0	0	0	0	4
	Circuit Total	**3**	**0**	**0**	**0**	**0**	**2**	**9**	**0**	**0**	**0**	**1**	**15**
42	Crawford	0	0	0	0	0	3	13	0	0	0	3	19
	Dent	0	0	0	0	0	0	0	0	1	0	1	2
	Iron	0	0	0	0	1	0	4	0	0	0	1	6
	Reynolds	0	0	0	0	0	3	1	0	0	0	3	7
	Wayne	0	0	0	0	0	2	4	0	1	0	1	8
	Circuit Total	**0**	**0**	**0**	**0**	**1**	**8**	**22**	**0**	**2**	**0**	**9**	**42**
43	Caldwell	0	0	0	0	0	0	1	0	0	0	0	1
	Clinton	0	0	0	0	0	3	3	0	0	0	3	9
	Daviess	0	0	0	0	0	0	0	0	0	0	2	2
	DeKalb	0	0	0	0	1	2	0	0	0	0	1	4
	Livingston	0	0	0	0	1	1	6	0	0	0	1	9
	Circuit Total	**0**	**0**	**0**	**0**	**2**	**6**	**10**	**0**	**0**	**0**	**7**	**25**
44	Douglas	0	0	0	0	0	2	2	0	4	0	5	13
	Ozark	1	0	0	0	1	2	6	0	0	0	2	12
	Wright	1	0	0	0	0	4	8	0	0	0	6	19
	Circuit Total	**2**	**0**	**0**	**0**	**1**	**8**	**16**	**0**	**4**	**0**	**13**	**44**
45	Lincoln	0	0	0	0	1	1	8	0	2	0	3	15
	Pike	0	0	0	0	0	2	0	0	0	0	0	2
	Circuit Total	**0**	**0**	**0**	**0**	**1**	**3**	**8**	**0**	**2**	**0**	**3**	**17**
	STATE TOTAL	**101**	**26**	**50**	**17**	**213**	**193**	**1,057**	**156**	**96**	**13**	**496**	**2,418**

MISSOURI OFFICE OF STATE COURTS ADMINISTRATOR
Court Business Services Division
Circuit Division: Eminent Domain-Condemnation filings, by Circuit, County and Fiscal Year

Circuit & County	Fiscal Year 2005			Fiscal Year 2006			Fiscal Year 2007			Fiscal Year 2008		Fiscal Year 2009		Fiscal Y
	Exceptions	State	Other	Exceptions	State	Other	Exceptions	State	Other	State	Other	State	Other	State
Clark	t	1	0	t	1	0	t	0	0	0	0	0	0	0
1 Schuyler	t	0	0	t	0	0	t	33	0	0	0	0	0	0
Scotland	t	0	0	t	0	0	t	0	0	0	0	0	0	0
Circuit Total	t	1	0	t	1	0	t	33	0	0	0	0	0	0
Adair	1	*	*	0	1	0	t	1	0	0	0	0	0	1
2 Knox	0	*	*	0	0	0	t	0	0	0	0	0	0	0
Lewis	1	*	*	0	0	0	t	0	0	0	0	0	0	0
Circuit Total	2	*	*	0	1	0	t	1	0	0	0	0	0	1
Grundy	t	0	2	t	0	0	t	0	0	0	1	0	0	0
Harrison	t	0	0	t	0	0	t	0	0	0	0	0	0	0
3 Mercer	t	0	0	t	1	0	t	0	0	0	0	0	0	0
Putnam	t	0	0	t	0	0	t	0	0	0	0	0	0	0
Circuit Total	t	0	2	t	1	0	t	0	0	0	1	0	0	0
Atchison	0	*	*	0	0	0	t	0	0	0	0	0	0	0
Gentry	0	*	*	0	0	0	t	0	0	0	0	0	0	0
4 Holt	0	*	*	0	0	0	t	0	0	0	0	0	0	0
Nodaway	0	*	*	0	0	0	t	0	0	0	0	0	0	0
Worth	0	*	*	0	0	0	t	0	0	0	0	0	0	0
Circuit Total	0	*	*	0	0	0	t	0	0	0	0	0	0	0
Andrew	t	0	0	t	0	0	t	0	0	0	0	0	0	0
5 Buchanan	t	5	1	t	3	0	t	0	1	1	0	0	3	0
Circuit Total	t	5	1	t	3	0	t	0	1	1	0	0	3	0
6 Platte	t	0	8	t	0	1	t	2	3	2	5	0	4	1
Circuit Total	t	0	8	t	0	1	t	2	3	2	5	0	4	1
7 Clay	25	*	*	6	0	0	t	0	9	2	5	1	1	0
Circuit Total	25	*	*	6	0	0	t	0	9	2	5	1	1	0
Carroll	t	0	0	t	0	1	t	0	0	0	0	0	1	0
8 Ray	t	0	0	t	0	0	t	0	1	0	0	0	0	0
Circuit Total	t	0	0	t	0	1	t	0	1	0	0	0	1	0
Chariton	t	0	0	t	0	0	t	1	1	0	0	0	2	0
9 Linn	t	0	0	t	0	0	t	0	0	0	0	0	0	0
Sullivan	t	0	0	t	0	0	t	0	0	0	0	0	3	0
Circuit Total	t	0	0	t	0	0	t	1	1	0	0	0	5	0
Marion	1	*	*	0	1	0	t	2	2	0	0	0	0	0
10 Monroe	0	*	*	0	0	0	t	0	0	0	0	0	0	0
Ralls	0	*	*	0	0	0	t	0	0	0	0	0	0	0
Circuit Total	1	*	*	0	1	0	t	2	2	0	0	0	0	0
11 St. Charles	t	1	33	t	9	15	t	6	10	3	16	12	18	3
Circuit Total	t	1	33	t	9	15	t	6	10	3	16	12	18	3
Audrain	t	0	0	t	0	0	t	0	0	0	0	0	0	0
12 Montgomery	t	0	0	t	0	0	t	0	0	0	0	0	0	0
Warren	t	0	0	t	0	0	t	0	0	1	0	0	0	0
Circuit Total	t	0	0	t	0	0	t	0	0	1	0	0	0	0
Boone	t	0	9	t	0	8	t	0	35	1	5	0	22	0
13 Callaway	t	0	0	t	0	1	t	0	1	0	0	0	0	0
Circuit Total	t	0	9	t	0	9	t	0	36	1	5	0	22	0
Howard	t	0	0	t	0	1	t	0	0	0	0	0	0	0
14 Randolph	t	0	0	t	0	1	t	0	1	0	0	0	1	0
Circuit Total	t	0	0	t	0	2	t	0	1	0	0	0	1	0
Lafayette	t	1	0	t	0	0	t	0	0	0	0	1	1	0
15 Saline	t	0	0	t	0	0	t	0	0	0	0	0	0	0
Circuit Total	t	1	0	t	0	0	t	0	0	0	0	1	1	0
16 Jackson	t	5	27	t	1	16	t	3	22	4	15	3	10	4
Circuit Total	t	5	27	t	1	16	t	3	22	4	15	3	10	4
Cass	1	0	0	t	0	1	t	0	1	0	3	0	2	1
17 Johnson	0	0	0	t	0	0	t	1	2	0	1	2	0	0
Circuit Total	1	0	0	t	0	1	t	1	3	0	4	2	2	1

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Circuit & County	Fiscal Year 2005			Fiscal Year 2006			Fiscal Year 2007			Fiscal Year 2008		Fiscal Year 2009		Fiscal Y
	Exceptions	State	Other	Exceptions	State	Other	Exceptions	State	Other	State	Other	State	Other	State
Cooper	t	0	1	t	0	0	t	0	0	0	0	0	0	0
18 Pettis	t	0	1	t	0	0	t	1	0	0	1	0	0	0
Circuit Total	t	0	2	t	0	0	t	1	0	0	1	0	0	0
Cole	t	0	5	t	0	7	t	2	3	0	0	0	0	0
19 **Circuit Total**	t	0	5	t	0	7	t	2	3	0	0	0	0	0
Franklin	t	7	0	t	13	0	t	2	0	9	0	1	0	1
Gasconade	t	0	0	t	0	0	t	0	0	0	0	0	0	0
20 Osage	t	0	2	t	0	0	t	0	4	0	0	0	0	0
Circuit Total	t	7	2	t	13	0	t	2	4	9	0	1	0	1
St. Louis County	133	*	*	78	*	*	t	11	26	1	22	2	12	8
21 **Circuit Total**	133	*	*	78	*	*	t	11	26	1	22	2	12	8
St. Louis City	21	*	*	t	9	1	t	2	8	1	2	3	6	7
22 **Circuit Total**	21	*	*	t	9	1	t	2	8	1	2	3	6	7
Jefferson	7	*	*	10	1	8	t	5	11	3	5	2	3	0
23 **Circuit Total**	7	*	*	10	1	8	t	5	11	3	5	2	3	0
Madison	t	0	1	t	0	0	t	0	0	3	0	0	0	0
St. Francois	t	6	2	t	3	3	t	0	0	2	0	0	1	0
Ste. Genevieve	t	0	0	t	0	0	t	0	0	0	1	0	0	0
24 Washington	t	0	0	t	0	0	t	0	0	0	0	0	0	0
Circuit Total	t	6	3	t	3	3	t	0	0	5	1	0	1	0
Maries	2	*	*	0	*	*	0	0	0	0	0	0	0	0
Phelps	7	*	*	1	*	*	2	0	1	0	0	0	0	0
25 Pulaski	1	*	*	1	*	*	0	0	0	0	4	0	0	0
Texas	0	*	*	0	*	*	0	0	0	0	0	0	1	0
Circuit Total	10	*	*	2	*	*	2	0	1	0	4	0	1	0
Camden	2	*	*	0	2	2	t	2	1	4	0	1	0	0
Laclede	2	*	*	1	0	1	t	0	1	0	0	1	1	0
Miller	0	*	*	0	0	0	t	0	0	0	0	1	1	0
26 Moniteau	1	*	*	1	0	0	t	1	0	1	0	0	0	0
Morgan	2	*	*	0	0	0	t	0	0	0	0	0	0	0
Circuit Total	7	*	*	2	2	3	t	3	2	5	0	3	2	0
Bates	t	0	0	t	0	0	t	0	0	0	2	0	1	0
Henry	t	0	0	t	0	4	t	1	0	2	2	0	0	0
27 St. Clair	t	1	0	t	0	0	t	0	0	0	0	0	0	0
Circuit Total	t	1	0	t	0	4	t	1	0	2	4	0	1	0
Barton	t	0	0	t	0	0	t	0	0	0	0	0	1	0
Cedar	t	0	0	t	0	0	t	0	0	0	0	0	0	0
28 Dade	t	0	0	t	0	0	t	0	0	0	0	0	0	0
Vernon	t	0	0	t	0	0	t	0	0	0	0	0	0	0
Circuit Total	t	0	0	t	0	0	t	0	0	0	0	0	1	0
Jasper	t	0	4	t	0	2	t	0	4	0	4	0	6	0
29 **Circuit Total**	t	0	4	t	0	2	t	0	4	0	4	0	6	0
Benton	t	1	0	t	0	0	t	0	0	0	0	1	0	3
Dallas	t	0	0	t	0	0	t	1	0	1	0	0	0	0
Hickory	t	0	0	t	0	0	t	0	0	0	0	0	0	0
30 Polk	t	0	0	t	0	0	t	0	0	0	0	0	0	0
Webster	t	0	0	t	0	0	t	1	0	1	0	0	0	0
Circuit Total	t	1	0	t	0	0	t	2	0	2	0	1	0	3
Greene	45	*	*	14	*	*	6	*	*	1	2	1	1	1
31 **Circuit Total**	45	*	*	14	*	*	6	*	*	1	2	1	1	1
Bollinger	t	0	0	t	0	1	t	1	0	0	0	0	0	0
Cape Girardeau	t	1	1	t	0	2	t	4	0	1	1	1	0	1
32 Perry	t	0	0	t	0	1	t	0	0	0	1	0	0	0
Circuit Total	t	1	1	t	0	4	t	5	0	1	2	1	0	1
Mississippi	t	0	0	t	0	0	t	0	0	0	0	0	0	0
33 Scott	t	14	21	t	16	2	t	1	0	0	0	24	1	28
Circuit Total	t	14	21	t	16	2	t	1	0	0	0	24	1	28

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Circuit & County	Fiscal Year 2005			Fiscal Year 2006			Fiscal Year 2007			Fiscal Year 2008		Fiscal Year 2009		Fiscal Y
	Exceptions	State	Other	Exceptions	State	Other	Exceptions	State	Other	State	Other	State	Other	State
New Madrid	t	0	0	t	0	1	t	0	0	1	0	0	0	0
34 Pemiscot	t	1	1	t	0	0	t	0	1	0	0	0	0	0
Circuit Total	t	1	1	t	0	1	t	0	1	1	0	0	0	0
Dunklin	t	0	0	t	0	0	t	0	0	0	0	0	0	0
35 Stoddard	t	2	0	t	0	0	t	0	0	0	0	0	0	0
Circuit Total	t	2	0	t	0	0	t	0	0	0	0	0	0	0
Butler	2	*	*	0	0	0	t	1	1	0	0	0	1	0
36 Ripley		*	*	0	0	2	t	0	0	0	0	0	1	0
Circuit Total	2	*	*	0	0	2	t	1	1	0	0	0	2	0
Carter	t	1	0	t	0	0	t	1	0	0	0	0	0	0
Howell	t	0	0	t	1	0	t	0	1	0	0	0	0	0
37 Oregon	t	0	0	t	0	1	t	0	0	0	0	0	0	0
Shannon	t	0	0	t	0	0	t	1	0	0	0	0	0	0
Circuit Total	t	1	0	t	1	1	t	2	1	0	0	0	0	0
Christian	t	0	0	t	0	5	t	0	0	0	10	0	0	0
38 Taney	t	0	3	t	2	10	t	0	3	1	1	1	6	1
Circuit Total	t	0	3	t	2	15	t	0	3	1	11	1	6	1
Barry	1	*	*	0	0	0	t	0	0	0	0	0	2	0
39 Lawrence	2	*	*	0	0	0	t	0	0	2	0	0	1	0
Stone		*	*	0	1	1	t	0	0	0	0	1	0	0
Circuit Total	3	*	*	0	1	1	t	0	0	2	0	1	3	0
McDonald	t	0	1	t	0	0	t	0	0	0	0	0	0	0
40 Newton	t	0	0	t	0	1	t	1	0	1	0	0	0	0
Circuit Total	t	0	1	t	0	1	t	1	0	1	0	0	0	0
Macon	t	0	0	t	0	0	t	1	0	1	0	0	0	0
41 Shelby	t	0	0	t	1	0	t	3	0	0	0	0	0	0
Circuit Total	t	0	0	t	1	0	t	4	0	1	0	0	0	0
Crawford	t	0	0	t	0	1	t	0	0	2	0	0	0	0
Dent	t	0	0	t	0	0	t	0	0	0	0	0	0	0
Iron	t	0	0	t	0	0	t	0	0	0	0	0	0	0
42 Reynolds	t	0	0	t	0	0	t	0	0	0	0	0	0	0
Wayne	t	0	0	t	0	0	t	1	0	1	0	1	0	1
Circuit Total	t	0	0	t	0	1	t	1	0	3	0	1	0	1
Caldwell	1	*	*	0	0	0	t	0	3	0	0	0	2	0
Clinton	0	*	*	0	0	0	t	0	0	0	1	0	0	0
Daviess	0	*	*	0	1	0	t	0	0	0	0	0	0	0
43 DeKalb	0	*	*	0	0	0	t	0	2	0	0	0	0	0
Livingston	0	*	*	0	0	0	t	0	0	0	1	0	0	0
Circuit Total	1	*	*	0	1	0	t	0	5	0	2	0	2	0
Douglas	0	*	*	0	0	0	t	0	0	0	0	0	0	0
44 Ozark	0	*	*	0	0	0	t	0	0	0	0	0	0	0
Wright	0	*	*	0	0	0	t	0	1	0	0	0	0	0
Circuit Total	0	*	*	0	0	0	t	0	1	0	0	0	0	0
Lincoln	t	0	0	t	0	0	t	0	0	0	0	0	2	0
45 Pike	t	0	0	t	0	0	t	0	0	0	1	0	0	0
Circuit Total	t	0	0	t	0	0	t	0	0	0	1	0	2	0
STATE TOTAL	258	47	123	112	67	101	8	93	160	53	112	60	118	61

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ar 2010	Fiscal Year 2011		Fiscal Year 2012		Fiscal Year 2013	
Other	State	Other	State	Other	State	Other
0	0	0	0	0	0	0
0	0	0	0	0	0	0
0	0	0	0	0	0	0
0	**0**	**0**	**0**	**0**	**0**	**0**
0	0	0	0	0	0	0
0	0	0	0	0	0	0
0	0	0	0	0	0	0
0	**0**	**0**	**0**	**0**	**0**	**0**
0	0	0	0	0	0	0
0	0	0	0	0	0	0
0	0	0	0	0	0	0
0	0	0	0	0	0	0
0	**0**	**0**	**0**	**0**	**0**	**0**
0	0	0	0	0	0	0
0	0	0	0	0	0	0
0	0	0	0	0	0	0
0	0	0	0	0	0	1
0	0	0	0	0	0	0
0	**0**	**0**	**0**	**0**	**0**	**1**
0	0	0	0	0	0	0
0	0	1	0	1	1	0
0	**0**	**1**	**0**	**1**	**1**	**0**
3	0	3	0	1	4	2
3	**0**	**3**	**0**	**1**	**4**	**2**
0	0	3	3	3	3	2
0	**0**	**3**	**3**	**3**	**3**	**2**
1	0	0	0	0	0	0
0	0	0	0	0	0	0
1	**0**	**0**	**0**	**0**	**0**	**0**
0	0	0	0	0	0	0
0	0	0	0	0	0	0
0	0	0	0	0	0	0
0	**0**	**0**	**0**	**0**	**0**	**0**
0	0	0	0	0	0	0
1	0	0	0	0	0	0
1	0	0	0	0	0	0
2	**0**	**0**	**0**	**0**	**0**	**0**
14	1	14	2	9	7	7
14	**1**	**14**	**2**	**9**	**7**	**7**
0	0	0	0	0	0	0
0	0	0	0	0	0	0
0	0	0	0	0	0	0
0	**0**	**0**	**0**	**0**	**0**	**0**
3	1	13	1	9	0	8
1	1	0	0	0	0	0
4	**2**	**13**	**1**	**9**	**0**	**8**
0	0	0	0	0	0	0
0	0	0	0	0	0	0
0	**0**	**0**	**0**	**0**	**0**	**0**
0	0	0	0	0	0	0
0	0	0	0	0	0	1
0	**0**	**0**	**0**	**0**	**0**	**1**
8	0	8	1	5	4	9
8	**0**	**8**	**1**	**5**	**4**	**9**
1	0	2	0	6	0	1
0	0	0	1	0	0	1
1	**0**	**2**	**1**	**6**	**0**	**2**

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ear 2010	Fiscal Year 2011		Fiscal Year 2012		Fiscal Year 2013	
Other	State	Other	State	Other	State	Other
0	0	0	0	0	0	0
0	0	0	0	0	0	1
0	**0**	**0**	**0**	**0**	**0**	**1**
2	2	0	0	1	0	1
2	**2**	**0**	**0**	**1**	**0**	**1**
0	3	1	0	1	0	0
0	0	0	0	0	0	0
0	0	0	1	0	0	0
0	**3**	**1**	**1**	**1**	**0**	**0**
19	3	7	1	17	3	8
19	**3**	**7**	**1**	**17**	**3**	**8**
2	0	1	0	1	0	0
2	**0**	**1**	**0**	**1**	**0**	**0**
4	0	1	1	5	0	2
4	**0**	**1**	**1**	**5**	**0**	**2**
0	0	0	0	0	0	0
2	1	0	1	0	0	0
0	0	0	0	2	0	0
0	0	2	0	0	0	0
2	**1**	**2**	**1**	**2**	**0**	**0**
0	0	0	0	0	0	0
0	0	0	0	0	0	1
0	0	0	0	0	0	0
0	0	0	0	2	0	0
0	**0**	**0**	**0**	**2**	**0**	**1**
1	0	0	0	1	0	0
1	0	0	1	1	1	0
0	0	0	0	1	0	0
0	0	0	0	0	0	0
0	0	0	0	0	0	0
2	**0**	**0**	**1**	**3**	**1**	**0**
0	0	0	0	0	0	0
0	0	0	0	0	0	0
0	0	0	0	0	0	0
0	**0**	**0**	**0**	**0**	**0**	**0**
2	0	0	0	0	0	0
0	0	0	0	0	0	0
0	0	0	0	0	0	0
0	0	0	0	0	0	0
2	**0**	**0**	**0**	**0**	**0**	**0**
5	0	0	0	0	0	1
5	**0**	**0**	**0**	**0**	**0**	**1**
0	0	0	0	0	0	0
0	0	0	0	1	0	0
0	0	0	0	0	0	0
0	0	0	0	0	0	1
0	0	1	0	0	0	0
0	**0**	**1**	**0**	**1**	**0**	**1**
0	0	1	0	1	2	2
0	**0**	**1**	**0**	**1**	**2**	**2**
0	1	0	0	0	1	0
2	0	1	0	2	0	0
0	0	0	0	0	0	0
2	**1**	**1**	**0**	**2**	**1**	**0**
0	0	0	0	0	0	0
7	0	0	0	1	0	0
7	**0**	**0**	**0**	**1**	**0**	**0**

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ear 2010	Fiscal Year 2011		Fiscal Year 2012		Fiscal Year 2013	
Other	State	Other	State	Other	State	Other
0	0	0	0	0	0	0
0	0	0	0	0	0	0
0	**0**	**0**	**0**	**0**	**0**	**0**
0	0	0	0	0	0	0
2	0	0	0	0	0	0
2	**0**	**0**	**0**	**0**	**0**	**0**
1	0	1	1	1	0	0
0	0	0	0	0	0	0
1	**0**	**1**	**1**	**1**	**0**	**0**
0	0	1	0	0	0	0
0	0	0	0	0	0	0
0	0	0	0	0	0	0
0	0	0	0	0	0	0
0	**0**	**1**	**0**	**0**	**0**	**0**
3	0	0	0	1	0	0
0	0	0	0	2	0	0
3	**0**	**0**	**0**	**3**	**0**	**0**
0	0	1	0	2	0	1
0	0	0	0	0	0	0
1	2	0	0	0	0	0
1	**2**	**1**	**0**	**2**	**0**	**1**
0	1	0	0	0	0	0
0	0	3	0	0	0	0
0	**1**	**3**	**0**	**0**	**0**	**0**
0	0	0	0	0	0	0
0	0	0	0	0	0	0
0	**0**	**0**	**0**	**0**	**0**	**0**
0	0	0	0	1	0	0
0	0	0	0	0	0	0
0	0	0	0	0	0	0
0	0	0	0	0	0	0
0	0	0	0	0	0	0
0	**0**	**0**	**0**	**1**	**0**	**0**
0	0	0	0	1	0	0
0	0	0	0	1	0	0
0	0	0	0	0	0	0
0	0	0	0	1	0	0
0	0	0	0	0	0	0
0	**0**	**0**	**0**	**3**	**0**	**0**
0	0	0	0	0	0	0
0	0	0	0	0	0	0
0	0	0	0	0	0	0
0	**0**	**0**	**0**	**0**	**0**	**0**
1	0	0	1	0	0	0
0	1	3	0	0	0	0
1	**1**	**3**	**1**	**0**	**0**	**0**
88	**17**	**68**	**15**	**81**	**26**	**50**

Summary of SC92470, *St. Louis County, Missouri v. River Bend Estates Homeowners' Association, et al.*

Appeal from the St. Louis County circuit court, Judge Ellen H. Ribaudo
Argued and submitted Nov. 28, 2012; opinion issued Sept. 10, 2013

Attorneys: St. Louis County was represented by County Counselor Patricia Redington, Carl W. Becker and Stephanie L. Hill of the county counselor's office in Clayton, (314) 615-7042; and the property owners were represented by Robert Denlow and Paul G. Henry of Denlow & Henry of Clayton, (314) 725-5151.

Overview: A county appeals a judgment that awarded property owners damages for the county's taking of their real property by eminent domain. In a 6-0 decision written by Judge Patricia A. Breckenridge, the Supreme Court of Missouri affirms the circuit court's decision. The heritage value statute's requirement of additional compensation when property has been held by the same family for 50 or more years does not violate the state constitution. Further, the trial court did not abuse its discretion in its evidentiary rulings or in overruling the county's motion for a new trial.

Facts: In 1904, Arthur and Stella Novel were deeded a 15-acre tract of property, which they operated as a farm until their deaths, after which it passed to their descendants. In December 2009, St. Louis County entered an order of condemnation for the property under eminent domain, which the trial court granted. After the descendants and the county were unable to agree on proper compensation for the property, the trial court appointed commissioners to make the determination, to which the trial court later added heritage value for a total of $480,000 in damages. The descendants then requested a jury trial and were awarded $1.3 million in damages plus $650,000 in heritage value. The county filed a motion for a new trial, which was overruled. The county appeals.

AFFIRMED.

Court en banc holds: (1) The fact the transcript is incomplete does not require a new trial. Although bench conferences (dialogue away from the jury, just with the judge) were omitted from the official transcript of the trial, the county and descendants stipulated (agreed) to a transcript of what was said, which eliminates any prejudice the missing record could have caused. Further, the substance of any other inaudible testimony and statements is apparent from the context and is not key testimony or argument nor material to issues raised.

(2) The trial court did not abuse its discretion in its evidentiary rulings regarding the admission and exclusion of testimony from the witnesses. The county failed to preserve its claims of error regarding the descendants' attachment to the property or unwillingness to sell. The court properly excluded evidence of the heritage value statute, which was irrelevant to determining fair market value. The trial court did not err in excluding a statement one descendant made at the commissioners' hearing because it was not a statement against interest or inconsistent with trial

testimony. The county did not preserve for review its claim about testimony from the descendants' appraiser, and the court properly excluded a portion of testimony from the county's appraiser. The court also properly excluded testimony from two witnesses who formed their opinions in anticipation of litigation but did not provide those opinions in discovery.

(3) The trial court did not abuse its discretion in overruling the county's motion for a new trial. An appraiser's testimony valuing the property at $1.3 million was substantial evidence to support the jury's verdict, which was not so grossly excessive as to warrant a new trial.

(4) The heritage value statute's requirement of additional compensation when property has been held by the same family for 50 or more years does not violate the Missouri Constitution's provision requiring "just compensation" for land taken by public use. "Just compensation" serves as a constitutional floor below which the legislature cannot descend, but it does not prevent the legislature from exercising its prerogative to allow additional compensation to certain property owners whose real property is taken for public use. Further, because the primary object of the expenditure in the heritage value statute is to compensate a class of persons whose property is acquired through eminent domain for the benefit of the public, that compensation is legal. Heritage value compensation is not part of the "just compensation" mandated by the constitution, so there is no constitutional mandate that it be ascertained by a jury.

SUPREME COURT OF MISSOURI
en banc

ST. LOUIS COUNTY, MISSOURI, Appellant, v. RIVER BEND ESTATES HOMEOWNERS' ASSOCIATION, *et al.*, Respondents.	)	No. SC92470

APPEAL FROM THE CIRCUIT COURT OF ST. LOUIS COUNTY
The Honorable Ellen H. Ribaudo, Judge

Opinion issued September 10, 2013

St. Louis County appeals a judgment that awarded the property owners damages for the county's taking of their real property by eminent domain. St. Louis County claims that the judgment should be reversed and the case remanded because the record of the jury trial on the property owners' exceptions to the condemnation commissioners' report is inadequate for appellate review as portions of the trial proceedings were inaudible or not recorded. It also claims that the trial court abused its discretion in its evidentiary rulings by admitting irrelevant and prejudicial testimony while excluding rebuttal testimony and evidence of an owner's opinion as to the value of the property. In addition, the county claims that the jury verdict was excessive and unsupported by the evidence. Lastly, the county challenges the trial court's award of heritage value because it claims that the statutes authorizing and implementing an award of heritage

value violate article I, section 26; article III, section 38(a); and, article VI, sections 23 and 25 of the Missouri Constitution.

The record is sufficient for this Court to rule on the claims on appeal with confidence. Regarding the county's claims, this Court finds that any errors in the trial court's evidentiary rulings are either not preserved or not prejudicial. This Court also finds that the jury verdict was not excessive so as to require a new trial. Finally, this Court finds that the heritage value statutes are constitutionally valid. Therefore, the judgment of the trial court is affirmed.

Facts and Procedure

St. Louis County determined that it was necessary to condemn 15 acres of real property located at 1653 Creve Coeur Mill Road in Chesterfield for the Page/Olive connector of the Highway 141 extension project. The 15-acre tract was deeded to Arthur Novel in 1904. While Arthur and his wife, Stella, lived on the property and operated it as a farm until their deaths, it had been vacant since 1968, and there is currently no house on the property. On the date of the taking, the property was heavily wooded with a creek, steep bluff, and sloping terrain.

St. Louis County filed its petition in condemnation in the circuit court of St. Louis County on December 22, 2009, with Arthur and Stella's descendants and their spouses as defendants.[1] On February 11, 2010, the trial court entered an order of

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[1] Arthur and Stella Novel's descendants and their spouses are defendants in this action because of their interest in the 15-acre tract. They are collectively referred to as "the Novels."

condemnation, authorizing the acquisition of the property. Because the property owners and the city were unable to agree on the proper compensation, the trial court appointed three commissioners who held a hearing and filed a report. The condemnation commissioners awarded the Novels $320,000 as damages for the acquisition of the property. The Novels filed exceptions to the commissioners' award and requested a jury trial.

Prior to the jury trial, the commissioners filed an amended report with the finding that the Novels had owned the property for more than 50 years. The Novels then filed a motion for assessment of "heritage value," pursuant to sections 523.061 and 523.039.[2] The trial court sustained the motion and awarded heritage value in the amount of $160,000, resulting in a total award of $480,000.

The Novels' exceptions to the commissioners' report were tried by a jury from December 12 to December 15, 2011. After hearing the evidence, the jury assessed damages for the Novels in the amount of $1.3 million. The Novels then filed a motion for assessment of heritage value and entry of judgment. The trial court sustained the Novels' motion over the county's objections that the statutes defining "heritage value" and governing its assessment were constitutionally invalid. The court added $650,000 for heritage value to the jury's verdict and assessed interest under section 523.045. The county filed a motion for a new trial, which the trial court denied.

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[2] Unless otherwise indicated, all statutory references are to RSMo Supp. 2012.

The county appeals. Because three of its claims challenge the constitutional validity of sections 523.039 and 523.061, the statutes authorizing an award of heritage value when the property has been owned by one family for 50 or more years, this Court has exclusive jurisdiction. Mo. Const. art. V, sec. 3.

I. Incomplete Transcript Does not Require a New Trial

In its first point, St. Louis County claims the trial court erred in failing to provide a complete record of the trial proceeding because the transcript of the electronic recording includes portions that are inaudible or omitted. Specifically, when the county received the transcript it had ordered, there were nine unrecorded bench conferences regarding objections and 146 instances of an inaudible word or words. St. Louis County argues that there cannot be meaningful review on appeal without a full and complete transcript of the trial proceedings.

Without a transcript, appellate courts "lack the necessary information to rule with any degree of confidence in the fairness, reasonableness and accuracy of our final conclusion." *Dale v. Dir., Mo. Dept. of Soc. Servs., Family Support & Children's Div.*, 285 S.W.3d 770, 772 (Mo. App. 2009). Consequently, an incomplete record on appeal warrants reversal if the appellant can demonstrate that (1) due diligence was employed in an attempt to correct the shortcomings and (2) the incomplete nature of the record

prejudiced him. *Skillicorn v. State*, 22 S.W.3d 678, 688 (Mo. banc 2000); *State v. Borden*, 605 S.W.2d 88, 91-92 (Mo. banc 1980).[3]

The county claims that it was prejudiced on appeal by the failure to record nine bench conferences because the recording device was not running when objections were raised and argued at the bench. The trial court's relocation of the bench microphone during bench conferences created the impression that the discussions at the bench were being recorded, and the court and the attorneys operated as if making a record of objections and arguments. To ameliorate the impact of the lack of a record of the bench conferences, the parties have filed a stipulation reconstructing the substance of the bench conferences. The parties' stipulation eliminates any prejudice the missing record could have caused.

The county also asserts that it was prejudiced by the inaudible parts in the transcript. In its reply brief, the county identified the inaudible parts of the transcript that it claims are material to particular claims of error and hinders its ability to address

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[3] While the requirement of due diligence to correct any shortcomings in the record previously has been applied by this Court in criminal cases, it is equally applicable to civil cases because the due diligence requirement stems from Rule 81.12(a), which requires an appellant to cause a transcript of proceedings to be prepared and filed with the clerk of the appropriate appellate court. *State v. Borden*, 605 S.W.2d at 91-92 (noting that Rule 81.12(a) was made applicable to criminal cases by Rule 28.18, 1979 Rules, now Rule 30.04(c) and (d)). This Court, in *Borden*, held that an appellant does not discharge the appellant's duty by filing an incomplete transcript with the clerk but must "attempt to obtain by stipulation or motion the substance of the missing testimony or argument," and, if unable to supply the omission or correct the record, show that the omissions were prejudicial. 605 S.W.2d at 91-92.

the issues on appeal. However, it fails to demonstrate that it exercised due diligence in an attempt to correct the inaudible parts. The county also fails to show how the inaudible word or words are, in fact, material. For example, the county asserts that inaudible words in the Novels' closing argument precluded the county from effectively demonstrating the extent to which the Novels utilized improper inflammatory and prejudicial language. In making that argument, it references six parts of the transcript. No objection was made to five statements by the Novels' attorney that contain an inaudible word or words, which the county now claims were improper closing argument. In the only identified instance in which a timely objection was made, the county claimed the Novels' attorney improperly characterized the issues in closing arguments. In that section of the transcript, there are no inaudible words.

During oral arguments, the county clarified that there is not any specific item missing from the transcript that has caused it prejudice but, rather, that the "cumulative effect" of the inaudible portions of the transcript causes it prejudice and precludes meaningful review. However, there is no cumulative effect that is sufficient to demonstrate prejudice. While many words in the transcript are inaudible, the substance of the witnesses' testimony and the statements made by the attorneys and trial court is apparent from the context of the inaudible word or words. Contrary to the county's claim, the inaudible words or phrases are not of key testimony or argument and are not material to the issues raised by the county's claims of error.

The county has failed to demonstrate how the omitted portions of the transcript – the unrecorded bench conferences and the inaudible words – prejudice it, either in a

single instance or cumulatively. Without a showing of prejudice, the omitted portions of the transcript do not impede this Court from ruling with confidence on the fairness, reasonableness, and accuracy of the trial court's final decision concerning the points of the county's appeal. The incompleteness of the record does not warrant reversal of the judgment and remand for a new trial. *Skillicorn*, 22 S.W.3d at 688.

II. Evidentiary Rulings Not an Abuse of Discretion

In four of its points relied on, St. Louis County claims error in the trial court's evidentiary rulings. Generally, a trial court has considerable discretion in admitting or excluding evidence. *Moore v. Ford Motor Co.*, 332 S.W.3d 749, 756 (Mo. banc 2011). This Court gives deference to the trial court's evidentiary rulings and will reverse the trial court's decision about the admission or exclusion of evidence only if the trial court clearly abused its discretion. *Kansas City v. Keene Corp.*, 855 S.W.2d 360, 367 (Mo. banc 1993). When reviewing for an "abuse of discretion," this Court presumes the trial court's ruling is correct and reverses only when the ruling "is clearly against the logic of the circumstance, is arbitrary and unreasonable, and indicates a lack of careful consideration." *State ex rel. McKeage v. Cordonnier*, 357 S.W.3d 597, 599 (Mo. banc 2012) (quoting *Green v. Fred Weber, Inc.*, 254 S.W.3d 874, 880 (Mo. banc 2008)). "If reasonable persons can differ as to the propriety of the trial court's action, then it cannot be said that the trial court abused its discretion." *In re Care and Treatment of Donaldson*, 214 S.W.3d 331, 334 (Mo. banc 2007).

A. Evidence of Unwillingness to Sell and Heritage Value

The first evidentiary error claimed by the county is that the trial court improperly allowed the Novels' testimony of their personal attachment to the property and the forced nature of the property's acquisition by the county, claiming this evidence inflamed and prejudiced the jury against it. The county asserts that the Novels were entitled only to compensation for the fair market value of their property, noting that the legal definition of "fair market value" is "what a reasonable buyer would give who was willing but did not have to purchase, and what a seller would take who was willing but did not have to sell." *City of St. Louis v. Union Quarry & Constr. Co.*, 394 S.W.2d 300, 305 (Mo. 1965). A sentimental attachment or an unwillingness to sell is not a consideration in determining fair market value. *See* section 523.001.1 ("[T]he value of the property taken after considering comparable sales in the area, capitalization of income, and replacement cost less depreciation, singularly or in combination, as appropriate, and additionally considering the value of the property based upon its highest and best use, using generally accepted appraisal practices."). The county states that prejudice from the error in admitting evidence of the Novels' sentimental attachment to and unwillingness to sell the property was exacerbated by the trial court's exclusion of evidence informing the jury that heritage value would be added to the amount of the jury's verdict.[4]

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[4] The Novels ask this Court to deny any claim of error in this point relied on because they claim it is unclear whether the county is claiming error for the admission of evidence as to the Novels' attachment to the property and unwillingness to sell or for

The county identifies seven places in the transcript where it claims that Derek Novel or other witnesses inappropriately testified of the Novels' attachment to the property or their unwillingness to sell. It also references six statements in closing arguments when counsel for the Novels stated that the property was taken by eminent domain and that the Novels did not willingly sell the property but were forced to sell at a time when prices had not recovered from the recession. The county claims these statements exacerbated the prejudice from the improper admission of evidence.

The county failed to preserve any of its claims of error regarding the admission of evidence of the Novels' attachment to the property and their unwillingness to sell. In the 13 references the county makes to the transcript in this point, it only objected once, pertaining to the Novels' criticism of a comparable sale used by the county's expert to arrive at his value for the property. The county did not object to any of the testimony it claims the trial court erroneously admitted regarding the Novels' attachment to the property or unwillingness to sell.[5] In fact, the county elicited some of the testimony it claims was erroneously admitted.[6]

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the exclusion of evidence of the heritage value statutes or for both. The county clarified in its reply brief that it was claiming error only in the admission of evidence of the Novel's attachment to and unwillingness to sell their property. It clarifies that the discussion of the exclusion of evidence of the addition of heritage value "highlights the prejudice" to the county.

[5] The county claims it objected to the testimony of Ernest Demba, the Novels' appraiser, because Mr. Dembra referenced the Novels' history with the property while emphasizing its sentimentality. The county claims that the trial court overruled its objection at an unrecorded bench conference and, thereafter, Mr. Demba was permitted to testify about the history of the family's property in such a manner as to invoke sympathy for the Novels and bias against the county. The transcript of Mr. Demba's

A party may not complain on appeal that the trial court erred in admitting evidence if the complaining party was the first to admit evidence of that type. *See Union Elec. Co. v. Metro. St. Louis Sewer Dist.*, 258 S.W.2d 48, 57 (Mo. banc 2008); *see also State v. Mickle*, 164 S.W.3d 33, 57 (Mo. App. 2005); *Bowls v. Scarborough*, 950 S.W.2d 691, 702 (Mo. App. 1997); *Anderson v. Rojanasathit*, 714 S.W.2d 894, 896 (Mo. App. 1986). "To properly preserve a challenge to the admission of evidence, the objecting party must make a specific objection to the evidence at the time of its attempted admission." *Mickle*, 164 S.W.3d at 55; *see also State v. Purlee*, 839 S.W.2d 584, 592 (Mo. banc 1992); *Bowls*, 950 S.W.2d at 702 ("In order to preserve any error in this regard, Appellants were required to await an attempt by Respondents to introduce evidence of the conversation and to object at that time."); *Anderson*, 714 S.W.2d at 896

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testimony contradicts the county's characterization of Mr. Demba's testimony after the objection. After the unrecorded side bar, Mr. Demba testified regarding how the Novel family accessed their home in the back of the property. He then was asked how long the property had been in the family and responded since 1904, which was more than 100 years. Mr. Demba merely was testifying about facts regarding the length of time the family owned the property, and his testimony of the history was not given in such a manner to generate sympathy for the Novels and bias against the county.

[6] The county attempts to excuse its failure to object by stating that some of the objectionable statements actually were contained in questions posed by the Novels' counsel, so an objection would have done little to correct or mitigate the damage that was done. This argument does not aid the county because failing to object to improper questions also fails to preserve anything for appeal. *See Perkins v. Kroger Co.*, 592 S.W.2d 292, 294-95 (Mo. App. 1979) (stating that it is the duty of the party to object to the form of a question and point out how it is erroneous if that party desires to preserve that question for appeal). The county then seeks plain error review. Plain error review rarely is granted in civil cases, and there is no circumstance warranting plain error review in this case. *Goltz v.* Masten, 333 S.W.3d 522, 524 (Mo. App. 2011).

("Nor can a plaintiff claim error for the admission of his own evidence. Plaintiffs' remedy was to resist and preserve error on matters considered in the ruling on the motion in limine, if any.").

Additionally, the county did not object to or raise a separate claim of error for any of the references in closing arguments to the Novels' forced sale of the property at an economically bad time. The county's failure to preserve its claims of error precludes review of any claim that the trial court erred in admitting evidence of the Novels' attachment to the property and unwillingness to sell. *Fleshner v. Pepose Vision Inst., P.C.*, 304 S.W.3d 81, 97 n.14 (Mo. banc 2010) (finding that failure to object to evidence as it is admitted at trial does not preserve that issue for appellate review).

Within this point, the county also asserts that the trial court compounded its error by refusing to let the jury know that the Novels would, in fact, be receiving additional compensation of 50 percent of any jury award to compensate them for the "heritage value" of the property. Because this Court has found there was no error in the admission of the evidence, there was no exacerbation of error. Additionally, when the jury has found that the property was owned by the same family for 50 or more years, the judge computes heritage value as 50 percent of the amount the jury found to be the fair market value of the condemned property. Sections 523.001(2) and 523.061; *State ex rel. White Family P'ship v. Roldan*, 271 S.W.3d 569, 574 (Mo. banc 2008). The definition of "fair market value" permits the jury to consider only the "value of the property . . . based upon its highest and best use . . . ." Sections 523.001(1) & 523.039(1). Consequently, the heritage value statute was irrelevant to the jury's given

task of determining the fair market value of the property. The trial court, therefore, did not abuse its discretion by excluding evidence of the statute.

B. Mr. Novel's Previous Statement at Commissioners' Hearing

The county contends that the trial court erred in excluding evidence that, during the commissioners' hearing, Mr. Novel stated his opinion that the value of the Novels' 15 acres was $496,000. It claims this statement was admissible as an admission against a party's interest and to impeach Mr. Novel's testimony at trial that he never had an opinion about the value of the property.

The trial court excluded evidence of the statement Mr. Novel made at the commissioners' hearing, finding that Mr. Novel was not stating his opinion of the value of the property but, instead, was stating the amount he would have taken to settle the case in his settlement negotiations with the county. Because the trial court found that Mr. Novel had not made a statement of his opinion about the value of the property, the statement was neither a statement against his interest nor a statement inconsistent with his trial testimony that he never had an opinion of the property's value.

The county points to testimony by Mr. Novel when he was cross-examined at trial regarding whether he had an opinion as to the value of the 15 acres. Specifically, the questions asked and the answers Mr. Novel gave were as follows:

> Q: All right. We started to talk about this yesterday. Do you have today an opinion of the value what the property is worth?
> A: No, I do not. I'm not an appraiser or an engineer, so I would have, from a laymen's point of view would not have a way to determine the value of the property.
> Q: Did you at any other time have an opinion of value as to the property?

A: No, I did not.

After Mr. Novel made these statements, the county sought to cross-examine him regarding whether he previously had testified at the commissioners' hearing that his opinion as to the value of the 15 acres was that it was worth $496,000 – $800,746 less than the testimony of the Novels' appraiser at trial. Upon the Novels' objection to the question, the trial court heard counsel's argument outside the presence of the jury. In addition to the argument of counsel, the trial court considered evidence regarding whether Mr. Novel's statement at the commissioners' hearing was a statement of value and, if so, whether it was admissible as a party's statement against interest or a prior inconsistent statement of a witness.[7] In particular, the trial court reviewed the deposition testimony of James Herries, an employee of St. Louis County who acted as its negotiator with the Novels. Mr. Herries' testimony was that he, and possibly other county negotiators, came to a tentative agreement with Mr. Novel during settlement negotiations that the Novels would be paid $496,000 as their damages for the taking of

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[7] Evidence of a commissioners' award may be objectionable, ostensibly under grounds that it would be both irrelevant and prejudicial. *See State ex rel. Mo. Highway & Transp. Comm'n v. Sisk*, 954 S.W.2d 503, 510 (Mo. App. 1997); *State ex rel. County of St. Charles v. Latham*, 868 S.W.2d 177, 181-82 (Mo. App. 1994). Nevertheless, inconsistent statements made during a condemnation commissioner's hearing are permissible under the general admissibility of prior inconsistent statements. *E.g.*, *Sisk*, 954 S.W.2d at 510. In addition, it appears that an admission against interest would be admissible under the same reasoning. "Admissions against interest are those made by a party to the litigation or by one in privity with or identified in legal interest with such party, and admissible whether or not the declarant is available as a witness." *Carpenter v. Davis*, 435 S.W.2d 382, 384 (Mo. banc 1968).

the 15 acres.[8] When the county would not agree to pay the negotiated figure, no settlement was reached, and there was a hearing before the three commissioners appointed by the trial court.

There was no official record of the commissioners' hearing. Consequently, Mr. Herries was asked about Mr. Novel's testimony before the commissioners in his deposition. After the trial court reviewed Mr. Herries' deposition testimony and heard argument of counsel, the court sustained the Novels' objection to questions to Mr. Novel about his statements in the commissioners' hearing.

Later during trial, the county made an offer of proof. Its offer of proof was not Mr. Novel's response to its questions but rather was testimony from Mr. Herries. Mr. Herries was asked by counsel for the county whether he ever heard an expression of the value of the property other than in settlement negotiations or an offer or demand. He responded affirmatively and then testified that Mr. Novel stated the value was $496,000 to non-county employees outside the context of any settlement or offer. The trial court asked what words Mr. Novel used, and Mr. Herries responded, "That I'll settle for 496,000," and confirmed that this statement was made during Mr. Novel's testimony at the commissioners' hearing. The court then asked what question elicited this response from Mr. Novel. Mr. Herries answered, "What I can remember is that the commissioners requested a settlement or what he thought the value was worth or what

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[8] Mr. Novel acted on behalf of the rest of his relatives during settlement negotiations with the county.

the property was worth." When the court completed its questioning of Mr. Herries, counsel for the county asked Mr. Herries whether the commissioners specifically asked what Mr. Novel's opinion of value was. Mr. Herries answered that they did, and stated that Mr. Novel responded to their question with $496,000.

When the trial reconvened the next morning, the county filed with the trial court its written Plaintiff's Response to Motion in Limine, setting out cases to support its argument that statements made in a commissioners' hearing may be admitted at trial for impeachment purposes so long as there is no reference to the commissioners' hearing or the commissioners' award. The court then stated on the record that it found there was not an inconsistent statement because it did not believe that Mr. Novel stated his opinion of the value of the property while he was testifying before the commission. Rather, according to the court, it "believe[d] that the number that was given at the commissioner's hearing at $496,000 was not representative as a number of what [Mr. Novel] believes the fair market value of the property was, but what he was willing to settle for after extended negotiations between the two sides with regards to numbers."

In light of this finding by the trial court, the county's claim that the trial court erred in not admitting Mr. Novel's prior inconsistent statement fails. The trial court is free to believe all, part, or none of the testimony of Mr. Herries. *Sch. Dist. of Kansas City v. State*, 317 S.W.3d 599, 612 (Mo. banc 2010). The record, in the light most favorable to the trial court's ruling, supports a finding that Mr. Novel was asked his opinion regarding his position on settlement and that he responded with the amount for which he would he would have settled during his negotiations with the county. Because

the trial court did not believe that Mr. Novel stated his opinion about the value of the property while testifying at the commissioners' hearing, there was no prior inconsistent statement with which to impeach him.

Nor did the trial court err in not admitting the evidence of Mr. Novel's statement as an admission against interest. While an out-of-court statement that is an admission against interest might be an exception to the hearsay rule, offers of settlement are inadmissible. Negotiations for the peaceful settlement of disputes are encouraged under the law. *Hancock v. Shook*, 100 S.W.3d 786, 799 (Mo. banc 2003); *State ex rel. State Highway Comm'n v. Sheets*, 483 S.W.2d 783, 785 (Mo. App. 1972). "If offers of settlement were admitted in evidence, they would have the natural tendency with the jury to denigrate the defense position at trial. No one would make such offers if the risk of their being before the jury were a necessary corollary of the offer." *J.A. Tobin Const. Co. v. State Highway Comm'n of Missouri*, 697 S.W.2d 183, 186 (Mo. App. 1985). The policy rationale behind the rule excluding evidence of settlement negotiations requires that "statements made with a clear purpose to resolve the existing dispute . . . be protected, even though uttered outside the negotiating arena." 2 C. Mueller & L. Kirkpatrick, *Federal Evidence* § 4:58 (3d ed. 2007). The trial court was free to conclude that Mr. Novel's response to the commissioners' question was a statement of his position during settlement negotiations and not a statement of his opinion about the value of the 15 acres. Therefore, the trial court did not abuse its discretion by excluding evidence of Mr. Novel's statement.

C. Mr. Demba's Testimony Regarding County's Comparable Sale and Rebuttal Testimony

In its next claim of error, the county asserts the trial court erred in admitting speculative testimony by Ernest Demba, the Novels' appraiser and expert witness who testified regarding his opinion about the value of the 15 acres. The county claims that the trial court erroneously admitted Mr. Demba's speculative testimony regarding the Terra Vista subdivision, a comparable sale used by one of the county's appraisers. It further claims the prejudice resulting from Mr. Demba's testimony was exacerbated when the court again erred in excluding rebuttal testimony from its appraiser, Jeff Gonterman, under the "project influence" doctrine. The county argues that Mr. Gonterman's testimony was admissible to rebut Mr. Demba's testimony disparaging one of the comparable sales used by Mr. Gonterman.

When testifying as an expert witness who appraised the 15 acres for the Novels, Mr. Demba stated that he utilized the comparable sales approach to determine a value for the property. He testified that the highest and best use of the property was for residential villa development because there are villa developments on adjacent properties, Mill Ridge and Terra Vista. Mr. Demba testified extensively about the Mill Ridge and Terra Vista properties and the history of their development as villas. Regarding the history of the development of Terra Vista villas, he testified that Mr. Walsh, the owner who sold the property to the developer, retained some property for his personal residence and negotiated for improvements to the property he retained as partial compensation for the sale. He also testified that he talked with Mr. Walsh and

that Mr. Walsh sold the property to the developer unaware that there were changes in the designation of part of the property from floodway, which cannot be developed, to floodplain, which may be developed if the property meets certain specifications.

During further questioning by the Novels' counsel, Mr. Demba testified that he did not use the sale of the Walsh property that was developed as the Terra Vista villas as one of his three comparable sales. The Terra Vista property was sold by Mr. Walsh for a much lower price, 30 cents per square foot, than Mr. Demba's valuation of the 15 acres, $2 per square foot. Mr. Demba stated that he did not consider the Terra Vista property a comparable sale because "the sale at 30 cents . . . was not a true money consideration" as Mr. Walsh received consideration other than money and, when Mr. Walsh sold the property, he was under the impression that it could not be developed. He stated that Mr. Walsh was not a knowledgeable seller, which is a requirement for fair market value.

During its cross-examination of Mr. Demba, the county questioned him at length regarding his statement that "certain information leaked out to the developer for Terra Vista." According to Mr. Demba, this information advised the developer, who was involved in the real estate market in the area, about the study that eventually resulted in changing the designation of the property from floodway to floodplain. The county also questioned him about the federal government's process of changing the designations of property and whether those changes had been finalized during the relevant time for the Walsh sale.

The county did not object to any of Mr. Demba's testimony that it now challenges. In fact, as noted, the county elicited some of the testimony it challenges. Consequently, the county has not preserved for review any error in the admissibility of that testimony from Mr. Demba. *McHaffie v. Bunch*, 891 S.W.2d 822, 830 (Mo. banc 1995) ("A party who fails to object to testimony at trial fails to preserve the issue for appellate review."); *Alvey v. Sears, Roebuck & Co.*, 360 S.W.2d 231, 234 (Mo. 1962), (finding that a party cannot object to the admission of evidence that is the same as evidence it has introduced).

Regarding the county's claim that the trial court improperly excluded testimony from Mr. Gonterman, the county's appraiser, which was intended to rebut Mr. Demba's testimony, the claim of error lacks merit. During the county's direct examination of Mr. Gonterman, he was questioned about Mr. Walsh's sale of the property on which the Terra Vista villas were developed. He testified that he had talked with Mr. Walsh and expressed his opinion that "Mr. Walsh seemed to be a very savvy or educated property owner." When asked why he had this opinion, Mr. Gonterman discussed the conditions under which Mr. Walsh sold the property to the developer of the Terra Vista villas. The county then asked Mr. Gonterman whether Mr. Walsh still lived on the property he retained when he sold property to the developer of the Terra Vista villas. Mr. Gonterman testified that Mr. Walsh had sold the property to another developer "who acquired the property hoping to get, [he guessed], bidding or be involved in the construction or be part of the construction for the Page/Olive connector . . . ."

When the county inquired about the price that Mr. Walsh had received when he sold the property he retained for his residence, the Novels objected that the purchase price was irrelevant. Counsel for the parties then were invited to approach the bench. The exchange between the parties and the judge was held off the record and, although the judge's ruling was not in the trial transcripts, both parties agree that the judge sustained the Novels' motion excluding testimony regarding that price.

The county claims that the ground on which the trial court excluded Mr. Gonterman's testimony was the "project influence" doctrine. This objection would be a different one than the relevance objection made before counsel were called to the bench. Nevertheless, this evidence was properly excluded on either ground. First, the evidence of the sale of Mr. Walsh's personal residence occurred years after his sale of the property to the developer of the Terra Vista villas, under different circumstances that involved different considerations – no conditions of sale other than the payment of money, a different real estate market, different participants, and the potential for condemnation. For the evidence of the sale price of Mr. Walsh's residence to be admissible, it must have been both logically and legally relevant. *Conley v. Kaney*, 250 S.W.2d 350, 353 (Mo. 1952). While the price Mr. Walsh negotiated for the sale of his residence might have some logical relevance to show his sophistication at the time he sold the Terra Vista villas property, the fact that years had passed between the two sales and that the sales occurred under different conditions make the logical relevance of the evidence insignificant. Regarding legal relevance, the limited probative value of

Mr. Walsh's property does not outweigh the possibility that the evidence of a non-comparable sale would be confusing to the jury.

Additionally, under the "project influence" doctrine, juries are prohibited from "consider[ing] either enhancements or depreciation brought about by the construction of [an] improvement for which the property is being taken. In other words, the value should be determined independent of [any] proposed improvement." *St. Louis Elec. Terminal Ry. Co. v. MacAdaras*, 166 S.W. 307, 310 (Mo. banc 1914). Under this doctrine, Missouri courts may exclude evidence of sales that are influenced by the project for which a property is being acquired. *Quality Heights Redevelopment v. Urban Pioneers*, 799 S.W.2d 867, 870 (Mo. App. 1990).

In this case, the record shows that the purchase price the county wished to admit into evidence was influenced by the same public project as the Novels' 15 acres. The county argues that "[t]here was no evidence suggesting that the purchase price and terms of the sale of the home had anything to do with the 'proposed improvements,' the highway, thus the project influence doctrine would simply not apply." This argument is refuted in the record by the testimony of the county's own witness. As noted previously, before Mr. Gonterman was asked the purchase price of Mr. Walsh's sale of his residence, Mr. Gonterman testified that the property also was "involved in the eminent domain [sic]" and that its buyers hoped to "be part of the construction" of the highway project. Under these circumstances, the trial court did not abuse its discretion by excluding this portion of Mr. Gonterman's testimony.

D. Testimony of County's Expert Witnesses Concerning Potential Development

In its fourth evidentiary issue, the county claims the court erred in excluding testimony from two witnesses employed by the city of Chesterfield, the municipality in which the 15 acres is located, regarding obstacles to the development of the subject property. The county claims that this testimony was needed to rebut testimony given by Mr. Demba and Dan Wind, a civil engineer who was retained as an expert witness by the Novels. The targeted testimony dealt with the number of villas that could be developed on the 15 acres and Mr. Demba's and Mr. Wind's efforts to discount the complexity of the development issues and the review process for approval of a villa development project.

In this claim of error, the county does not assert that the trial court erred in admitting the testimony of Mr. Wind and Mr. Demba. The only error asserted is that the trial court erred in not permitting two witnesses it called to testify concerning the effect that the development challenges would have on the value of the 15 acres. The witnesses were Jeff Paskiewicz, a civil engineer in the city public works department who managed capital improvement projects for Chesterfield, and Aimee Nassif, city planning and development director for Chesterfield.

The county first claims that the trial court erroneously granted the Novels' motion in limine and prohibited Mr. Paskiewicz from testifying with respect to the development of the 15 acres and the potential development problems associated therewith. In their motion in limine, the Novels stated that, prior to trial, the county had

identified Mr. Paskiewicz and Ms. Nassif as "non-retained witnesses." The motion alleged that both witnesses were deposed, that Ms. Nassif indicated at her deposition that she would expect to testify as to the potential for rezoning the 15 acres, and that Mr. Paskiewicz stated that he may testify about the probability of whether the 15 acres would receive a "map revision" regarding flooding risk. The Novels then objected to testimony from the two witnesses "as to how the City would or would not act with regard to [the 15 acres]," citing *State ex rel. Missouri Highway & Transportation Commission v. Gannon*, for the principle that "a member of the government organization making rezoning decisions . . . should not give an opinion on something which has yet to come before that decisional body." 898 S.W.2d 141, 142 (Mo. App. 1995). When addressing this motion in limine, the trial court stated that it agreed that these Chesterfield employees could not testify about their opinion as to what actions Chesterfield would take regarding the development of the 15 acres because the employees do not have authority to speak for the city council.

Prior to Mr. Paskiewicz being called as a witness for the county, counsel for the county asked to approach the bench. The side bar with the trial court was not recorded, but the county has filed with this Court a stipulation in which the parties agree that the trial court granted the Novels' motion in limine to limit the testimony of the county's non-retained experts, Mr. Paskiewicz and Ms. Nassif. When the county began the direct examination of Mr. Paskiewicz, the Novels objected to any opinion testimony regarding development of the subject property because Mr. Paskiewicz was a non-retained expert witness. The county countered with the argument that its expert witnesses had the

knowledge and expertise to testify as to Chesterfield's requirements for development and the possible challenges to such development and that their testimony was admissible. The court ruled that the testimony of such experts be limited to general application of Chesterfield's development requirements, prohibiting any specific application to development of the subject property.

After this ruling, Mr. Paskiewicz testified at great length. He testified about levee districts and maps depicting flood risk areas as well as how the maps are created, drafted and maintained. He also testified as to his review and approval of the Terra Vista and Mill Ridge developments, the general process of approving improvements to a property to remove it from the limitations of a floodplain designation, challenges the Terra Vista and Mill Ridge developments faced, and the Chesterfield ordinances governing floodplain management and development in Chesterfield. While Mr. Paskiewicz testified about his familiarity with the location of the Novels' property on a map, no questions were asked of Mr. Paskiewicz or objections made regarding the specific development of the 15 acres, the potential development problems associated therewith, or what action Chesterfield would take regarding the development of the property.

Ms. Nassif testified that she was familiar with the Terra Vista and Mill Ridge subdivisions and the Novels' property. She testified about her involvement in the development of the Terra Vista property. She described the planning process generally and how the Terra Vista property proceeded through the planning process. She also testified regarding site specific ordinances and environmental restrictions and

conditions. She used the Terra Vista property as an example when she described the process of applying for a planned environment unit, which allows a developer to have different uses and flexibility in the design in exchange for preservation and protection of natural areas and topography on the development site. She testified as to how the shape and terrain of a property impacts the density of its development. She also testified that it was a difficult process to remove areas out of a floodplain and that there were requirements for open space; landscape, creek, and stream buffers; tree preservation; water quality; lighting; structure setbacks; parking; and sanitary and storm water sewers. No questions were asked of Ms. Nassif or objections made regarding the specific development of the 15 acres, the potential development problems associated therewith, or what action Chesterfield would take regarding the development of the property.

The county intended to present the testimony of these experts to show how development challenges would impact the value of the 15 acres. While the trial court sustained the Novels' objection so that Mr. Paskiewicz and Ms. Nassif were prevented from testifying about the 15 acres, the two witnesses testified extensively regarding general requirements, challenges, and risks associated with the development of property in a floodplain and floodway. This testimony related directly to the challenges caused by land conditions that previously were identified by Mr. Demba and Mr. Wind as present on the 15 acres, including a creek running through the property, sloping terrain, and being designated within a floodway, floodplain, or wetlands. Ms. Nassif testified, in particular, about the rigorous requirements for city approval to develop in a floodplain. This evidence was clear rebuttal to the testimony of the Novels' experts that

it would not be difficult to get approval of the villa development plans or to construct a villa development on the 15 acres.[9]

Nevertheless, the issue presented by the county's claim is whether the trial court abused its discretion by preventing the county from specifically asking these non-retained experts about their opinions regarding the 15 acres. Discovery rules distinguish between facts and opinions held by non-retained experts from those held by experts who acquired facts and developed opinions in anticipation of litigation. *See* Rule 56.01(b)(4),(5). When asked in interrogatories, a party must disclose any expert witness it expects to provide testimony regarding facts known and opinions developed in anticipation of litigation. *Id.* at 56.01(b)(4)(a). Discovery rules also permit parties to compel their opponents "to state the general nature of the subject matter on which the expert is expected to testify." Rule 56.01(b)(4)(a). On the other hand, disclosure requirements for a non-retained witness are limited to their identity and their field of expertise. Rule 56.01(b)(5). Otherwise, any information that they provide is discoverable in the same manner as other lay witnesses. *Id.*

The discovery rules treat experts differently depending on the expected scope of their testimony. To give advance notice to the opposing party and avoid unfair surprise,

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[9] The county argues the Novels deposed Mr. Paskiewicz and Ms. Nassif, so they were on notice of the evidence these non-retained experts would have given concerning how zoning and development issues would have affected the value of the 15 acres. In the depositions, however, neither non-retained expert provided an opinion as to how the development issues would affect the value of the 15 acres, even after being invited to do so.

Rule 56.01(b)(4) requires a party to disclose more information with respect to expert witnesses who acquired facts and have formed opinions in preparation for litigation. *See State ex rel. Mo. Highway & Transp. Comm'n v. McDonald's Corp.*, 872 S.W.2d 108, 113 (Mo. App. 1994). "The purpose of the discovery rules is to take the surprise out of trials of cases so that all relevant facts and information pertaining to the action may be ascertained in advance of trial." *State ex rel. Bush v. Elliott*, 363 S.W.2d 631, 636 (Mo. banc 1963); *State ex rel. Plank v. Koehr*, 831 S.W.2d 926, 927 (Mo. banc 1992) ("[R]ules relating to discovery were designed to eliminate, as far as possible, concealment and surprise in the trial of lawsuits . . . .").

Early in the litigation, the county identified Mr. Paskiewicz and Ms. Nassif as non-retained expert witnesses, providing to the Novels only that information required by Rule 51.04(b)(5), namely, their names and titles with the city of Chesterfield. Additionally, the county did not ask them to prepare an opinion concerning the 15 acres for the purpose of this litigation. However, the expert testimony the trial court excluded would have been developed in anticipation of the litigation. During the Novels' depositions of each of those experts, it became apparent that they had no involvement with the Novels' property prior to their contact with the county. For example, Mr. Paskiewicz testified that he was "[b]riefly" familiar with the area containing the Novels' property on the map, but he had no specific knowledge about the Novels' property even though he had specific knowledge about two nearby subdivisions. Furthermore, neither experts' job had familiarized him or her specifically with the

difficulties of developing the Novels' property. Accordingly, any opinion regarding the 15 acres would have been formed in anticipation of this litigation

Notwithstanding the fact that the county treated Mr. Paskiewicz and Ms. Nassif as non-retained experts during discovery, it asked the trial court to allow them to testify about their opinions regarding the developmental challenges to the 15 acres, opinions that were formed in anticipation of litigation. Because the county did not provide an opinion from Mr. Paskiewicz and Ms. Nassif in discovery, the Novels were not properly put on notice of the intended subject of their testimony. As such, allowing Mr. Paskiewicz and Ms. Nassif to testify about their opinions formed in preparation for this litigation would frustrate the purpose of the rules of discovery. Therefore, the trial court did not abuse its discretion in excluding testimony that failed to comply with the requirements of Rule 56.01(b)(5).

III. Jury's Verdict Not Grossly Excessive and Not Against the Weight of the Evidence

St. Louis County claims that the trial court erred in overruling its motion for a new trial and entering judgment because the jury's $1.3 million verdict was excessive in that it was against the weight of the evidence. When the county filed its principal brief raising this claim of error, it asserted that the verdict exceeded the evidence by $31,000. In its reply brief, however, it concedes that the amount by which the verdict exceeded the evidence was $3,254. Nevertheless, it continues to claim it was an excessive verdict that shows the jury was swayed by passion and prejudice.

The standard of review for a trial court's order denying a motion for a new trial is abuse of discretion. *Bowan v. Express Med. Transporters, Inc.*, 135 S.W.3d 452, 456 (Mo. App. 2004). A trial court abuses its discretion when:

> [A] ruling is clearly against the logic of the circumstances then before it and is so arbitrary and unreasonable as to shock the sense of justice and indicate a lack of careful consideration. *McGuire v. Seltsam*, 138 S.W.3d 718, 720 (Mo. banc 2004). The denial of a new trial would be an abuse of discretion if it were based on findings not substantially supported by the record. *Bowan*, 135 S.W.3d at 456.

In re H.L.L., 179 S.W.3d 894, 896-97 (Mo. banc 2005). In reviewing a trial court's order denying a motion for a new trial, the evidence is viewed in a light most favorable to the trial court's order. *Badahman v. Catering St. Louis*, 395 S.W.3d 29, 39-40 (Mo. banc 2013).

At trial, Mr. Demba testified that the subject property was valued at $2 per square foot. When asked whether his valuation of $2 per square foot multiplied by 648,373 square feet gives a value of $1,296,746, he stated, "That's true," He then was asked, "So that's close to 1.3 million?" and he responded, "Yes."

In addition to Mr. Demba's testimony, the $1.3 million amount was mentioned in the Novels' closing argument. Their counsel stated, "Every foot of land is worth $2 a square foot over the entire land. And that is technically like $1.29, but we round it to $1.3 million." When the jury reached its verdict, it awarded the Novels $1.3 million for the property. The county claims this verdict exceeded the evidence by $3,254 or 0.25 percent.

The evidence viewed in the light most favorable to the trial court's order denying the motion, is that the Novels were damaged in the amount of $1,296,746, which rounds up to $1.3 million. During the questioning of Mr. Demba and the closing argument of the Novels' counsel, the county did not object that it was improper for $1,296,746 to be rounded up to $1.3 million. From these facts, it is clear that the jury rounded up the amount of damages like Mr. Demba did in his testimony and the Novels' counsel did in closing argument. It is easy to understand why the jury more easily could remember $1.3 million than $1,296,746 when setting the damages.

The opinion of a single qualified witness constitutes substantial evidence to support a jury's verdict. *Heins Implement Co. v. Missouri Highway & Transp. Comm'n*, 859 S.W.2d 681, 692 (Mo. banc 1993), *abrogated on other grounds as recognized by Southers v. City of Farmington*, 263 S.W.3d 603 (Mo. banc 2012); *State ex rel. State Highway Comm'n v. Hamel*, 404 S.W.2d 736, 739 (Mo. 1966). Mr. Demba's testimony describing the value of the 15 acres as $1.3 million provides substantial evidence to support the verdict. Therefore, the trial court did not abuse its discretion when it overruled the county's motion for a new trial.

IV. Heritage Value Statutes Constitutionally Valid

St. Louis County also asserts that sections 523.039 and 523.061, the statutes authorizing and implementing an award of heritage value, violate the Missouri Constitution in three respects: (1) the General Assembly impermissibly altered the judicial definition of "just compensation" by permitting the addition of heritage value to fair market value, in violation of article I, section 26 of the Missouri Constitution; (2)

the heritage value statutes require that the county expend public funds without a public purpose in violation of article III, section 38(a) and article VI, sections 23 and 25 of the Missouri Constitution; and, (3) the statutory requirement that a judge compute heritage value invades the province of the jury to determine just compensation for land taken by eminent domain, in contravention of article I, section 26 of the Missouri Constitution.

"The standard of review for constitutional challenges to a statute is de novo." *City of Arnold v. Tourkakis*, 249 S.W.3d 202, 204 (Mo. banc 2008). Statutes are presumed to be constitutional. *State v. Young*, 362 S.W.3d 386, 390 (Mo. banc 2012). "This Court will not invalidate a statute unless 'it clearly and undoubtedly violates some constitutional provision and palpably affronts fundamental law embodied in the constitution.'" *Id.* (quoting *State v. Richard*, 298 S.W.3d 529, 531 (Mo. banc 2009)). The county, as the party challenging the validity of the heritage value statutes, bears the burden of proving the statutes clearly and undoubtedly violate the constitution. *Id.*

A. Legislature Did Not Impermissibly Alter Definition of "Just Compensation"

The Bill of Rights Preamble and article I, section 26 of the Missouri Constitution provide that, "In order to assert our rights, acknowledge our duties, and proclaim the principles on which our government is founded, we declare: . . .[t]hat private property shall not be taken or damaged for public use without just compensation." The term "just compensation" is not defined in the constitution, but the United States Supreme Court and this Court long have interpreted it to mean "the 'fair market value' of the property at the time of the taking." *E.g.*, *Olson v. United States*, 292 U.S. 246, 255 (1934); *City of St. Louis v. Union Quarry*, 394 S.W.2d 300, 305 (Mo. 1965). "The fair

market value of land is what a reasonable buyer would give who was willing but did not have to purchase, and what a seller would take who was willing but did not have to sell." *Union Quarry*, 394 S.W.2d at 305.

In 2006, the Missouri General Assembly "enacted a statutory definition of just compensation" codifying the judicial determination that "just compensation" means "fair market value" and providing for additional compensation for the taking of homesteads and properties held within the same family for 50 or more years. *State ex rel. White Family P'ship*, 271 S.W.3d at 572. Section 523.039 states, in part:

> In all condemnation proceedings filed after December 31, 2006, just compensation for condemned property shall be determined under one of the three following subdivisions, whichever yields the highest compensation, as applicable to the particular type of property and taking:
>
> (1) An amount equivalent to the fair market value of such property;
>
> (2) For condemnations that result in a homestead taking, an amount equivalent to the fair market value of such property multiplied by one hundred twenty-five percent; or
>
> (3) For condemnation of property that results in any taking that prevents the owner from utilizing property in substantially the same manner as it was currently being utilized on the day of the taking and involving property owned within the same family for fifty or more years, an amount equivalent to the sum of the fair market value and heritage value.

Section 523.001 defines "heritage value" as 50 percent of the fair market value of a property that has been owned within the same family for 50 or more years. Accordingly, for qualifying properties that have been held within the same family for 50 or more years, "just compensation" under section 523.039 is the fair market value plus an additional 50 percent for heritage value, equaling 150 percent of the fair market value.

The county asserts that these statutes were *ultra vires* because article II of the Missouri Constitution prohibits the legislature from enacting a law contrary to the Court's interpretation of the constitution. Specifically, the county claims that the General Assembly legislatively changed the meaning of "just compensation" in article I, section 26 to something more than "fair market value." *Union Quarry*, 394 S.W.2d at 305. The county is correct that "[c]onstitutional interpretation is a function of the judicial, and not the legislative branch." *Poertner v. Hess*, 646 S.W.2d 753, 756 (Mo. banc 1983). *See also Dickerson v. United States*, 530 U.S. 428, 437 (2000) (Congress may not supersede a constitutional rule legislatively); *City of Boerne v. Flores*, 521 U.S. 507, 519 (1997) (The legislative power "to enforce" does not include altering the meaning of a constitutional provision because the power "to enforce" does not include "changing what the right is."). Contrary to the county's argument, however, this constitutional principle is not implicated in the General Assembly's enactment of sections 523.039 and 523.061. Sections 523.039 and 523.061 do not alter this Court's definition of "just compensation," which serves as a constitutional floor below which the legislature cannot descend;[10] the statutes instead promote the legislature's intended

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[10] Justice William Brennan of the Supreme Court of the United States explained the concept of constitutional floors in a federal setting, where state constitutions may provide more protections than those afforded by the federal constitution without contravening the federal constitution. *See* William J. Brennan, Jr., *The Bill of Rights and the States: The Revival of State Constitutions As Guardians of Individual Rights*, 61 N.Y.U. L. Rev. 535, 548 (1986).

policy of providing additional benefits to certain property owners whose real property is taken for public use.

The United States Supreme Court's decisions in *Mitchell v. United States* and *Joslin Mfg. Co. v. Providence* support the proposition that a legislature may compensate losses and damages beyond those traditionally included in its interpretation of "just compensation." 267 U.S 341 (1925); 262 U.S. 668 (1923). In *Mitchell*, the Supreme Court considered the validity of a property owner's request for consequential damages for losses to a business when land was taken by eminent domain in Maryland. 267 U.S. at 344. The Supreme Court stated:

> It does not follow that, in the absence of an agreement, the plaintiffs can compel payment for such losses. To recover, they must show some statutory right conferred. States have not infrequently directed the payment of compensation in similar situations. The constitutions of some require that compensation be made for consequential damages to private property resulting from public improvements. Others have, in authorizing specific public improvements, conferred the right to such compensation. Congress had, of course, the power to make like provision here.

Id. at 345-46 (citations omitted).

In *Joslin Mgf. Co.*, the issue before the Supreme Court was the validity of statutes authorizing compensation for the condemnation of land, interests, and water rights to provide a pure water supply for a municipality. 262 U.S. at 670. In its opinion, the Supreme Court addressed an equal protection challenge to a statute providing compensation for injury to businesses established prior to notice that the property would be taken but not to those businesses established after notice. *Id.*at 276. The Supreme Court stated:

> In respect of the contention that the statute expends the right to recover compensation, so as to include these and other forms of consequential damages, and, thus, deprives plaintiffs in error, as taxpayers of the city, of their property without due process of law, we need say no more than that, while the Legislature was powerless to diminish the constitutional measure of just compensation, we are aware of no rule, which stands in the way of an extension of it, within the limits of equity and justice, so as to include rights otherwise excluded. As stated by the Supreme Judicial Court of Massachusetts in *Earle v. Commonwealth*, 180 Mass. 579, 583, 63 N. E. 10 (57 L.R.A. 292, 91 Am. St. Rep. 326), speaking through Mr. Justice Holmes, who was then a member of that court:
>
> "Very likely the . . . rights were of a kind that might have been damaged if not destroyed without the constitutional necessity of compensation. But some latitude is allowed to the Legislature. It is not forbidden to be just in some cases where it is not required to be by the letter of the paramount law."

Id. at 676-77.

As *Mitchell* and *Joslin Mgf. Co.* illustrate, the constitutionally required "just compensation" is a minimum measure that must be paid, not a maximum one. The legislature has the power to provide for more than the minimum "just compensation." Therefore, there is no violation of the Missouri Constitution's provision requiring "just compensation" for land taken for public use by the requirement of additional compensation for heritage value in section 523.039. Article I, section 26 operates as a constitutional minimum, and section 523.039 is an example of the legislature exercising its prerogative to allow additional compensation for a statutorily defined class whose

land is subject to taking, i.e., real property owners whose land has been owned by their family for 50 or more years.[11]

As a political subdivision of the state government, the county has been delegated the power of eminent domain by the legislature. *State ex rel. Jackson v. Dolan*, 398 S.W.3d 472, 476 (Mo. banc 2013). As such, the county has "no inherent powers but [is] confined to those expressly delegated by the sovereign and to those powers necessarily implied in the authority to carry out the delegated powers." *Christian Cnty. v. Edward D. Jones & Co., L.P.*, 200 S.W.3d 524, 527 (Mo. banc 2006) (quoting *Premium Standard Farms, Inc. v. Lincoln Township of Putnam Cnty.*, 946 S.W.2d 234, 238 (Mo. banc 1997)). "[T]he State, speaking through its Legislature, may . . . impose upon itself, and upon those to whom it delegates the right of eminent domain, an obligation to pay more than what the courts might consider a 'just compensation.'" *Daniels v. State Rd. Dep't.*, 170 So. 2d 846, 853 (Fla. 1964).

B. Heritage Value Statutes Do Not Confer Public Funds for Private Benefit

In its second constitutional challenge to the statute, the county asserts that the payment of heritage value uses public funds to confer an unconstitutional private benefit. Article III, section 38(a) of the Missouri Constitution states:

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[11] In addressing a similar constitutional challenge, the Supreme Court of Kansas held that the Kansas legislature could increase the amount of compensation owed to a party to include payment of a 25 percent premium above fair market value without offending the requirements in the constitutions of the United States and Kansas that require payment of "just compensation." *State ex rel. Tomasic v. Unified Gov't of Wyandotte Cnty.*, 962 P.2d 543, 560-61 (Kan. 1998).

> The general assembly shall have no power to grant public money or property, or lend or authorize the lending of public credit, to any private person, association or corporation, excepting aid in public calamity, and general laws providing for pensions for the blind, for old age assistance, for aid to dependent or crippled children or the blind, for direct relief, for adjusted compensation, bonus or rehabilitation for discharged members of the armed services of the United States who were bona fide residents of this state during their service, and for the rehabilitation of other persons.

Accordingly, public funds may be used only for the public interest unless the situation allows for one of the listed exceptions. Article VI, sections 23 and 25 similarly restrict local governments from providing public money for private use.

Here, the county does not argue that its exercise of eminent domain fails to serve some public purpose. Rather, it argues that any compensation it must pay beyond the constitutional minimum to make that acquisition serves no public purpose and is, therefore, unconstitutional. To determine whether there is a sufficient purpose behind a grant of public money, this Court has employed the "primary effect" test. *Curchin v. Missouri Indus. Dev. Bd.*, 722 S.W.2d 930, 934 (Mo. banc 1987). The "primary effect" test states:

> If the primary object of a public expenditure is to subserve a public municipal purpose, the expenditure is legal, notwithstanding it also involves as an incident an expense, which, standing alone, would not be lawful. But if the primary object is not to subserve a public municipal purpose, but to promote some private end, the expense is illegal, even though it may incidentally serve some public purpose.

Id. (quoting *State ex rel. City of Jefferson v. Smith*, 154 S.W.2d 101, 102 (Mo. banc 1941)).

When considering the statutory compensation in section 523.039 for condemnation of property that has been owned by a family for 50 or more years, the

public expenditure is made to acquire, through eminent domain, property for a public purpose.[12] The primary object of the expenditure in section 523.039, then, is to compensate a class of persons whose property is acquired through eminent domain for the benefit of the public. Therefore, the compensation authorized by section 523.039 "is legal, notwithstanding that it also involves as, an incident, an expense that, standing alone, would not be lawful." *Curchin*, 722 S.W.2d at 934. Section 523.039 does not violate the constitutional prohibition against using public funds for a private benefit.

C. Heritage Value Statutes Do Not Invade Jury's Duty to Determine Just Compensation

Article I, section 26 of the Missouri Constitution states that the "just compensation" to be paid for the acquisition of land by eminent domain "shall be ascertained by a jury." The county asserts that the heritage value statute violates this section of the constitution because, under section 523.061, it is the judge's responsibility to determine heritage value and not the jury's.[13]

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[12] For the purpose of applying the "primary object" test, this Court assumes, without finding, that there is no public purpose in paying property owners additional compensation when the condemned property has been owned by one family 50 or more years.

[13] The county does not allege that section 532.061 violates its right to a jury trial provided by article I, section 22(a) of the Missouri Constitution.

This assertion is incorrect. This argument is based on the county's claim that the language of section 523.060, referencing "just compensation," mandates that all amounts paid under the statute are constitutional compensation that must be ascertained by a jury. As previously determined, article I, section 26 requires the payment of "just compensation," which has been defined by this Court as "fair market value." *Union Quarry*, 394 S.W.2d at 305. The legislature has provided for payment of heritage value compensation in addition to the constitutionally required payment of "fair market value." Because heritage value compensation is not part of the "just compensation" mandated by the constitution, there is no constitutional mandate that it be ascertained by a jury.

Conclusion

While numerous parts of the trial transcripts were missing, none of the inaudible words or unrecorded side bars were material to the issues raised on appeal, so the record was sufficient for this Court to rule with confidence. The trial court did not err in its evidentiary rulings, and the verdict was not grossly excessive so as to warrant a new trial.

Furthermore, the trial court did not err in assessing and adding heritage value to the jury's verdict. The statutes providing that persons who have owned their property for 50 or more years, whose property is subject to taking for public use, should be awarded an amount of compensation greater than the fair market value of that property do not violate the Missouri Constitution. Nor does compensation that is above the fair market value, provided in response to a taking, violate the constitution by providing a

private benefit with public funds. Lastly, the heritage value statutes do not give the judge the jury's responsibilities in determining just compensation in violation of the constitution. Accordingly, the judgment of the trial court is affirmed.

PATRICIA BRECKENRIDGE, JUDGE

Russell, C.J., Fischer, Stith, Draper and Teitelman, JJ., concur. Wilson, J., not participating.